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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. Nos. AMS-FV-10-0094; FV11-985-1A IR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2011-2012 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule revises the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year. This rule increases the Scotch spearmint oil salable quantity from 693,141 pounds to 733,913 pounds, and the allotment percentage from 34 percent to 36 percent. In addition, this rule increases the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds, and the allotment percentage from 44 percent to 55 percent. The marketing order regulates the handling of spearmint oil produced in the Far West and is administered locally by the Spearmint Oil Administrative Committee (Committee). The Committee recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices and to help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2011, through May 31, 2012; comments received by December 5, 2011 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; *Fax:* (202) 720-8938; or *Internet:* <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (503) 326-2724, *Fax:* (503) 326-7440, or *E-mail:* Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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 provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Scotch and Native spearmint oil produced in the Far West that handlers may purchase from, or handle on behalf of, producers during the 2011-2012 marketing year, which began on June 1, 2011, and ends on May 31, 2012.

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. A 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.

The original salable quantity and allotment percentages for Scotch and Native spearmint oil for the 2011-2012 marketing year were recommended by the Committee at its October 13, 2010, meeting. The Committee recommended salable quantities of 694,774 pounds and 1,012,983 pounds, and allotment percentages of 34 percent and 44 percent, respectively, for Scotch and Native spearmint oil. A proposed rule was published in the **Federal Register** on March 4, 2011 (76 FR 11971). Comments on the proposed rule were solicited from interested persons until April 4, 2011. No comments were received. Subsequently, a final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2011-2012 marketing year was published in the **Federal Register** on May 13, 2011 (76 FR 27852).

This rule revises the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle

on behalf of, producers during the 2011–2012 marketing year, which ends on May 31, 2012. Pursuant to authority contained in §§ 985.50, 985.51, and 985.52 of the order, the full eight member Committee met on August 17, 2011, to consider pertinent market information on the current supply, demand, and price of spearmint oil. The Committee, in two separate motions, recommended that the 2011–2012 marketing year Scotch and Native spearmint oil allotment percentages be increased by 2 percent and 11 percent, respectively. The motion to increase the allotment percentage for Scotch was unanimous and the motion to increase the allotment percentage for Native passed with seven members in favor and one member opposed. The member opposed to the motion agreed that an increase was necessary for the industry to respond to increasing demand, but based his vote on the opinion that an 11 percent increase was too high this early in the marketing year.

Thus, taking into consideration the following discussion, this rule increases the 2011–2012 marketing year salable quantities and allotment percentages for Scotch and Native spearmint oil to 733,913 pounds and 36 percent, and 1,266,161 pounds and 55 percent, respectively.

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during the marketing year. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

The total industry allotment base for Scotch spearmint oil for the 2011–2012 marketing year was estimated by the Committee at the October 13, 2010, meeting at 2,043,453 pounds. This was later revised at the beginning of the 2011–2012 marketing year to 2,038,595 pounds to reflect the loss of 4,858 pounds of base due to non-production of some producers' total annual allotments during the 2010–2011 marketing year.

Section 985.53(e) of the order requires that producers make a bona fide effort to produce all of their respective allotment base each year. Failure to do so results in a reduction in the producer's allotment base equivalent to such unproduced portion. The 4,858 pound reduction in allotment base for Scotch spearmint oil reflects the total base surrendered by all producers due to the non-production of those

producers' total annual allotments during the 2010–2011 marketing year.

When the revised total Scotch allotment base of 2,038,595 pounds is applied to the originally established allotment percentage of 34 percent, the initially established 2011–2012 marketing year salable quantity of 694,774 pounds is effectively modified to 693,122 pounds. After accounting for a rounding adjustment of 19 pounds, the actual 2011–2012 marketing year annual allotment for Scotch spearmint oil prior to this increase is 693,141 pounds.

The same situation applies to Native spearmint oil where the Committee estimated at the October 13, 2010, meeting that the total industry allotment base for Native spearmint oil for the 2011–2012 marketing year was 2,302,233 pounds. This number was later revised at the beginning of the 2011–2012 marketing year to 2,301,926 pounds to reflect the bona fide effort reduction of 307 pounds. Just as with Scotch spearmint oil, the 307 pound reduction in Native allotment base reflects the total base surrendered by all producers due to the non-production of such producers' total annual allotments during the 2010–2011 marketing year.

When the revised total Native allotment base of 2,301,926 pounds is applied to the originally established allotment percentage of 44 percent, the initially established 2011–2012 marketing year Native salable quantity of 1,012,983 pounds is effectively modified to 1,012,847 pounds. After accounting for 102 pounds of rounding adjustments when calculating each producer's annual allotment, the actual 2011–2012 total annual allotment of Native spearmint oil prior to this increase is 1,012,949 pounds.

By increasing the salable quantity and allotment percentage, this rule makes additional amounts of Scotch and Native spearmint oil available to the market. Such additional oil may come from spearmint oil produced in the current marketing year or by releasing oil from the reserve pool. As of May 31, 2011, the Committee estimated the Scotch reserve pool to contain 454,715 pounds of spearmint oil and the Native reserve pool to contain 606,942 pounds of spearmint oil.

When the allotment percentage increases established by this rule are applied to each individual producer, each such producer may deliver up to an amount equal to such allotment from their 2011–2012 marketing year's production, from spearmint oil transferred from another producer's 2011–2012 marketing year production, or from the respective class of oil held in reserve. However, pursuant to

§§ 985.56 and 985.156, producers with excess oil are only able to transfer such excess oil to other producers to fill deficiencies in annual allotments prior to October 31 of each marketing year. The Committee expects that all individuals entitled to a pro rata increase in the salable quantity allotment for each class of spearmint oil will be able to exercise the full marketing rights associated with such an increase.

Therefore, the 2 percent increase in the Scotch spearmint oil allotment percentage established by this rule is expected to result in a 2011–2012 marketing year salable quantity of 733,913 pounds. Likewise, the 11 percent increase in the Native spearmint oil allotment percentage established by this rule is expected to result in a 2011–2012 marketing year salable quantity of 1,266,161 pounds. This reflects an additional 40,772 pounds of Scotch spearmint oil and 253,212 pounds of Native spearmint oil being made available to the market by this rule.

The following summarizes the Committee recommendations:

Scotch Spearmint Oil Recommendation

(A) Estimated 2011–2012 Scotch Allotment Base—2,043,453 pounds. This is the estimate on which the original 2011–2012 salable quantity and allotment percentage was based.

(B) Revised 2011–2012 Scotch Allotment Base—2,038,595 pounds. This is 4,858 pounds less than the estimated allotment base of 2,043,453 pounds. The difference is the result of some producers failing to produce all of their 2010–2011 allotment.

(C) Original 2011–2012 Scotch Allotment Percentage—34 percent. This was unanimously recommended by the Committee on October 13, 2010.

(D) Original 2011–2012 Scotch Salable Quantity—694,774 pounds. This figure is 34 percent of the estimated 2011–2012 allotment base of 2,043,453 pounds.

(E) Adjusted 2011–2012 Scotch Salable Quantity—693,141 pounds. This figure reflects the salable quantity actually available at the beginning of the 2011–2012 marketing year. This quantity is derived by applying the 34 percent allotment percentage to the revised allotment base of 2,038,595. This adjusted salable quantity also accounts for a 19 pound increase due to rounding.

(F) Current Revision to the 2011–2012 Scotch Salable Quantity and Allotment Percentage:

(1) Increase in Scotch Allotment Percentage—2 percent. The Committee

recommended a 2 percent increase at its August 17, 2011, meeting.

(2) 2011–2012 Scotch Allotment Percentage—36 percent. This figure is derived by adding the increase of 2 percent to the original 2011–2012 allotment percentage of 34 percent.

(3) Calculated Revised 2011–2012 Scotch Salable Quantity—733,913 pounds. This figure is 36 percent of the revised 2011–2012 allotment base of 2,038,595 pounds plus the 19 pound rounding adjustment.

(4) Computed Increase in the 2011–2012 Scotch Salable Quantity—40,772 pounds. This figure is 2 percent of the revised 2011–2012 allotment base of 2,038,595 pounds.

The 2011–2012 marketing year began on June 1, 2011, with an estimated carry-in of 227,241 pounds of salable Scotch spearmint oil. When the estimated carry-in is added to the revised 2011–2012 salable quantity of 693,141 pounds, the result is a total estimated available supply of Scotch spearmint oil for the 2011–2012 marketing year of 920,382 pounds. Of this amount, 733,877 pounds of Scotch spearmint oil have already been sold or committed, which leaves just 186,505 pounds available for sale for the remainder of the 2011–2012 marketing year.

In making this recommendation to increase the available supply of Scotch spearmint oil, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. By increasing the 2011–2012 Scotch spearmint oil salable percentage by 2 percent, an estimated additional 40,772 pounds will be made available to the market. This amount combined with the 186,505 pounds currently available, will make a total of 227,277 pounds available to the market and bring the total available supply of Scotch spearmint oil for the marketing year to 961,154 pounds.

When the original 2011–2012 marketing policy statement was drafted, handlers estimated that the demand for Scotch spearmint oil for the 2011–2012 marketing year may be 800,000 pounds. However, when the Committee made its original recommendation for the establishment of the Scotch spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year, it had not anticipated the increase in demand for Scotch spearmint oil that the market is currently experiencing.

The Committee believes that the supply of Scotch spearmint oil available to the market, without an increase in the salable quantity, would be insufficient to satisfy the current demand for oil at reasonable price levels. Therefore, it is the opinion of the industry that this action is essential to ensuring an adequate supply of Scotch spearmint oil to the market.

Native Spearmint Oil Recommendation

(A) Estimated 2011–2012 Native Allotment Base—2,302,233 pounds. This is the estimate on which the original 2011–2012 Native spearmint oil salable quantity and allotment percentage was based.

(B) Revised 2011–2012 Native Allotment Base—2,301,926 pounds. This is 307 pounds less than the estimated allotment base of 2,302,233 pounds. The difference is the result of some producers failing to produce all of their 2010–2011 allotment.

(C) Original 2011–2012 Native Allotment Percentage—44 percent. This was unanimously recommended by the Committee at its October 13, 2010 meeting.

(D) Original 2011–2012 Native Salable Quantity—1,012,983 pounds. This figure is 44 percent of the estimated 2011–2012 allotment base of 2,302,233.

(E) Adjusted 2011–2012 Native Salable Quantity—1,012,949 pounds. This figure reflects the salable quantity actually available at the beginning of the 2011–2012 marketing year. This quantity is derived by applying the 44 percent allotment percentage to the revised allotment base of 2,301,926. The adjusted salable quantity also accounts for a 101 pound increase due to rounding.

(F) Current Revision to the 2011–2012 Native Salable Quantity and Allotment Percentage:

(1) Increase in Native Allotment Percentage—11 percent. The Committee recommended an 11 percent increase at its August 17, 2011, meeting.

(2) 2011–2012 Native Allotment Percentage—55 percent. This figure is derived by adding the increase of 11 percent to the original 2011–2012 allotment percentage of 44 percent.

(3) Calculated Revised 2011–2012 Native Salable Quantity—1,266,161 pounds. This figure is 55 percent of the revised 2011–2012 allotment base of 2,301,926 pounds, plus the 101 pound increase due to rounding.

(4) Computed Increase in the 2011–2012 Native Salable Quantity—253,212 pounds. This figure is 11 percent of the revised 2011–2012 allotment base of 2,301,926 pounds.

The 2011–2012 marketing year began on June 1, 2011, with an estimated carry-in of 164,809 pounds of salable Native spearmint oil. When the estimated carry-in is added to the revised 2011–2012 salable quantity of 1,012,949 pounds, the result is a total estimated available supply of Native spearmint oil for the 2011–2012 marketing year of 1,177,758 pounds. Of this amount, 1,076,114 pounds of oil have already been sold or committed for the 2011–2012 marketing year, which leaves just 101,644 pounds available for sale.

In making this recommendation, the Committee considered all available information on price, supply, and demand. The Committee also considered reports and other information from handlers and producers in attendance at the meeting and reports given by the Committee manager from handlers and producers who were not in attendance. By increasing the 2011–2012 Native spearmint oil salable percentage by 11 percent, an estimated additional 253,212 pounds will be made available to the market. This amount combined with the 101,644 pounds currently available, will make a total of 354,856 pounds available to the market and bring the total available supply of Native spearmint oil for the year to 1,430,970 pounds.

When the original 2011–2012 marketing policy statement was drafted, handlers estimated that the demand for Native spearmint oil for the 2011–2012 marketing year may be 1,130,000 pounds. However, when the Committee made its original recommendation for the establishment of the Native spearmint oil salable quantity and allotment percentage for the 2011–2012 marketing year, it had not anticipated the increase in demand for Native spearmint oil that the market is currently experiencing. The Committee believes that the supply of Native spearmint oil available to the market, without an increase in the salable quantity, would be insufficient to satisfy the current demand for oil at reasonable price levels. Therefore, it is the opinion of the industry that this action is essential to ensuring an adequate supply of Native spearmint oil to the market.

Based on its analysis of available information, USDA has determined that the salable quantity and allotment percentage for Scotch spearmint oil for the 2011–2012 marketing year should be increased to 733,913 pounds and 36 percent, respectively. In addition, USDA has determined that the salable quantity and allotment percentage for Native spearmint oil for the 2011–2012

marketing year should be increased to 1,266,161 pounds and 55 percent, respectively.

This rule relaxes the regulation of Scotch and Native spearmint oil and will allow producers to meet market demand while improving producer returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 2011–2012 marketing year has been reviewed by USDA. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of § 985.50 of the order. During its discussion of revising the 2011–2012 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with USDA's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

The increases in the Scotch and Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for both classes of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this initial 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 8 spearmint oil handlers subject to regulation under the order, and approximately 32 producers of Scotch spearmint oil and approximately 88 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on the SBA's definition of small entities, the Committee estimates that two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 8 of the 32 Scotch spearmint oil producers and 22 of the 88 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Volume control is believed to have little or no effect on consumer prices of products containing spearmint oil and likely does not result in fewer retail sales of such products. Without volume control, producers would not be limited in the production and marketing of spearmint oil. Under those conditions, the spearmint oil market would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source flavoring needs from other markets, potentially causing long term economic damage to the domestic spearmint oil industry. The marketing order's volume control provisions have been successfully implemented in the domestic spearmint oil industry for nearly three decades and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Scotch and Native spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2011–2012 marketing year, which ends on May 31, 2012. This rule increases the Native spearmint oil salable quantity from 693,141 pounds to 733,913 pounds

and the allotment percentage from 34 percent to 36 percent. Additionally, this rule increases the Native spearmint oil salable quantity from 1,012,949 pounds to 1,266,161 pounds and the allotment percentage from 44 percent to 55 percent.

Based on projections available at the meeting, the Committee considered a number of alternatives to this increase. The Committee not only considered leaving the salable quantity and allotment percentage unchanged, but also considered other potential levels of increase. The Committee reached its recommendation to increase the salable quantity and allotment percentage for both Scotch and Native spearmint oil after careful consideration of all available information, and believes that the levels recommended will achieve the objectives sought. Without the increase, the Committee believes the industry would not be able to satisfactorily meet market demand.

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. 0581–0178, Vegetable and Specialty Crop Marketing Orders. 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 will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil 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.

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.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to

submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on a change to the salable quantity and allotment percentage for both Scotch and Native spearmint oil for the 2011–2012 marketing year. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Scotch and Native spearmint oil that may be marketed during the marketing year, which ends on May 31, 2012; (2) the current quantity of Scotch and Native spearmint oil may be inadequate to meet demand for the 2011–2012 marketing year, thus making the additional oil available as soon as is practicable will be beneficial to both handlers and producers; (3) the Committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 985.230, paragraphs (a) and (b) are revised to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.230 Salable quantities and allotment percentages—2011–2012 marketing year.

* * * * *

(a) Class 1 (Scotch) oil—a salable quantity of 733,913 pounds and an allotment percentage of 36 percent.

(b) Class 3 (Native) oil—a salable quantity of 1,266,161 pounds and an allotment percentage of 55 percent.

Dated: September 30, 2011.

Ellen King,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2011–25812 Filed 10–5–11; 8:45 am]

BILLING CODE 3410–02–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 201, 206, 207, and 210

Practice and Procedure: Rules of General Application, Safeguards, Antidumping and Countervailing Duty, and Adjudication and Enforcement

AGENCY: International Trade Commission.

ACTION: Final rule.

SUMMARY: The United States International Trade Commission (“Commission”) is amending its rules of practice and procedure concerning rules of general application, safeguards, antidumping and countervailing duty, and adjudication and enforcement. The amendments are necessary to implement a new Commission requirement for electronic filing of most documents with the agency. The intended effects of the amendments are to increase efficiency in processing documents filed with the Commission, reduce Commission expenditures, and conform agency processes to Federal Government initiatives.

DATES: Effective November 7, 2011.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary, telephone (202) 205–2000 or Gracemary Roth-Roffy, telephone (202) 205–3117, Office of the General Counsel, United States

International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 6, 2011, the Commission published a notice of proposed rulemaking concerning the filing of documents with the agency. 76 FR 39750, July 6, 2011. This notice of final rulemaking is based on that notice. On the same day, the Commission published a notice seeking public comment on a draft Handbook on Electronic Filing Procedures. 76 FR 39757, July 6, 2011. The preamble below is designed to assist readers in understanding these amendments to the Commission's Rules. This preamble provides background information, a regulatory analysis of the amendments, a discussion of the comments received from the public, and a section-by-section explanation of the amendments.

Background

Section 335 of the Tariff Act of 1930 (19 U.S.C. 1335) authorizes the Commission to adopt such reasonable procedures, rules, and regulations as it deems necessary to carry out its functions and duties. This rulemaking seeks to improve provisions of the Commission's existing Rules of Practice and Procedure. The Commission is amending its rules covering proceedings such as investigations and reviews conducted under title VII and section 337 of the Tariff Act of 1930 (19 U.S.C. 1337, 1671 *et seq.*), sections 202, 406, 421, 422 of the Trade Act of 1974 (19 U.S.C. 2252, 2436, 2451, 2451a), and sections 302 and 312 of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3352, 3372).

Consistent with its ordinary practice, the Commission is issuing these amendments in accordance with provisions of section 553 of the APA (5 U.S.C. 553), although not all provisions apply to this rulemaking. The APA procedure entails the following steps: (1) Publication of a notice of proposed rulemaking; (2) solicitation of public comments on the proposed amendments; (3) Commission review of public comments on the proposed amendments; and (4) publication of final amendments at least thirty days prior to their effective date.

The Commission will now require that most filings with the agency be made by electronic means. The electronic version will constitute the

official record document and any paper form of the document must be a true copy and identical to the electronic version. The Commission's Electronic Document Information System (EDIS) already accepts electronic filing of certain documents, and will be the mechanism by which participants in Commission proceedings electronically file their documents in the future. Previously, submitters have been permitted to file only public documents into EDIS. The new rules provide for the electronic filing of documents containing confidential business information and business proprietary information into EDIS. A new Handbook on Filing Procedures will supersede the Commission's current Handbook on Electronic Filing Procedures, and will provide more detailed information on the filing process. The Commission has sought public comment concerning the new handbook in a separate notice. Persons seeking to file documents will be required to comply with the revised rules and the Handbook on Filing Procedures.

The Commission estimates that electronic filing of most documents will significantly reduce the cost to the agency of processing documents. These costs include labor costs for scanning paper documents into EDIS, storage costs for paper documents, and costs for continuity of operations. Electronic filing also is expected to improve the efficiency and effectiveness of the filing process because documents will be entered into EDIS more rapidly. Electronic filing also accords with government-wide initiatives encouraging agencies to do business electronically.

Although the Commission intends to require electronic filing of most documents, documents generally will also be submitted in paper form. The agency will allow some documents to be filed in paper form by noon on the next business day. Moreover, witness testimony and hearing materials in import injury investigations and reviews will be submitted only in paper form, and public versions of testimony will be accepted at the relevant conference or hearing. The rules will provide the Secretary to the Commission with the authority to establish exceptions and modifications to the requirement to electronically file documents, as more fully described in the Handbook on Filing Procedures.

The changes to the filing process are not intended to affect the current practice with respect to the filing of responses to Commission questionnaires in import injury investigations and reviews.

Regulatory Analysis

The Commission has determined that the final rules do not meet the criteria described in section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of final rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission chose to publish a notice of proposed rulemaking, these regulations are "agency rules of procedure and practice," and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104-121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), because the amendments would impose no new collection of information under the statute.

Comments

The Commission received 10 sets of comments on the notice of proposed rulemaking. Commenters generally made comments both on that notice and on the related notice concerning the Handbook. Comments were received from Adduci, Mastriani, & Schaumberg LLP (AMS); the American Bar Association Section of Intellectual Property (ABA); the American Intellectual Property Law Association (AIPLA); the Customs and International Trade Bar Association (CITBA); Hughes Hubbard & Reed LLP (Hughes Hubbard);

the ITC Trial Lawyers Association (ITC TLA); Kelley Drye & Warren (Kelley Drye); Stewart and Stewart; Wiley Rein LLP, on behalf of Nucor Corporation (Wiley Rein); and Williams Mullen. Issues raised in the comments will be addressed in this section. The section first addresses comments made by two or more commenters on the same issue, then addresses unique comments made by one commenter. The Commission appreciates the comments received, and the thoughtful and thorough analysis on which they are based.

Comments on Paper Filing Requirement

AMS, the CITBA, Hughes Hubbard, the ITC TLA, Kelley Drye, Wiley Rein, and Williams Mullen oppose requiring the submission of paper copies of documents in addition to their electronic filing. Several commenters pointed to government-wide initiatives that support moving to electronic filing. CITBA contends that the Commission's new procedure will increase the burden on submitters. CITBA, among others, cites as examples that entries of appearance and public versions of confidential filings, that in the past could have been filed electronically, will now have to be filed both electronically and in paper form. Hughes Hubbard, Kelley Drye, and Wiley Rein submit that the Commission will incur storage costs for paper copies. Hughes Hubbard suggests that, if the paper filing requirement is retained, the number of required copies should be reduced from eight to four. AMS suggests requiring one paper copy, and setting an end date for the requirement.

AMS suggests that the new policy may result in increased costs and reduced efficiency for the Commission. Kelley Drye and Wiley Rein warn that the Commission will need to verify that electronic and paper submissions are correct, and deal with problems arising from improper filings. Wiley Rein expresses the concern that the requirement to simultaneously file electronically and submit paper copies will lead to an increase in filing problems such as administrative protective order violations. Wiley Rein expresses the concern that the proposed rules and Handbook did not explain (1) The status of a filing where the paper version is timely received but not the electronic version, or vice versa; (2) the process to follow where there are differences between the versions, and (3) whether a special process will be used if business proprietary information is redacted in one version but not the other. Wiley Rein notes that, although electronic filing of business proprietary data appears to be required, it is not

explicitly stated, and the Commission has not explained whether proprietary data must be marked and controlled to ensure against unauthorized access.

In developing its new filing policy, the Commission seeks to meet its needs for filings in particular formats without unduly burdening submitters. As a preliminary matter, the Commission confirms that the electronic filing requirement covers documents containing business proprietary or confidential business information. EDIS currently provides for specifying whether a document contains confidential information, and blocks access by members of the public to such documents. Language is being added to the Handbook to more fully address the filing of confidential material.

The Commission recognizes the arguments for moving fully to electronic filing. However, after careful consideration, the Commission has decided that the paper copies it will require are currently necessary for carrying out the agency's functions. At the present time, eight paper copies—a reduction from fourteen—are needed. The copies are provided to each Commissioner's office as well as relevant staff offices. Commission proceedings operate under very short deadlines and filings are voluminous. Paper copies are needed to ensure that staff and decision-makers can efficiently and fully review and analyze submissions in such short time periods. It is not practicable for the agency to print out paper copies of complicated documents for Commissioners and staff as rapidly as they are needed. Such documents often include tabbed sections, appendices, and color graphics, and the parties are in a better position to present the paper versions of their filings in the manner they intend them to be presented. Storage costs should not be substantial, because the Commission's records disposition schedule allows for prompt destruction of paper copies after the proceeding is completed. To the extent that the requirement to simultaneously file electronically and submit paper copies poses a problem for submitters, the Commission urges submitters to consult with the Secretary to help ensure that filings are accomplished correctly.

However, in the interest of reducing the burden on submitters, the Commission will not require certain documents, such as entries of appearance, to be filed in paper form. In addition, as the Commission periodically reviews its regulations, it may revisit the filing requirement after it has had a chance to function for a time, and may make further changes to

the requirement as warranted by experience. However, the Commission cannot yet specify a schedule for this review.

The Commission wishes to emphasize that all of the requirements relating to filing of documents will be enforced. In particular, the failure to redact business proprietary information from the electronic version of a document may constitute a breach of the administrative protective order whether or not the redaction was done properly in the paper copies; the same would be true if the problem appeared in the paper copies.

Comments on the Filing of Petitions

Hughes Hubbard, Kelley Drye, and Williams Mullen suggest that the Commission require that petitions in import injury proceedings be filed electronically. Kelley Drye indicates that the proposed rulemaking did not make clear whether exhibits and attachments would need to be in paper form as well as on electronic media. They also believe that it was not clear whether eight paper copies of the petition are required.

Because of the special handling that petitions require, electronic filing of such documents would not meet the agency's needs at this time. However, with respect to exhibits, appendices, and attachments to petitions, the Commission requires these documents to be filed only on electronic media and not in paper form. The Commission requires that the original plus eight paper copies of the confidential version of the petition and four paper copies of the public version of the petition must be filed.

Comments on the "One-Day Rule"

AMS, the CITBA, Hughes Hubbard, Kelley Drye, Wiley Rein, and Williams Mullen urge the Commission to retain the one-day rule on the filing of public versions of confidential documents in import injury proceedings. The Commission did not intend to eliminate this rule, which the agency agrees serves a valuable function. The Commission is clarifying in its Handbook that the one-day rule has been retained.

Comments on Filing Requirements in Section 337 Proceedings

The AIPLA and the ABA suggest that the Commission clarify the filing requirements in section 337 proceedings by setting out those requirements in section 210.4(f), rather than employing cross-references among several rules. The final rules adopt the suggested approach to address this concern.

AMS, the AIPLA and the ABA express the concern that the proposed rules imply the creation of a same-day rule for filing the public version of a confidential submission. In a similar vein, the ITC TLA urges the Commission to not require the filing of public versions of all confidential documents. The Commission did not intend to create such a general requirement. However, the rules already provide for the filing of public versions of some confidential filings.

The AIPLA and the ABA suggest replacing in section 210.4(f) "submissions pursuant to an order of the presiding" ALJ with "submissions filed with the Secretary pursuant to an order of the presiding ALJ." The ITC TLA makes a similar comment. The ABA suggests making a similar revision to section II(C) of the Handbook. The Commission has adopted this suggestion.

The AIPLA, the ABA, and the ITC TLA suggest clarifying whether the Commission is removing the requirement to submit copies of the complaint for service on parties and embassies. The Commission does not intend to remove this requirement, and is reflecting this clarification in its rules.

The AIPLA and the ABA suggest deleting new section II(J)(3) of the Handbook as unnecessarily onerous. The ITC TLA suggests that the requirement is particularly difficult for counsel not resident in Washington, DC. The Commission has modified that section to simplify the procedure.

The ABA suggests clarifying in section 210.8 whether the Commission intends to remove procedures for the separation of confidential and nonconfidential versions of documents such as complaints, and for submitting multiple copies of exhibits, appendices, and attachments. The ITC TLA similarly indicates that the proposed rules appear to eliminate the requirement to separate the public and confidential versions of the complaint. The Commission does not intend to remove the requirement to separate the public and confidential versions of documents, and is clarifying this point in its rules.

Comments Relating to Service

The AIPLA and the ABA suggest removing the requirement in section II(K) of the Handbook that parties obtain approval of the presiding administrative law judge in order to effect electronic service. The AIPLA offers a proposed amendment to section 201.16(f) to streamline service. The ABA suggests adding electronic service on lead counsel as a default method of service. Stewart and Stewart urges the

Commission to consider allowing parties to serve public documents electronically if other parties consent to such service, and requesting that parties include in their entries of appearance a statement on whether they consent. The ITC TLA urges the Commission to clarify the discussion of service in the Handbook with respect to whether permission is required for electronic service during the Commission review phase of a section 337 proceeding, and whether such service requires the consent of both the presiding administrative law judge and the relevant party.

The Commission has determined to amend its rule on service to remove the requirement for obtaining the consent of the Secretary or the presiding administrative law judge in order to effect service electronically. A party will be able to opt out of being served electronically by notifying the Secretary or the administrative law judge, and the other parties to a proceeding.

Comment Relating to Agency Closure

The ABA suggests that section II(C)(4) of the Handbook be revised to adopt a default filing date of the next business day in the event of a closure of the Commission, regardless of whether the electronic docketing system is operational. The ITC TLA makes a similar comment. The Commission has adopted the suggestion.

Adduci, Mastriani, & Schaumberg LLP

AMS notes that the reproduction of items on EDIS beyond fair use requires the registered user's permission. Paragraph L of the Handbook addresses copyright issues.

The American Intellectual Property Law Association

The AIPLA proposes to replace "copies" with "a copy" in section 201.16. The Commission has adopted this suggestion.

The AIPLA suggests replacing the term "true copies." The Commission believes that the term is clearer than the proposed alternative, but has added clarifying language to its rules.

The AIPLA suggests clarifying in section II(c)(4) of the Handbook how a submitter is to notify the Secretary of a technical failure at a time when the agency is closed but EDIS is operational. The Commission believes that this clarification is not needed in view of the fact that the Commission will extend electronic filing deadlines to the next business day after the agency closure.

The American Bar Association Section of Intellectual Property

The ABA suggests adding a provision to section II(C) of the Handbook stating that, in case of a conflict between the Handbook and the instructions issued by the presiding administrative law judge, the latter controls. The Commission is including such a provision in the Handbook, but notes that if the conflict is between the administrative law judge's ground rules and the Commission's rules, the latter control.

Hughes Hubbard & Reed LLP

Hughes Hubbard urges the Commission to set the deadline for electronic filing at midnight on the relevant day, rather than at 5:15 p.m. The Commission needs to retain the existing deadline in order to ensure proper receipt and tracking of electronic filings.

Hughes Hubbard recommends that the Commission extend the procedure for reporting an EDIS failure to the reporting of a technical failure in the submitter's system. The Commission is not adopting this change, because of the difficulty of determining whether a submitter's system has failed.

Hughes Hubbard suggests that the Commission develop a standard e-filing declaration concerning technical failures. The Commission considers that such a form may not be practical, because of the variety of circumstances that may arise.

Hughes Hubbard suggests that the Commission add "(unless otherwise authorized by the Commission)" to the rule on posthearing briefs. The Commission does not believe that this addition is necessary, because the Commission, pursuant to section 201.4, has the authority to modify its page limit requirements where a particular instance so warrants.

The ITC Trial Lawyers Association

The ITC TLA urges the Commission to make clear whether and how confidential business information is to be filed electronically. The Commission confirms that the electronic filing requirement covers documents containing business proprietary or confidential business information. EDIS currently provides for specifying whether a document contains confidential information, and blocks access by members of the public to such documents. Language is being added to the Handbook to more fully address the filing of confidential material.

The ITC TLA requests clarification of the relationship between copies

provided for in sections 201.14 and 210.4 and copies required under the ground rules of the presiding administrative law judge. The copies provided for in the Commission rules are distinct and in addition to any copies required in ground rules.

The ITC TLA suggests specifying how many copies are required of the exhibits, appendices, and attachments to a complaint. The Commission will only require a single copy of such documents on CD-ROM or other approved media. If the documents contain confidential business information, however, a public version shall be filed on separate media.

The ITC TLA recommends that the Handbook specify that the Commission rules control in any conflict between the Handbook and the rules. The Handbook contains such a statement.

The ITC TLA suggests specifying in section H(1) of the Handbook whether a submitter is required to perform optical character recognition prior to submitting a document. The Commission does not require submitters to perform such a process.

The ITC TLA suggests clarifying the term "attestation" as used in the Handbook. To avoid confusion, the term "attest" is being replaced by "certify," a term that is already used in the rules, such as in 19 CFR 201.6.

The ITC TLA suggests clarifying the Appendix to the Handbook by specifying that certain categories do not refer to section 337 documents. The Appendix has been revised to clearly distinguish between instructions for filing section 337 documents and instructions for other filings.

Wiley Rein LLP

Wiley Rein urges the Commission to not adopt the proposed regulations and Handbook in their present form. Instead, Wiley Rein suggests that the Commission (1) Undertake additional review and then publish a new proposal for public comment, (2) revise its rules to permit electronic-only filing, or (3) permit electronic filing one day after all paper submissions. As discussed above, the Commission has decided that it must require electronic filing and the submission of paper copies of certain documents at this time. The Commission considers that these processes must be simultaneous in import injury proceedings due to the short timeframe and to facilitate review by the Commissioners and staff in these proceedings. The Commission is issuing this notice of final rulemaking rather than a new proposal for comment because it wishes to implement its new requirement as soon as possible, with

the attendant benefits described in the notice of proposed rulemaking.

Wiley Rein suggests that the Commission provide more detail concerning the filing of voluminous documents, such as by emulating the Commerce Department, which provides for special handling of documents over 500 pages in length. The Commission does not believe that further guidance is necessary, because EDIS is capable of handling voluminous documents such as documents containing 500 pages.

List of Subjects in 19 CFR Parts 201, 206, 207, and 210

Administrative practice and procedure, Business and industry, Customs duties and inspection, Imports, Investigations.

For the reasons stated in the preamble, the United States International Trade Commission amends 19 CFR parts 201, 206, 207, and 210 as follows:

PART 201—RULES OF GENERAL APPLICATION

■ 1. The authority citation for part 201 continues to read as follows:

Authority: Sec. 335 of the Tariff Act of 1930 (19 U.S.C. 1335), and sec. 603 of the Trade Act of 1974 (19 U.S.C. 2482), unless otherwise noted.

Subpart B—Initiation and Conduct of Investigations

■ 2. Amend § 201.8 by revising paragraphs (a), (c), (d), and (f) to read as follows:

§ 201.8 Filing of documents.

(a) *Applicability; where to file; date of filing.* This section applies to all Commission proceedings except, notwithstanding any other section of this chapter, those conducted under 19 U.S.C. 1337, which are covered by requirements set out in part 210 of this chapter. Documents shall be filed at the office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

* * * * *

(c) *Specifications for documents.* Each document filed under this chapter shall be signed, double-spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (e.g. pleadings

papers), and single sided. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

(d) *Filing.* (1) Except as provided in paragraphs (d)(2) through (6) and (f) of this section, all documents filed with the Commission shall be filed electronically. Completion of filing requires the submission of paper copies by 12 noon, eastern time, on the next business day. A paper copy provided for in this section must be a true copy of the electronic version of the document, i.e., a copy that is identical in all possible respects. All filings shall comply with the procedures set forth in the Commission's Handbook on Filing Procedures, which is available from the Secretary and on the Commission's Electronic Document Information System Web site at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures that apply to the filing of a document may result in the rejection of the document as improperly filed.

(2) Briefs, statements, responses, comments, and requests filed pursuant to § 201.12, § 201.14, § 206.8, § 207.15, § 207.23, § 207.25, § 207.28, § 207.30, § 207.61, § 207.62, § 207.65, § 207.67, or § 207.68 of this chapter shall be filed electronically and the requisite number of true paper copies of these documents shall be submitted to the Commission in accordance with the provisions of the applicable section.

(3) Petitions and requests filed under § 206.2 or § 207.10 of this chapter shall be filed in paper form and exhibits, appendices, and attachments to the documents shall be filed in electronic form on CD-ROM, DVD or other portable electronic media approved by the Secretary in accordance with the provisions of the applicable section. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(4) Supplementary material and witness testimony provided for under § 201.13, § 207.15, or § 207.24 of this chapter shall be filed in paper form in accordance with the provisions of the applicable section.

(5) Certain documents filed under § 201.4 of this chapter and applications for administrative protective orders filed under §§ 206.17 and 207.7 of this chapter shall only be filed electronically; no paper copies will be required.

(6) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception

should consult the Handbook on Filing Procedures.

(7) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

* * * * *

(f) *Nonconfidential copies.* In the event that confidential treatment of a document is requested under § 201.6(b), a nonconfidential version of the document shall be filed, in which the confidential business information shall have been deleted and which shall have been conspicuously marked "nonconfidential" or "public inspection." The nonconfidential version shall be filed electronically, and four (4) true paper copies shall be submitted on the same business day as this electronic filing, except as provided in § 206.8 or § 207.3 of this chapter. In the event that confidential treatment is not requested for a document under § 201.6(b), the document shall be conspicuously marked "No confidential version filed," and the document shall be filed in accordance with paragraph (d) of this section. The name of the person signing the original shall be typewritten or otherwise reproduced on each copy.

* * * * *

■ 3. Revise § 201.12 to read as follows:

§ 201.12 Requests.

Any party to a nonadjudicative investigation may request the Commission to take particular action with respect to that investigation. Such requests shall be made by letter addressed to the Secretary, shall be placed by him in the record, and shall be served on all other parties. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day. The Commission shall take such action or make such response as it deems appropriate.

■ 4. Amend § 201.14 by revising paragraph (b)(3) to read as follows:

§ 201.14 Computation of time, additional hearings, postponements, continuances, and extensions of time.

* * * * *

(b) * * *

(3) A request that the Commission take any of the actions described in this section shall be filed with the Secretary and served on all parties to the investigation. Such request shall be filed electronically and two (2) true paper copies shall be submitted on the same business day.

■ 5. Amend § 201.16 by revising paragraphs (b) and (f) to read as follows:

§ 201.16 Service of process and other documents.

* * * * *

(b) By a party other than the Commission. Except when service by another method shall be specifically ordered by the Commission, the service of a document of a party shall be effected:

(1) By mailing or delivering a copy of a nonconfidential version of the document to each party, or, if the party is represented by an attorney before the Commission, by mailing or delivering a nonconfidential version thereof to such attorney; or

(2) By leaving a copy thereof at the principal office of each other party, or, if a party is represented by an attorney before the Commission, by leaving a copy at the office of such attorney.

(3) When service is by mail, it is complete upon mailing of the document.

(4) When service is by mail, it shall be by first class mail, postage prepaid. In the event the addressee is outside the United States, service shall be by first class airmail, postage prepaid.

* * * * *

(f) Electronic service. Parties may serve documents by electronic means in all matters before the Commission. Parties may effect such service on any party, unless that party has, upon notice to the Secretary and to all parties, stated that it does not consent to electronic service. If electronic service is used, paragraphs (b), (d), and (e) of this section shall not apply. However, any dispute that arises among parties regarding electronic service must be resolved by the parties themselves, without the Commission's involvement.

* * * * *

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

■ 6. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 2451–2451a, 3351–3382; secs. 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

■ 7. Revise § 206.2 to read as follows:

§ 206.2 Identification of type of petition or request and petition filing procedures.

An investigation under this part 206 may be commenced on the basis of a petition, request, resolution, or motion as provided in section 202(a)(1),

204(c)(1), 406(a)(1), 421(b) or (o), or 422(b) of the Trade Act of 1974 or section 302(a)(1) or 312(c)(1) of the North American Free Trade Agreement Implementation Act. Each petition or request, as the case may be, filed by an entity representative of a domestic industry under this part 206 shall state clearly on the first page thereof "This is a [petition or request] under section [202, 204(c), 406, 421(b) or (o), or 422(b) of the Trade Act of 1974, or section 302 or 312(c) of the North American Free Trade Agreement Implementation Act] and Subpart [B, C, D, E, F, or G] of part 206 of the rules of practice and procedure of the United States International Trade Commission." A paper original and eight (8) true paper copies of a petition, request, resolution, or motion shall be filed. One copy of any exhibits, appendices, and attachments to the document shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary.

■ 8. Amend § 206.8 by adding paragraph (d) to read as follows:

§ 206.8 Service, filing, and certification of documents.

* * * * *

(d) Briefs. All briefs filed in proceedings subject to this part shall be filed electronically, and eight (8) true paper copies shall be filed on the same business day.

■ 9. Amend § 206.17 by revising paragraph (a)(2) to read as follows:

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

(a) * * *

(2) Application. An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of an authorized applicant must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with confidential business information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file

their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, and shall not be served with confidential business information.

* * * * *

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

■ 10. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

■ 11. Amend § 207.7 by revising paragraph (a)(2) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

(a) * * *

(2) Application. An application under paragraph (a)(1) of this section must be made by an authorized applicant on a form adopted by the Secretary or a photocopy thereof. A signed application shall be filed electronically. An application on behalf of a petitioner, a respondent, or another party must be made no later than the time that entries of appearance are due pursuant to § 201.11 of this chapter. In the event that two or more authorized applicants represent one interested party who is a party to the investigation, the authorized applicants must select one of their number to be lead authorized applicant. The lead authorized applicant's application must be filed no later than the time that entries of appearance are due. Provided that the application is accepted, the lead authorized applicant shall be served with business proprietary information pursuant to paragraph (f) of this section. The other authorized applicants representing the same party may file their applications after the deadline for entries of appearance but at least five days before the deadline for filing posthearing briefs in the investigation, or the deadline for filing briefs in the preliminary phase of an investigation, or the deadline for filing submissions in a remanded investigation, and shall not be served with business proprietary information.

* * * * *

■ 12. Amend § 207.10 by revising paragraph (a) to read as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

* * * *

■ 13. Revise § 207.15 to read as follows:

§ 207.15 Written briefs and conference.

Each party may submit to the Commission on or before a date specified in the notice of investigation issued pursuant to 207.12 a written brief containing information and arguments pertinent to the subject matter of the investigation. Briefs shall be signed, shall include a table of contents, and shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day (on paper measuring 8.5 x 11 inches, double-spaced and single-sided). Any person not a party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for the filing of briefs. In addition, the presiding official may permit persons to file within a specified time answers to questions or requests made by the Commission's staff. If he deems it appropriate, the Director shall hold a conference. The conference, if any, shall

be held in accordance with the procedures in § 201.13 of this chapter, except that in connection with its presentation a party may provide written witness testimony at the conference; if written testimony is provided, eight (8) true paper copies shall be submitted. The Director may request the appearance of witnesses, take testimony, and administer oaths.

■ 14. Revise § 207.23 to read as follows:

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents and shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified and the same manner specified for filing of prehearing briefs.

■ 15. Amend § 207.24 by revising paragraph (b) to read as follows:

§ 207.24 Hearing.

* * * *

(b) *Procedures.* Any hearing shall be conducted after notice published in the **Federal Register**. The hearing shall not be subject to the provisions of 5 U.S.C. subchapter II, chapter 5, or to 5 U.S.C. 702. Each party shall limit its presentation at the hearing to a summary of the information and arguments contained in its prehearing brief, an analysis of the information and arguments contained in the prehearing briefs described in § 207.23, and information not available at the time its prehearing brief was filed. Unless a portion of the hearing is closed, presentations at the hearing shall not include business proprietary information. Notwithstanding § 201.13(f) of this chapter, in connection with its presentation, a party may provide written witness testimony at the hearing; if written testimony is provided, eight (8) true paper copies shall be submitted. In the case of testimony to be presented at a closed session held in response to a request under § 207.24(d), confidential and non-confidential versions shall be filed in

accordance with § 207.3. Any person not a party may make a brief oral statement of information pertinent to the investigation.

* * * *

■ 16. Revise § 207.25 to read as follows:

§ 207.25 Posthearing briefs.

Any party may file a posthearing brief concerning the information adduced at or after the hearing with the Secretary within a time specified in the notice of scheduling or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

■ 17. Revise § 207.28 to read as follows:

§ 207.28 Anticircumvention.

Prior to providing advice to the administering authority pursuant to section 781(e)(3) of the Act, the Commission shall publish in the **Federal Register** a notice that such advice is contemplated. Any person may file one written submission concerning the matter described in the notice no later than fourteen (14) days after publication of the notice. Such a statement shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. The statement shall contain no more than fifty (50) double-spaced and single-sided pages of textual material, when printed out on paper measuring 8.5 x 11 inches. The Commission shall by notice provide for additional statements as it deems necessary.

■ 18. Amend § 207.30 by revising paragraph (b) to read as follows:

§ 207.30 Comment on information.

* * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.25. A comment shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double-spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches. A comment

may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to investigations subject to the provisions of section 771(7)(G)(iii) of the Act, and with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

■ 19. Amend § 207.61 by adding paragraph (e) to read as follows:

§ 207.61 Responses to notice of institution.

* * * * *

(e) A document filed under this section shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day.

■ 20. Amend § 207.62 by revising paragraph (b)(2) to read as follows:

§ 207.62 Rulings on adequacy and nature of Commission review.

* * * * *

(b) * * *

(2) Comments shall be submitted within the time specified in the notice of institution. In a grouped review, only one set of comments shall be filed per party. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall not exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches. Comments containing new factual information shall be disregarded.

* * * * *

■ 21. Revise § 207.65 to read as follows:

§ 207.65 Prehearing briefs.

Each party to a five-year review may submit a prehearing brief to the Commission on the date specified in the scheduling notice. A prehearing brief shall be signed and shall include a table of contents. A prehearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted (on paper measuring 8.5 x 11 inches and single-sided) on the same business day. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments

which the party believes relevant to the subject matter of the Commission's determination.

■ 22. Amend § 207.67 by revising paragraph (a) to read as follows:

§ 207.67 Posthearing briefs and statements.

(a) *Briefs from parties.* Any party to a five-year review may file with the Secretary a posthearing brief concerning the information adduced at or after the hearing within a time specified in the scheduling notice or by the presiding official at the hearing. A posthearing brief shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. No such posthearing brief shall exceed fifteen (15) pages of textual material, double spaced and single sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. In addition, the presiding official may permit persons to file answers to questions or requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with this section.

* * * * *

■ 23. Amend § 207.68 by revising paragraph (b) to read as follows:

§ 207.68 Final comments on information.

* * * * *

(b) The parties shall have an opportunity to file comments on any information disclosed to them after they have filed their posthearing brief pursuant to § 207.67. Comments shall be filed electronically, and eight (8) true paper copies shall be submitted on the same business day. Comments shall only concern such information, and shall not exceed 15 pages of textual material, double spaced and single-sided, when printed out on paper measuring 8.5 x 11 inches and single-sided. A comment may address the accuracy, reliability, or probative value of such information by reference to information elsewhere in the record, in which case the comment shall identify where in the record such information is found. Comments containing new factual information shall be disregarded. The date on which such comments must be filed will be specified by the Commission when it specifies the time that information will be disclosed pursuant to paragraph (a) of this section. The record shall close on the date such comments are due, except with respect to changes in bracketing of business proprietary information in the comments permitted by § 207.3(c).

PART 210—ADJUDICATION AND ENFORCEMENT

■ 24. The authority citation for part 210 continues to read as follows:

Authority: 19 U.S.C. 1333, 1335, and 1337.

■ 25. Amend § 210.4 by revising paragraphs (f)–(g) and adding paragraphs (h)–(i) to read as follows:

§ 210.4 Written submissions; representations; sanctions.

* * * * *

(f) *Filing of documents.* (1) Written submissions that are addressed to the Commission during an investigation or a related proceeding shall comply with the Commission's Handbook on Filing Procedures, which is issued by and available from the Secretary and posted on the Commission's Electronic Document Information System Web site at <https://edis.usitc.gov>. Failure to comply with the requirements of this chapter and the Handbook on Filing Procedures in the filing of a document may result in the rejection of the document as improperly filed.

(2) A complaint, petition, or request, and supplements and amendments thereto, filed under §§ 210.8, 210.75, 210.76, or 210.79 shall be filed in paper form. An original and eight (8) true paper copies shall be filed. All exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary. Sections 210.8 and 210.12 set out additional requirements for a complaint filed under section 210.8. Additional requirements for a petition or request filed under §§ 210.75, 210.76, or 210.79 are set forth in those sections. Submitted media will be retained by the Commission, except that media may be returned to the submitter if a document is not accepted for filing.

(3) Responses to a complaint, briefs, comments and responses thereto, compliance reports, motions and responses or replies thereto, petitions and replies thereto, prehearing statements, and proposed findings of fact and conclusions of law and responses thereto provided for under §§ 210.4(d), 210.13, 210.8, 210.14, 210.15, 210.16, 210.17, 210.18, 210.19, 210.20, 210.21, 210.23, 210.24, 210.25, 210.26, 210.33, 210.34, 210.35, 210.36, 210.40, 210.43, 210.45, 210.46, 210.47, 210.50, 210.52, 210.53, 210.57, 210.59, or 210.71; and submissions filed with the Secretary pursuant to an order of the presiding administrative law judge shall be filed electronically, and true paper copies of such submissions shall be filed by 12 noon, eastern time, on the next business day.

(4) Except for the documents listed in paragraphs (f)(2) and (f)(3) of this section, all other documents shall be filed electronically, and no paper copies will be required.

(5) If paper copies are required under this section, the required number of paper copies shall be governed by paragraph (f)(6) of this section. A paper copy provided for in this section must be a true copy of the electronic version of the document, *i.e.*, a copy that is identical in all possible respects.

(6) Unless the Commission or this part specifically states otherwise:

(i) Two (2) true paper copies of each submission shall be filed if the investigation or related proceeding is before an administrative law judge; and

(ii) Eight (8) true paper copies of each submission shall be filed if the investigation or related proceeding is before the Commission.

(7)(i) If a complaint, a supplement or amendment to a complaint, a motion for temporary relief, or the documentation supporting a motion for temporary relief contains confidential business information as defined in § 201.6(a) of this chapter, the complainant shall file nonconfidential copies of the complaint, the supplement or amendment to the complaint, the motion for temporary relief, or the documentation supporting the motion for temporary relief concurrently with the requisite confidential copies, as provided in § 210.8(a). A nonconfidential copy of all exhibits, appendices, and attachments to the document shall be filed in electronic form on one CD-ROM, DVD, or other portable electronic media approved by the Secretary, separate from the media used for the confidential version.

(ii)(A) Persons who file the following submissions that contain confidential business information covered by an administrative protective order, or that are the subject of a request for confidential treatment, must file nonconfidential copies and serve them on the other parties to the investigation or related proceeding within 10 calendar days after filing the confidential version with the Commission:

(1) A response to a complaint and all supplements and exhibits thereto;

(2) All submissions relating to a motion to amend the complaint or notice of investigation; and

(3) All submissions addressed to the Commission.

(B) Other sections of this part may require, or the Commission or the administrative law judge may order, the filing and service of nonconfidential copies of other kinds of confidential

submissions. If the submitter's ability to prepare a nonconfidential copy is dependent upon receipt of the nonconfidential version of an initial determination, or a Commission order or opinion, or a ruling by the administrative law judge or the Commission as to whether some or all of the information at issue is entitled to confidential treatment, the nonconfidential copies of the submission must be filed within 10 calendar days after service of the Commission or administrative law judge document in question. The time periods for filing specified in this paragraph apply unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise.

(8) The Secretary may provide for exceptions and modifications to the filing requirements set out in this chapter. A person seeking an exception should consult the Handbook on Filing Procedures.

(9) Where to file; date of filing. Documents shall be filed at the Office of the Secretary of the Commission in Washington, DC. Such documents, if properly filed within the hours of operation specified in § 201.3(c), will be deemed to be filed on the date on which they are actually received in the Commission.

(10) Conformity with rules. Each document filed with the Commission for the purpose of initiating any investigation shall be considered properly filed if it conforms with the pertinent rules prescribed in this chapter. Substantial compliance with the pertinent rules may be accepted by the Commission provided good and sufficient reason is stated in the document for inability to comply fully with the pertinent rules.

(11) During any period in which the Commission is closed, deadlines for filing documents electronically and by other means are extended so that documents are due on the first business day after the end of the closure.

(g) *Cover Sheet.* When making a paper filing, parties must complete the cover sheet online at <http://edis.usitc.gov> and print out the cover sheet for submission to the Office of the Secretary with the paper filing. The party submitting the cover sheet is responsible for the accuracy of all information contained in the cover sheet, including, but not limited to, the security status and the investigation number, and must comply with applicable limitations on disclosure of confidential information under § 210.5.

(h) *Specifications.* (1) Each document filed under this chapter shall be double-

spaced, clear and legible, except that a document of two pages or less in length need not be double-spaced. All submissions shall be in letter-sized format (8.5 x 11 inches), except copies of documents prepared for another agency or a court (*e.g.* patent file wrappers or pleadings papers), and single sided. Typed matter shall not exceed 6.5 x 9.5 inches using 11-point or larger type and shall be double-spaced between each line of text using the standard of 6 lines of type per inch. Text and footnotes shall be in the same size type. Quotations more than two lines long in the text or footnotes may be indented and single-spaced. Headings and footnotes may be single-spaced.

(2) The administrative law judge may impose any specifications he deems appropriate for submissions that are addressed to the administrative law judge.

(i) *Service.* Unless the Commission, the administrative law judge, or another section of this part specifically provides otherwise, every written submission filed by a party or proposed party shall be served on all other parties in the manner specified in § 201.16(b) of this chapter.

■ 26. Amend § 210.8 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 210.8 Commencement of preinstitution proceedings.

* * * * *

(a)(1) A complaint filed under this section shall be filed in paper form with the Secretary as follows.

(i) An original and eight (8) true paper copies of the nonconfidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the complaint shall be filed. All exhibits, appendices, and attachments to this version of the complaint shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(iii) For each proposed respondent, one true copy of the nonconfidential version of the complaint and one true copy of the confidential version of the complaint, if any, along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits shall be filed, and

(iv) For the government of the foreign country in which each proposed respondent is located as indicated in the

complaint, one true copy of the nonconfidential version of the complaint shall be filed.

Note to paragraph (a)(1): The same requirements apply for the filing of a supplement or amendment to the complaint.

(2) If the complainant is seeking temporary relief, the complainant must also file:

(i) An original and eight (8) true paper copies of the nonconfidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary.

(ii) An original and eight (8) true paper copies of the confidential version of the motion for temporary relief. All exhibits, appendices, and attachments to this version of the motion shall be filed in electronic form on CD-ROM, DVD, or other portable electronic media approved by the Secretary; and

(iii) For each proposed respondent, one true copy of the nonconfidential version of the motion and one true copy of the confidential version of the motion along with one true copy of the nonconfidential exhibits and one true copy of the confidential exhibits filed with the motion.

Note to paragraph (a)(2): The same requirements apply for the filing of a supplement or amendment to the complaint or a supplement to the motion for temporary relief.

* * * * *

Issued: September 29, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-25646 Filed 10-5-11; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9549]

RIN 1545-BH28

Implementation of Form 990; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document describes a correcting amendment to final regulations (TD 9549) that implement the redesigned Form 990, "Return of

Organization Exempt From Income Tax". These regulations were published in the Federal Register on Thursday, September 8, 2011 (76 FR 55746).

DATES: This correction is effective on October 6, 2011, and is applicable on September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Terri Harris, (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 170A, 507, 509, 6033 and 6043 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9549) contain an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805. * * *

■ Par. 2. Section 1.509(a)-3 is amended by revising paragraph (n)(3) to read as follows:

§ 1.509(a)-3 Broadly, publicly supported organizations.

* * * * *

(n) * * *

(3) An organization that fails to meet a public support test for its first taxable year beginning on or after January 1, 2008, under the regulations in this section may use the prior test set forth in §§ 1.509(a)-3(a)(2) and 1.509(a)-3(a)(3) or § 1.170A-9(e)(2) or § 1.170A-9(e)(3) as in effect before September 9, 2008, (as contained in 26 CFR part 1 revised April 1, 2008) to determine whether the organization may be publicly supported for its 2008 taxable year based on its satisfaction of a public support test for taxable year 2007,

computed over the period 2003 through 2006.

* * * * *

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011-25773 Filed 10-5-11; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9549]

RIN 1545-BH28

Implementation of Form 990; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document describes a correction to final regulations (TD 9549) that implement the redesigned Form 990, "Return of Organization Exempt From Income Tax". These regulations were published in the Federal Register on Thursday, September 8, 2011 (76 FR 55746).

DATES: This correction is effective on October 6, 2011, and is applicable on September 8, 2011.

FOR FURTHER INFORMATION CONTACT: Terri Harris, (202) 622-6070 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under sections 170A, 507, 509, 6033 and 6043 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9549) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 9549) which were the subject of FR Doc. 2011-22614 is corrected as follows:

On page 55747, column 2, in the preamble, under the paragraph heading "Computation Period for Public Support", third paragraph of the column, line 13, the language "§ 1.170A-9(f)(9). The final regulations"

is corrected to read “§ 1.170A–9T(f)(9). The final regulations”.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 2011–25776 Filed 10–5–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9543]

RIN 1545–BA99

Timely Mailing Treated as Timely Filing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations (TD 9543) that were published in the **Federal Register** on Tuesday, August 23, 2011 (76 FR 52561), the regulations provide guidance on the proper use of registered or certified mail, or a service of a private delivery service designated under criteria established by the Internal Revenue Service, will constitute prima facie evidence of delivery. The regulations affect taxpayers who mail Federal tax documents to the Internal Revenue Service or the United States Tax Court.

DATES: This correction is effective on October 6, 2011 and applies to any payment or document mailed and delivered in accordance with the requirements of § 301.7502–1 in an envelope bearing a postmark dated after September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Steven Karon, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9543) that is the subject of this correction is under section 602 of the Internal Revenue Code.

Need for Correction

As published on August 23, 2011 (76 FR 52561), the final regulations (TD 9543) contains an error that may prove to be misleading and is in need of clarification.

Lists of Subjects in 26 CFR Part 602

Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR part 602 is corrected by making the following correcting amendment:

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTIONS ACT

■ **Paragraph 1.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 2.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table:

§ 602.101 OMB Control numbers.

* * * * *
(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
301.7502–1	1545–1899
* * * * *	* * * * *

Diane O. Williams,

Federal Register Liaison, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2011–25616 Filed 10–5–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0870]

RIN 1625–AA00

Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing safety zones for Fireworks displays within the Captain of the Port (COTP) Long Island Sound Zone. This action is necessary to provide for the safety of life on navigable waters during these events. Entry into, transit through, mooring or anchoring within these zones is prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: This rule is effective in the CFR from October 6, 2011 until 10:30 p.m. on October 28, 2011. This rule is

effective with actual notice for purposes of enforcement from 8:30 p.m. on September 24, 2011 until 10:30 p.m. on October 28, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0870 and are available online by going to <http://www.regulations.gov>, inserting USCG–2011–0870 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 Joseph Graun, Prevention Department, U. S. Coast Guard Sector Long Island Sound, (203) 468–4544, Joseph.L.Graun@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 any delay encountered in this regulation’s effective date by publishing an NPRM would be contrary to public interest since immediate action is needed to protect both spectators and participants from the potential safety hazards associated with these events. We spoke to the event sponsors, and they are unable and unwilling to move their event dates for the following reasons.

The sponsor for GDM Chamber of Commerce Annual Music Festival Fireworks submitted a marine event application with sufficient notice to the Coast Guard. This fireworks display is a recurring marine event with a corresponding entry in a proposed permanent rule for which the NPRM just closed its public comment period

(docket number USCG–2008–0384); No public comments were received. The Coast Guard is establishing this temporary safety zone to provide for safety of life during this year's event.

The sponsor for the Dooley Wedding Fireworks stated their event is held in conjunction with a wedding that cannot be moved. The sponsor was not aware of the requirements for submitting a marine event application 135 days in advance resulting in a late notification to the Coast Guard. The sponsor is now aware of the reporting requirements.

The sponsor for the Charles W. Morgan 70th Anniversary Fireworks Display stated they are unable and unwilling to reschedule their event because it is held in conjunction with a 70th anniversary festival that cannot be moved. Rescheduling the event would not be a viable option because the festival is a large public event with numerous vendors already scheduled. This is a first time event, the sponsor was not aware of the requirements for submitting a marine event application 135 days in advance, resulting in a late notification to the Coast Guard. The sponsor is now aware of the reporting requirements. For the same reasons under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date by first publishing a NPRM would be contrary to the rule's objectives of ensuring safety of life on the navigable waters during these scheduled events as immediate action is needed to protect both spectators and participants from the potential safety hazards associated with these events including unexpected pyrotechnics detonation and burning debris.

Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary rule establishes safety zones for fireworks displays. Fireworks displays are frequently held on the navigable waters within the COTP Long Island Sound Zone. Based on accidents that have occurred in the past and the explosive hazards of fireworks, the COTP Long Island Sound has determined that fireworks displays proximate to watercrafts pose significant risk to public safety and property.

In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes safety zones for the time and location of each event.

Discussion of Rule

This temporary rule establishes safety zones for three fireworks displays in the COTP Long Island Sound Zone. These events are listed below in the text of the regulation in table format.

Because large numbers of spectator vessels are expected to congregate around the location of these events, these regulated areas are needed to protect both spectators and participants from the safety hazards created by them including unexpected pyrotechnics detonation and burning debris.

This rule prevents vessels from entering, transiting, mooring or anchoring within areas specifically designated as regulated areas during the periods of enforcement unless authorized by the COTP or designated representative.

The Coast Guard has determined that these regulated areas will not have a significant impact on vessel traffic due to their temporary nature, limited size, and the fact that vessels are allowed to transit the navigable waters outside of the regulated areas. The COTP will cause public notifications to be made by all appropriate means including but not limited to the Local Notice to Mariners as well as Broadcast Notice to Mariners.

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.

Executive Order 12866 and Executive Order 13563

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated areas will be of limited duration and cover only a small portion of the navigable waterways. Furthermore, vessels may transit the navigable waterways outside of the regulated areas. Vessels requiring entry into the regulated areas may be authorized to do

so by the COTP or the designated representative.

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

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 may be small entities: The owners or operators of vessels intending to transit or anchor in the designated regulated areas during the enforcement periods stated for each event listed below in the List of Subjects.

The temporary safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated areas will be of limited size and of short duration, and vessels that can safely do so may navigate in all other portions of the waterways except for the areas designated as regulated areas. Additionally, notifications will be made before the effective period by all appropriate means, including but not limited to the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

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.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule

involves the establishment of 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, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01-0870 to read as follows:

§ 165.T01-0870 Safety Zones; Fireworks Displays in Captain of the Port Long Island Sound Zone.

(a) Regulations.

The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the events listed in the TABLE of § 165.T01-0870. These regulations will be enforced for the duration of each event.

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

(1) Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Long Island Sound (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

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

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

(c) Vessel operators desiring to enter or operate within the regulated areas should contact the COTP or the designated representative via VHF

channel 16 or by telephone at (203) 468-4404 to obtain permission to do so.

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

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

(f) The regulated area for all fireworks displays listed in the TABLE of § 165.T01-0870 is that area of navigable waters within a 1000 foot radius of the launch platform or launch site for each

fireworks display. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS—STAY AWAY." This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background. Shore sites used in these locations will display a sign labeled "FIREWORKS—STAY AWAY" with the same dimensions.

TABLE OF § 165.T01-0870

	Fireworks display events
1 CDM Chamber of Commerce Annual Music Festival Fireworks	<ul style="list-style-type: none"> • Date: September 24, 2011. • Rain date: September 25, 2011. • Time: 8:30 p.m. to 10:30 p.m. • Location: A point off of Cedar Beach Town Park, Mount Sinai, NY in approximate position 40°57'54.02" N, 073°01'57.52" W (NAD 83).
2 Dooley Wedding Fireworks	<ul style="list-style-type: none"> • Date: October 1, 2011. • Rain Date: October 2, 2011. • Time: 8:30 p.m. to 10:30 p.m. • Location: A point off of Oyster Bay Harbor, Mill Neck, NY in approximate position 40°53'04.27" N, 073°32'38.53" W (NAD 83).
3 Charles W. Morgan 70th Anniversary Fireworks	<ul style="list-style-type: none"> • Date: October 28, 2011. • Time: 8:30 p.m. to 10:30 p.m. • Location: A point on the Mystic River, Mystic, CT in approximate position 41°21'56.455" N, 071°57'58.32" W (NAD 83).

Dated: September 23, 2011.
J.M. Vojvodich,
Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.
 [FR Doc. 2011-25816 Filed 10-5-11; 8:45 am]
BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2011-0800]

RIN 1625-AA87

Security Zones, 2011 Asia-Pacific Economic Cooperation Conference, Oahu, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule; request for comments.

SUMMARY: The Coast Guard is establishing four temporary security zones on the navigable waters of Oahu's southern and western shores in support of the Asia-Pacific Economic Cooperation (APEC) conference in Oahu, Hawaii. The establishment of these security zones is necessary to ensure the safety of all APEC attendees to include the President of the United States, as well as numerous foreign dignitaries and senior government officials. Entry into the temporary security zones established by this rule is

prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu, or her designated representatives.

DATES: This rule will be effective from 11 p.m. HST on November 9, 2011 through 11 p.m. HST on November 16, 2011. The § 165.T14-0800 (a)(2) and (4) security zones, West Waikiki and Ala Wai Harbor and Canal, will be enforced from 11 p.m. HST on November 9, 2011 through 11 p.m. HST on November 16, 2011. The § 165.T14-0800 (a)(1) security zone, Ko'olina Offshore, will be enforced from 11 p.m. HST on November 12, 2011, to 11 p.m. HST on November 13, 2011. The § 165.T14-0800 (a)(3) security zone, East Waikiki, will be enforced from 12 a.m. HST to 11 p.m. HST on November 12, 2011.

Comments and related material must be submitted to the Coast Guard no later than October 17, 2011.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0800 using any one of the following methods:

- (1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- (2) *Fax:* 202-493-2251.
- (3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Lt. Scott O. Whaley, U.S. Coast Guard; telephone 808-522-8264 (ext. 352), e-mail

Scott.O.Whaley@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:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2011-0800), indicate the specific section of this document to which each comment applies, and provide a reason for each

suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online 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 Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Search All" and insert "USCG-2011-0800" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-0800" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or

signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. Insufficient time exists prior to this event to facilitate requests for a public meeting. If you object to this decision however, you may submit a request for one by October 17, 2011 using one of the four methods specified under **ADDRESSES**. Please explain in detail why you believe a public meeting would be necessary in this case. If we then determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

From November 9, 2011, through November 16, 2011, the President of the United States, various foreign dignitaries, members of their official parties, and other senior government officials will be attending the 2011 APEC conference in Honolulu, Hawaii. APEC is a multi-national association of economies and their senior leadership from the Asia-Pacific region working together to reduce trade barriers and facilitate business interactions between member nations. The conference is located adjacent to U.S. navigable waters in the Honolulu Captain of the Port Zone. Accordingly, the U.S. Coast Guard is establishing these security zones in order to maintain optimum security for this high visibility event and to ultimately protect the participants of this event from all possible threats associated with vessels and persons in the water. Entry of persons or vessels into these security zones will be prohibited unless authorized by the Captain of the Port (COTP) Honolulu.

Discussion of Temporary Interim Rule

This security zone temporary interim rule will be effective from 11 p.m. HST on November 9, 2011 through 11 p.m. HST on November 16, 2011. This security zone covers four areas located within the Honolulu Captain of the Port Zone (See 33 CFR 3.70-10)

The first area is designated as the Ko'olina Offshore Zone and covers all waters creating a box shape, encompassed by a line extending 1500 yards seaward from 21°19'23.63" N, 158°07'20.83" W; to 21°18'49.59" N, 158°07'52.68" W; then north to 21°21'17.96" N, 158°08'36.75" W; then due east to 21°21'18.70" N,

158°07'49.15" W; then along the shoreline back to the starting point. The Ko'olina Offshore Zone does not include the entrance of Barbers Point Harbor Channel or the four lagoons adjacent to the Ko'olina Resort. The Ko'olina Offshore Zone will be enforced from 11 p.m. HST on November 12, 2011, to 11 p.m. HST on November 13, 2011.

The second area is designated as the West Waikiki Zone and includes all waters creating a box-like shape offshore of Waikiki Beach and is encompassed by a line connecting the following points: Beginning at 21°16'40.33" N, 157°50'01.26" W; to 21°16'10.20" N, 157°50'37.55" W; to 21°16'29.28" N, 157°50'56.69" W; to 21°16'53.95" N, 157°50'29.10" W; then along the shoreline back to the starting point. The West Waikiki Zone includes the offshore area adjacent to the Hilton Hawaiian Village Resort and the Fort DeRussy military reservation. The West Waikiki Zone does not include the two lagoons adjacent to the Hilton Hawaiian Village Resort. The West Waikiki Zone will be enforced from 11 p.m. HST on November 9, 2011 to 11 p.m. HST on November 16, 2011.

A third area is designated as the East Waikiki Zone and includes all waters creating a box-like shape offshore of Waikiki Beach and is encompassed by a line connecting the following points: beginning at 21°16'36.20" N, 157°49'46.91" W; to 21°16'05.04" N, 157°50'20.56" W; to 21°16'14.87" N, 157°50'30.98" W; to 21°16'40.33" N, 157°50'01.26" W; then along the shoreline back to the starting point. The East Waikiki Zone includes the offshore area adjacent to the Sheraton Waikiki Hotel and the Outrigger Waikiki Hotel. The East Waikiki Zone will be enforced from 12 a.m. HST to 11 p.m. HST on November 12, 2011.

A fourth area is designated as the Ala Wai Harbor and Canal Zone. It includes a section of the Ala Wai Canal extending from the entrance to the canal in Ala Wai harbor to a point 15 yards northeast of the McCully Bridge and also includes all Ala Wai Harbor waters encompassing the Harbor Working Docks, the "Front Row" along Holomoana Ave, the Loading Dock, G Dock, F Dock, the 400 Row, the south face of X Dock and D Dock. See Example 1 in the docket for an illustration of the Ala Wai harbor section of this security zone. The Ala Wai Harbor and Canal Zone will be enforced from 11 p.m. HST on November 9, 2011 to 11 p.m. HST on November 16, 2011.

A graphic labeled "Illustration of APEC 2011 security zones" is available via <http://www.regulations.gov> in docket USCG-2011-0800. It provides a

graphical representation of the four security zones discussed above that are established by this temporary interim rule.

In accordance with the general regulations in 33 CFR part 165, subpart D, no person or vessel will be permitted to transit into or remain in the zone except for those authorized support vessels, aircraft and support personnel, or other personnel or vessels authorized by the Captain of the Port or the District Commander. Any Coast Guard commissioned, warrant, or petty officer, or other Captain of the Port representative permitted by law, may enforce the zone. Vessels, aircraft, or persons in violation of this rule will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192.

Regulatory Analyses

We did not publish a notice of proposed rulemaking (NPRM) for this temporary interim rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the sensitive nature of this highly visible event, sufficient notice of the zone locations was not released in time to adequately complete the NPRM rulemaking. This event is a matter of national security and the changing nature of the event has required flexibility among all parties. Issuing an NPRM is impracticable due to the nature of the event. This temporary interim rule, however, is being used to provide a post-promulgation comment period in advance of the event given the limited time remaining. It would be contrary to the public interest to delay issuing an effective rule. Post-promulgation comments received on this temporary interim rule may allow the COTP to issue an improved temporary final rule, but issuing the interim rule now ensures that an effective rule will be in place to provide the necessary security measures required for the Asia-Pacific Economic Cooperation conference held on Oahu.

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

Regulatory Planning and Review

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

economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based on the limited duration of the zone and the limited geographic area affected by it. Furthermore, the general public will be permitted to transit the security zone as necessary but will not be permitted to loiter.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary interim rule will 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 temporary interim rule will not have a significant economic impact on a substantial number of small entities.

This temporary interim rule could affect the following entities, some of which might be small entities: the owners or operators of vessels for hire intending to transit or operate in the Ala Wai Harbor and Canal and West Waikiki Security Zones from November 9, 2011 to November 16, 2011; the owners or operators of vessels for hire intending to transit or operate in the East Waikiki Security Zone on November 12, 2011; and the owners or operators of vessels for hire intending to transit or operate in the Ko’olina Security Zone on November 13, 2011.

These security zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The security zones will be activated and thus subject to enforcement for a period of no longer than seven (7) days and will not affect vessels transiting 1500 yards (or more) offshore from the Sheraton Waikiki to 1500 yards south-southwest from the Ala Wai Harbor breakwater. It also will not affect vessels transiting or operating outside 1500 yards west from Kahe Point Beach Park to 1500 yards southwest from Barbers Point Harbor Channel, not including the entrance to Barbers Point Harbor.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and

to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this temporary interim rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Scott O. Whaley at (808) 522–8264 ext. 352. The Coast Guard will not retaliate against small entities that question or complain about this temporary interim rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this temporary interim 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 temporary interim 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 temporary interim 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 temporary interim 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 temporary interim rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This temporary interim rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will 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 temporary interim 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 temporary interim rule does not use technical standards. Therefore, we

did not consider the use of voluntary consensus standards.

Environment

We have analyzed this temporary interim rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this temporary interim rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION 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, 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.T14-0800 to read as follows:

§ 165.T14-0800 Security Zones; 2011 Asia-Pacific Economic Cooperation Conference, Oahu, HI.

(a) *Locations.* The following areas, from the surface of the water to the ocean floor, are security zones.

(1) *Ko'olina Offshore Zone.* All waters encompassed by a line extending 1500 yards seaward from 21°19'23.63" N, 158°07'20.83" W; to 21°18'49.59" N, 158°07'52.68" W; then north to 21°21'17.96" N, 158°08'36.75" W; then due east to 21°21'18.70" N, 158°07'49.15" W; then along the shoreline back to the starting point. This security zone does not include the entrance of Barbers Point Harbor Channel or the four lagoons adjacent to the Ko'olina Resorts.

(2) *West Waikiki Zone.* All waters offshore of Waikiki Beach encompassed by a line connecting the following points: beginning at 21°16'40.33" N,

157°50'01.26" W; to 21°16'10.20" N, 157°50'37.55" W; to 21°16'29.28" N, 157°50'56.69" W; to 21°16'53.95" N, 157°50'29.10" W; then along the shoreline back to the starting point. The West Waikiki Zone includes the offshore area adjacent to the Hilton Hawaiian Village Resort and the Fort DeRussy military reservation. The West Waikiki Zone does not include the two lagoons adjacent to the Hilton Hawaiian Village Resort.

(3) *East Waikiki Zone.* All waters offshore of Waikiki Beach encompassed by a line connecting the following points: Beginning at 21°16'36.20" N, 157°49'46.91" W; to 21°16'05.04" N, 157°50'20.56" W; to 21°16'14.87" N, 157°50'30.98" W; to 21°16'40.33" N, 157°50'01.26" W; then along the shoreline back to the starting point. The East Waikiki Zone includes the offshore area adjacent to the Sheraton Waikiki Hotel and the Outrigger Waikiki Hotel.

(4) *Ala Wai Harbor and Canal Zone.* All waters, including a section of the Ala Wai Canal, extending from the entrance to the canal in Ala Wai harbor to a point 15 yards northeast of the McCully Bridge and also including all Ala Wai Harbor waters encompassing the Harbor Working Docks, the "Front Row" along Holomoana Ave, the Loading Dock, G Dock, F Dock, the 400 Row, the south face of X Dock and D Dock.

Note to paragraph (a)(4): See Example 1 in <http://www.regulations.gov> docket USCG-2011-0800 for an illustration of the Ala Wai harbor section of this paragraph (a)(4) security zone and clarification as to the docks encompassed by this zone.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Honolulu to assist in enforcing the security zones described in paragraph (a) of this section.

(c) *Regulations.* The general security zone regulations found in 33 CFR part 165, subpart D, apply to the security zones created by this temporary section.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu.

(3) Persons desiring to transit the security zones identified in paragraph (a) of this section may contact the Captain of the Port at Command Center telephone number (808) 842-2600 and (808) 842-2601, fax (808) 842-2624 or on VHF channel 16 (156.8 Mhz) to seek

permission to transit the zones. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Honolulu or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zones by Federal, State, and local agencies.

Dated: September 22, 2011.

J.M. Nunan,

Captain, U.S. Coast Guard, Captain of the Port Honolulu.

[FR Doc. 2011-25855 Filed 10-5-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA-2011-0002; Internal Agency Docket No. FEMA-8201]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C

Street, SW., Washington, DC 20472, (202) 646-2953.

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IV				
South Carolina:				
Marion, City of, Marion County.	450142	March 4, 1974, Emerg; May 4, 1987, Reg; October 18, 2011, Susp.	Oct. 18, 2011	Oct. 18, 2011.
Marion County, Unincorporated Areas.	450141	July 22, 1985, Emerg; June 18, 1990, Reg; October 18, 2011, Susp.	.....*do	Do.
Mullins, City of, Marion County.	450143	August 4, 1975, Emerg; June 3, 1986, Reg; October 18, 2011, Susp.	.....do	Do.
Nichols, Town of, Marion County.	450144	July 21, 1975, Emerg; September 15, 1999, Reg; October 18, 2011, Susp.	.....do	Do.
Sellers, Town of, Marion County.	450145	April 26, 1995, Emerg; April 1, 2002, Reg; October 18, 2011, Susp.	.....do	Do.
Region V				
Michigan:				
Alma, City of, Gratiot County.	260083	December 26, 1974, Emerg; March 1, 1982, Reg; October 18, 2011, Susp.	.....do	Do.
St. Louis, City of, Gratiot County.	260085	July 31, 1975, Emerg; January 18, 1989, Reg; October 18, 2011, Susp.	.....do	Do.
Ohio:				
Holmes County, Unincorporated Areas.	390276	October 25, 1977, Emerg; December 15, 1990, Reg; October 18, 2011, Susp.	.....do	Do.
Killbuck, Village of, Holmes County.	390279	August 27, 1975, Emerg; February 5, 1986, Reg; October 18, 2011, Susp.	.....do	Do.
Region VII				
Iowa:				
Bonaparte, City of, Van Buren County.	190266	January 14, 1976, Emerg; July 2, 1987, Reg; October 18, 2011, Susp.	.....do	Do.
Cascade, City of, Dubuque County.	190117	November 20, 1975, Emerg; April 2, 1979, Reg; October 18, 2011, Susp.	.....do	Do.
Dubuque, City of, Dubuque County.	195180	May 15, 1970, Emerg; April 2, 1971, Reg; October 18, 2011, Susp.	.....do	Do.
Dubuque County, Unincorporated Areas.	190534	May 24, 1974, Emerg; September 1, 1983, Reg; October 18, 2011, Susp.	.....do	Do.
Durango, City of, Dubuque County.	190119	April 10, 1974, Emerg; July 16, 1981, Reg; October 18, 2011, Susp.	.....do	Do.
Dyersville, City of, Dubuque County.	190120	December 29, 1972, Emerg; December 1, 1977, Reg; October 18, 2011, Susp.	.....do	Do.
Epworth, City of, Dubuque County.	190576	August 4, 1976, Emerg; July 12, 1977, Reg; October 18, 2011, Susp.	.....do	Do.
Farmington, City of, Van Buren County.	190267	June 19, 1975, Emerg; July 16, 1987, Reg; October 18, 2011, Susp.	.....do	Do.
Keosauqua, City of, Van Buren County.	190268	January 14, 1975, Emerg; September 5, 1979, Reg; October 18, 2011, Susp.	.....do	Do.
Sageville, City of, Dubuque County.	190122	November 20, 1974, Emerg; June 15, 1984, Reg; October 18, 2011, Susp.	.....do	Do.
Van Buren County, Unincorporated Areas.	190265	N/A, Emerg; February 11, 1998, Reg; October 18, 2011, Susp.	.....do	Do.
Worthington, City of, Dubuque County.	190123	August 7, 1975, Emerg; October 18, 1983, Reg; October 18, 2011, Susp.	.....do	Do.
Missouri:				
Berger, City of, Franklin County.	290132	October 7, 1975, Emerg; June 15, 1982, Reg; October 18, 2011, Susp.	.....do	Do.
New Haven, City of, Franklin County.	290133	January 16, 1976, Emerg; February 18, 1981, Reg; October 18, 2011, Susp.	.....do	Do.
Sullivan, City of, Franklin County.	290136	August 8, 1974, Emerg; June 15, 1981, Reg; October 18, 2011, Susp.	.....do	Do.
Washington, City of, Franklin County.	290138	March 20, 1975, Emerg; November 3, 1982, Reg; October 18, 2011, Susp.	.....do	Do.
Region VIII				
Montana:				
Livingston, City of, Park County.	300051	May 12, 1975, Emerg; May 19, 1987, Reg; October 18, 2011, Susp.	.....do	Do.
Park County, Unincorporated Areas.	300160	July 6, 1976, Emerg; January 1, 1987, Reg; October 18, 2011, Susp.	.....do	Do.

*do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-25871 Filed 10-5-11; 8:45 am]

BILLING CODE 9110-12-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 64

[WC Docket No. 10-141; FCC 11-92]

Electronic Tariff Filing System (ETFS)

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Electronic Tariff Filing System (ETFS)*, Report and Order (*Order*). This notice is consistent with the *Order*, which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of those rules.

DATES: The rules published at 47 CFR in parts 61 and 64 published at 76 FR 43206, July 20, 2011, are effective November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Pamela Arluk, Pricing Policy Division, Wireline Competition Bureau, at (202) 418-1520, or email: pamela.arluk@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on July 20, 2011, OMB approved, for a period of three years, the information collection requirements contained in the Commission's *Order*, FCC 11-92, published at 76 FR 43206, July 20, 2011. The OMB Control Number is 3060-1142. The Commission publishes this notice as an announcement of the effective date of the rules. 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 Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number, 3060-1142, in your correspondence. The Commission will also accept your comments via e-mail at 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 and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (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 on July 20, 2011, for the information collection requirements contained in the modifications to the Commission's rules in 47 CFR parts 61 and 64.

Under 5 CFR part 1320, 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 that does not display a current, valid OMB Control Number. The OMB Control Number is 3060-1142.

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.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060-1142.

OMB Approval Date: July 20, 2011.

OMB Expiration Date: September 30, 2013.

Title: Electronic Tariff Filing System, WC Docket No. 10-141.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 1,500 respondents; 1,500 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: Annual and on-occasion reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is found at sections 1, 2, 4(i), 201-205, and 226(h)(1)(A) of the Communications Act of 1934, as amended (Act), 47 U.S.C. 151, 152, 154(i), 201-205, and 226(h)(1)(A).

Total Annual Burden: 1,500 hours.

Total Annual Cost: \$1,222,500.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Needs and Uses: In this document, the Federal Communications Commission (Commission) adopts rule revisions enabling all tariff filers to file

tariffs electronically over the Internet, using the Electronic Tariff Filing System (ETFS). Additionally, the Commission clarifies and makes more consistent certain technical rules related to tariff filings. The Commission concludes that it is appropriate to apply the same electronic filing requirements to all tariff filers and expands the applicability of the Commission's rules to include all tariff filers. The Commission also concludes that the Commission's rules, which require specific formatting and composition of tariffs, will now apply to all tariff filers. The Chief of the Wireline Competition Bureau will be responsible for administering the adoption of electronic tariff filing requirements for all tariff filers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2011-25801 Filed 10-5-11; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R3-ES-2009-0009; MO 92210-0-0008-B2]

RIN 1018-AV94

Endangered and Threatened Wildlife and Plants; Endangered Status for the Ozark Hellbender Salamander

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status under the Endangered Species Act of 1973 (Act), as amended, for the Ozark Hellbender (*Cryptobranchus alleganiensis bishopi*), a subspecies found in northern Arkansas and southern Missouri. This final rule implements the Federal protections provided by the Act for this species. We have also determined that the designation of critical habitat for the Ozark Hellbender is not prudent. The final rule for the CITES Appendix III listing for the Ozark and Eastern Hellbender is being published concurrently in today's **Federal Register**.

DATES: This final rule is effective November 7, 2011.

ADDRESSES: The final rule is available on the Internet at <http://www.regulations.gov> and at the

Columbia Missouri Ecological Services Field Office. Comments and materials received, as well as supporting documentation used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: U.S. Fish and Wildlife Service, Columbia Missouri Ecological Services Field Office, 101 Park De Ville Dr., Suite A, Columbia, MO 65203; telephone: 573-234-2132; facsimile: 573-234-2181.

FOR FURTHER INFORMATION CONTACT:

Charles Scott, Field Supervisor, at the U.S. Fish and Wildlife Service, Columbia Missouri Ecological Services Field Office (see **ADDRESSES** section). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) is a law that was passed to prevent extinction of species by providing measures to help alleviate the loss of species and their habitats. Before a plant or animal species can receive the protection provided by the Act, it must first be added to the Federal Lists of Threatened and Endangered Wildlife and Plants; section 4 of the Act and its implementing regulations at 50 CFR part 424 set forth the procedures for adding species to these lists. We published a proposed rule (75 FR 54561) to list the Ozark Hellbender (*Cryptobranchus alleganiensis bishopi*) as endangered under the Endangered Species Act, as amended (Act; 16 U.S.C. 1531 *et seq.*) on September 8, 2010, with a 60-day public comment period.

Previous Federal Action

Federal actions for this species prior to September 8, 2010, are outlined in our proposed rule for this action (75 FR 54561). We implemented the Service's peer review process and opened a 60-day comment period to solicit scientific and commercial information on the species from all interested parties following publication of the proposed rule. Because collection for trade is considered a primary threat, we coordinated with our Division of Management Authority to develop, concurrent with that proposal, a proposal to list the Ozark Hellbender as well as the Eastern Hellbender in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (75 FR 54579). The final rule for the CITES Appendix III listing is being

published concurrently in today's **Federal Register**.

Species Description

The Ozark Hellbender is a large, strictly aquatic salamander endemic to streams of the Ozark Plateau in southern Missouri and northern Arkansas. Its dorso-ventrally flattened body form enables movements in the fast-flowing streams it inhabits (Nickerson and Mays 1973a, p. 1). Ozark Hellbenders have a large, keeled tail and tiny eyes. An adult may attain a total length of 11.4 to 22.4 inches (in) (29 to 57 centimeters (cm)) (Dundee and Dundee 1965, pp. 369-370; Johnson 2000, p. 41). Numerous fleshy folds along the sides of the body provide surface area for respiration (Nickerson and Mays 1973a, pp. 26-28) and obscure their poorly developed costal grooves (grooves in the inner border of the ribs; Dundee 1971, p. 101.1). Ozark Hellbenders are distinguishable from Eastern Hellbenders (*Cryptobranchus alleganiensis alleganiensis*) by their smaller body size, dorsal blotches, increased skin mottling, heavily pigmented lower lip, smooth surfaced lateral line system, and reduced spiracular openings (openings where water is expelled out of the body) (Grobman 1943, p. 6; Dundee 1971, p. 101.3; Peterson *et al.* 1983, pp. 227-231; LaClaire 1993, pp. 1-2). Despite these distinguishing characteristics, the two subspecies are not easily or readily distinguishable absent the presence of both subspecies or when encountered outside of their subspecies' range.

Taxonomy

The Ozark Hellbender was originally described as *Cryptobranchus bishopi* by Grobman (1943, pp. 6-9) from a specimen collected from the Current River in Carter County, Missouri. Based on the slight morphological and ecological variation within the genus *Cryptobranchus*, Dundee and Dundee (1965, pp. 369-370) determined subspecific status for Ozark and Eastern hellbenders as within the hellbender, *C. alleganiensis* complex *sensu lato* (which means, "in the broad sense" and is used when two subspecies are derived from a single species within a broader context). Subsequent genetic analyses by Merkle *et al.* (1977, pp. 550-552) and Shaffer and Breden (1989, pp. 1017-1022) supported the classification of the Ozark and Eastern hellbender as subspecies. In 1991 Collins (1991, pp. 42-43) attempted to revive the designation of *C. bishopi*, due to the lack of intergradation between the Eastern and Ozark Hellbenders, primarily a result of the taxa occurring

in separate, nonoverlapping geographic areas (Dundee 1971, p. 101.1). However, despite some phenotypic and genetic differences between Ozark and Eastern hellbenders (Grobman 1943, pp. 6-9; Dundee and Dundee 1965, p. 370; Dundee 1971, p. 101.1; Routman 1993, pp. 410-415; Kucuktas *et al.* 2001, p. 127), the suggestion to elevate Ozark and Eastern hellbenders to species status was never accepted by other taxonomists (Crother *et al.* 2008, p. 15). We will continue to use the nomenclature *C. a. bishopi* for the Ozark Hellbender, which is the taxonomy currently recognized by the Committee on Standard English and Scientific Names (Crother *et al.* 2008, p. 15). Although discussion continues over the taxonomic status of the Ozark Hellbender, the designation of the Ozark Hellbender as a species or subspecies does not affect its qualification for listing under the Act (16 U.S.C. 1531 *et seq.*).

Habitat and Life History

Eastern and Ozark hellbenders are similar in habitat selection, movement, and reproductive biology (Nickerson and Mays 1973a, pp. 44-55). Published works on the Eastern Hellbender provide insights into Ozark Hellbender ecology. Adult Ozark Hellbenders are frequently found beneath large rocks, typically limestone or dolomite, and in moderate to deep (less than 3 feet (ft) to 9.8 ft (less than 1 meter (m) to 3 m)), rocky, fast-flowing streams in the Ozark Plateau (Johnson 2000, p. 42; Fobes and Wilkinson 1995, pp. 5-7). In spring-fed streams, Ozark Hellbenders will often concentrate downstream of the spring, where there is little water temperature change throughout the year (Dundee and Dundee 1965, p. 370). Adults are nocturnal, remaining beneath cover during the day and emerging to forage at night, primarily on crayfish. They are diurnal during the breeding season (Nickerson and Mays 1973a, pp. 40-41; Noeske and Nickerson 1979, pp. 92, 94). Ozark Hellbenders are territorial and will defend occupied cover from other hellbenders (Nickerson and Mays 1973a, pp. 42-43). This species migrates little throughout its life. For example, one tagging study revealed that 70 percent of marked individuals moved less than 100 ft (30 m) from the site of original capture (Nickerson and Mays 1973b, p. 1165). Home ranges average 91.9 square (sq) ft (28 sq m) for females and 265.7 sq ft (81 sq m) for males (Peterson and Wilkinson 1996, p. 126).

Hellbenders are habitat specialists that depend on consistent levels of dissolved oxygen, temperature, and flow (Williams *et al.* 1981, p. 97). The lower

dissolved-oxygen levels found in warm or standing water do not provide for the hellbender's respiratory needs. In fact, hellbenders have been observed rocking or swaying in still, warm water (Williams *et al.* 1981, p. 97) to increase their exposure to oxygen. Hutchison and Hill (1976, p. 327) found that the hellbender exhibits a preferred mean water temperature of 52.9 °F (11.6 °C), 63.9 °F (17.7 °C), and 71.1 °F (21.7 °C) for individuals acclimatized to temperatures of 41 °F (5 °C), 59 °F (15 °C), and 77 °F (25 °C), respectively. Hutchison *et al.* (1973, p. 807) found the mean critical thermal maxima (the temperature at which animals lose their organized locomotory ability and are unable to escape from conditions that would promptly lead to their death) of Ozark Hellbenders was 90.9 °F (32.7 °C) at 41 °F (5 °C) acclimation, 91.2 °F (32.9 °C) at 59 °F (15 °C), and 97.7 °F (36.5 °C) at 77 °F (25 °C).

Hellbenders are long-lived, capable of living 25 to 30 years in the wild (Peterson *et al.* 1983, p. 228). Hellbenders may live up to 29 years in captivity (Nigrelli 1954, p. 297). Individuals mature sexually at 5 to 8 years of age (Bishop 1941, pp. 49–50; Dundee and Dundee 1965, p. 370), and males normally mature at a smaller size and younger age than females. Female hellbenders are reported to be sexually mature at a total length of 14.6 to 15.4 in (37 to 39 cm), or at an age of approximately 6 to 8 years (Nickerson and Mays 1973a, p. 54; Peterson *et al.* 1983, p. 229; Taber *et al.* 1975, p. 638). Male hellbenders have been reported to reach sexual maturity at a total length of 11.8 in (30 cm), or at an age of approximately 5 years (Taber *et al.* 1975, p. 638).

Breeding generally occurs between mid-September and early October (Johnson 2000, p. 42). Males prepare nests beneath large flat rocks or submerged logs. Ozark Hellbenders mate via external fertilization, and males will guard the fertilized eggs from predation by other hellbenders (Nickerson and Mays 1973a, pp. 42, 48). Clutch sizes vary from 138 to 450 eggs per nest (Dundee and Dundee 1965, p. 369), and eggs hatch after approximately 80 days (Bishop 1941, p. 47). Larvae and small individuals hide beneath small stones in gravel beds or under large rocks, similar to those occupied by adults (Nickerson and Mays 1973a, p. 12; LaClaire 1993, p. 2). Although there is little information on the diet of larval hellbenders, it is generally believed that aquatic insects comprise their primary food source. In one of the few studies on larval diet, Pitt and Nickerson (2006, p. 69) found that the stomach of a larval

Eastern Hellbender from the Little River in Tennessee exclusively contained aquatic insects.

During or shortly after eggs are laid, males and females may prey upon their own and other individuals' clutches. Most hellbenders examined during the breeding season contain between 15 and 25 eggs in their stomachs (Smith 1907, p. 26). Males frequently regurgitate eggs (King 1939, p. 548; Pflingsten 1990, p. 49), and females sometimes eat their own eggs while ovipositing (laying) them (Nickerson and Mays 1973a, p. 46). Topping and Ingersol (1981, p. 875) found that up to 24 percent of the gravid (egg-bearing) females examined from the Niangua River in Missouri retained their eggs and eventually reabsorbed them.

Range

Ozark Hellbenders are endemic to the White River drainage in northern Arkansas and southern Missouri (Johnson 2000, pp. 40–41), historically occurring in portions of the Spring, White, Black, Eleven Point, and Current Rivers and their tributaries (North Fork White River, Bryant Creek, and Jacks Fork) (LaClaire 1993, p. 3). Currently, populations of Ozark Hellbenders are known to occur in the North Fork of the White River, the Eleven Point River, and the Current River.

The other subspecies of hellbender, the Eastern Hellbender, occurs in central and eastern Missouri (in portions of the Missouri drainage in south-central Missouri and the Meramec (Mississippi drainage)), but its range does not overlap with that of the Ozark Hellbender. The Eastern Hellbender's range extends eastward to New York, Georgia, and the States in between.

Population Estimates and Status

Evidence indicates Ozark Hellbenders are declining throughout their range (Wheeler *et al.* 2003, pp. 153, 155), and no populations appear to be stable.

At the request of the Saint Louis Zoo's Wildcare Institute, the Conservation Breeding Specialist Group (CBSG) facilitated a Population and Habitat Viability Analysis (PHVA) for Ozark and Eastern Hellbenders in August 2006. Thirty workshop participants explored threats to hellbender populations and developed management actions aimed at understanding and halting their decline. Using the software program Vortex (v9.61), the CBSG team prepared and presented a baseline model for hellbender populations and worked through the input parameters with the participants to optimize the model and determine current and projected mean population sizes for all current populations in 75 years (Briggler *et al.*

2007, pp. 8, 80–86). The results of the model are presented in the river-specific population accounts below.

A description of what we know about Ozark Hellbender populations follows, including current population estimates from the hellbender PHVA (Briggler *et al.* 2007, pp. 83–84).

White River—There are only two Ozark Hellbender records from the main stem of the White River. In 1997, an Ozark Hellbender was recorded in Baxter County, Arkansas (Irwin 2008a, pers. comm.). No hellbenders were found during a 2001 survey of the lower portion of the White River, but in 2003, an angler caught a specimen in Independence County, Arkansas (Irwin 2008a, pers. comm.). We do not know whether a viable population exists (or whether hellbenders are able to exist) in the main stem of the White River or if the individuals captured are members of a relic population that was separated from the North Fork White River population by Norfolk Reservoir. Much of the potentially occupied hellbender habitat was destroyed by the series of dams constructed in the 1940s and 1950s on the upper White River, including Beaver, Table Rock, Bull Shoals, and Norfolk Reservoirs.

North Fork White River—The North Fork White River (North Fork) historically contained a considerable Ozark Hellbender population. In 1973, results of a mark-recapture study indicated that there were approximately 1,150 hellbenders within a 1.7-mile (mi) (2.7-kilometer (km)) reach of the North Fork in Ozark County, Missouri, with an estimated density of one individual per 26.2 to 32.8 sq ft (8 to 10 sq m; Nickerson and Mays 1973b, p. 1165). Ten years later, hellbender density in a 2.9-mi (4.6-km) section of the North Fork in the same county remained high, with estimated densities between one per 19.7 sq ft (6 sq m) and one per 52.5 sq ft (16 sq m; Peterson *et al.* 1983, p. 230). Individuals caught in this study also represented a range of lengths from 6.8 to 21.7 in (172 to 551 millimeters (mm)), indicating that reproduction was occurring in this population, and most individuals measured between 9.8 and 17.7 in (250 and 449 mm). In a 1992 qualitative study in Ozark County, Missouri, 122 hellbenders were caught during 49 person-hours of searching the North Fork (Ziehmer and Johnson 1992, p. 2). Those individuals ranged in length from 10 to 18 in (254 to 457 mm), and no average length was included in that publication.

Until the 1992 study, the North Fork population appeared to be relatively healthy. However, in a 1998 study of the same reach of river that was censused in

1983 (Peterson *et al.* 1983, pp. 225–231) and that used the same collection methods, only 50 hellbenders were captured (Wheeler *et al.* 1999, p. 18). These individuals ranged in length from 7.9 to 20.0 in (200 to 507 mm), with most measuring between 15.7 and 19.7 in (400 and 500 mm), and the average length was significantly greater than the average length of those collected 20 years earlier (Wheeler 1999, p. 15). This shift in length distribution was not a result of an increase in maximum length of individuals; instead, there were fewer individuals collected in the smaller size classes.

As a way to compare relative abundance of hellbenders in the late 1990s to historic numbers, Wheeler *et al.* (2003, pp. 152–153) obtained raw data used in the Peterson *et al.* (1983) study to calculate numbers of individuals caught per day. Other Ozark Hellbender population studies not included in that conversion are converted here for further comparison of relative abundance between historic and more recent studies (Ziehmer and Johnson 1992, pp. 1–5). For comparison purposes, one search day is defined as 8 hours of searching by 3 people (or 24 person-hours). However, converting person-hours to a search day metric may underestimate actual search effort and overestimate relative hellbender abundance as person-hours usually only include time spent in the water searching (as opposed to total number of hours spent on the river). It should also be noted that because search effort was not standardized among all studies, comparison of hellbender captures per search day is a general, rather than a quantitative, comparison. Using this metric for the North Fork, approximately 55 hellbenders were caught per search day in 1983 (Peterson *et al.* 1983, pp. 225–231). In 1992, 60 hellbenders per search day were caught (Ziehmer and Johnson 1992, p. 2), and in 1998, 17 hellbenders per search day were caught (Wheeler 2003, p. 153).

Another comparison of Ozark Hellbenders captures between historic and recent years provides further evidence of a decline. A 16.2-mi (25-km) section of stream in the North Fork (overlapping with some sites sampled in the previous studies) was surveyed during 1969–1979 and again during 2005–2006 (Nickerson and Briggler 2007, pp. 212–213). Between 1969 and 1979, researchers caught 8 to 12 hellbenders per hour (64 to 96 hellbenders per search day); whereas in 2005 and 2006 researchers averaged 0.5 hellbenders per hour (4 hellbenders per search day) (Nickerson and Briggler 2007, p. 213).

In 2006, hellbender experts estimated the current population in the North Fork to be 200 individuals (Briggler *et al.* 2007, p. 83). The North Fork had been considered the stronghold of the species in Missouri, and the populations inhabiting this river were considered stable by Ziehmer and Johnson (1992, p. 3) and LaClaire (1993, pp. 3–4). However, the studies cited above indicate that these populations now appear to be experiencing declines similar to those in other streams. The collection of young individuals has become rare, indicating that there is little recruitment. Although Briggler (2011c, pers. comm.) occasionally found some younger hellbenders in this river during surveys between 2005 and 2010, no larvae have been found despite extensive effort. In species such as the hellbender, which are long lived and mature at a relatively late age, detecting declines related to insufficient recruitment can take many years, as recruitment under healthy population conditions is typically low (Nickerson and Mays 1973a, p. 54). Based on the comparisons of relative abundance and lack of observed recruitment, it appears that a severe decline has occurred in the North Fork.

Bryant Creek—Bryant Creek is a tributary of the North Fork in Ozark County, Missouri, which flows into Norfolk Reservoir. Ziehmer and Johnson (1992, p. 2) expected to find Ozark Hellbenders in this stream during an initial survey, but none were captured or observed after 22 person-hours (0.9 search days). This apparent absence of the species conflicted with previous reports from Missouri Department of Conservation (MDC) personnel and an angler who reported observations of fairly high numbers of hellbenders in Bryant Creek during the winter months (Ziehmer and Johnson 1992, p. 3). A subsequent survey of the creek resulted in the capture of six hellbenders (Wheeler *et al.* 1999, p. 7) and confirmed the existence of a population in this tributary, at least through 1998. This population, however, is isolated from the other North Fork White River populations by the Norfolk Reservoir, which could contribute to this population's apparent small size due to fragmentation of habitat. During MDC surveys conducted in 2007, no individuals were found in areas where the six individuals were found in 1998. However, five individuals were found in areas of Bryant Creek that were not surveyed in 1998. This population has been historically low and is not considered to be viable (Briggler 2008b, pers. comm.).

Black River—There is one documented record of an Ozark Hellbender in the Black River above its confluence with the Strawberry River on the Independence-Jackson County line (Arkansas) in 1978 (Irwin 2008a, pers. comm.). Portions of the Black River in Missouri were surveyed in 1999 by researchers at Arkansas State University, but no hellbenders were observed (Wheeler *et al.* 1999, p. 18). Currently, the Black River does not appear to have conditions suitable for Ozark Hellbenders, although it may have been occupied before intensive agriculture was initiated in the area (Irwin 2008b, pers. comm.). The Black River is presumed to be part of the historical range of the subspecies, because Ozark Hellbenders have been documented in several of its tributaries, including the Spring, Current, and Eleven Point rivers (Firschein 1951, p. 456; Trauth *et al.* 1992, p. 83). In 2004, MDC surveyed areas in Missouri that had been searched in 1999 (Wheeler *et al.* 1999, p. 18), as well as areas not searched in 1999 that had anecdotal reports of hellbenders. No hellbenders were found during this 2-day survey. The habitat was considered less than ideal because it was predominantly composed of igneous rocks, which lack the cracks and crevices necessary for hellbender inhabitation. Parts of the Black River, with suitable dolomite rock, might have contained a small population at one time (Briggler 2008b, pers. comm.).

Spring River—The Spring River, a tributary of the Black River, flows from Oregon County, Missouri, south into Arkansas. Ozark Hellbender populations have been found in the Spring River near Mammoth Spring in Fulton County, Arkansas (LaClaire 1993, p. 3). In the early 1980s, 370 individuals were captured during a mark-recapture study along 4.4-mi (7-km) of stream south of Mammoth Spring (Peterson *et al.* 1988, p. 293). Hellbender density at each of the two surveyed sites was fairly high (approximately one per 75.5 square (sq) ft (23 sq m) and one per 364 sq ft (111 sq m), respectively). These individuals were considerably larger than hellbenders captured from other streams during the same time period, with 74 percent of Spring River hellbenders having a total length of more than 17.7 in (450 mm), with a maximum length of 23.6 in (600 mm) (Peterson *et al.* 1988, p. 294). Although other factors may be involved in the observed length differences, it has been hypothesized that Spring River populations are genetically distinct from other hellbender populations. This

speculation was upheld by the conclusions of a genetic study of the populations in the Spring, Current, and Eleven Point rivers (Kucuktas *et al.* 2001, pp. 131–135). In 1991, surveyors searched 10 sites for hellbenders along a 16.2-mi (26-km) stream reach but observed only 20 individuals during 41 person-hours (11.7 hellbenders per search day) over a 6-month period (Trauth *et al.* 1992, pp. 84–85). This 6-month survey included the two sites surveyed in the early to mid-1980s in which surveyors captured 370 hellbenders, along with eight additional sites upstream and downstream (Peterson *et al.* 1988, pp. 291–303; Trauth *et al.* 1992, p. 83). No size class information is available, although the large sizes of captures reported in Peterson *et al.* (1988, p. 294) may be indicative of a population experiencing little recruitment.

Researchers with Arkansas State University surveyed the Spring River from autumn 2003 through winter 2004, performing 74 hours of search effort and found only 12 Ozark Hellbenders (3.9 hellbenders per search day) (Hiler 2005, p. 186). Nine of these animals exhibited severe physical abnormalities and were removed from the river to be housed at the Mammoth Spring National Fish Hatchery but have since died. All nine have since died, however, possibly due to water quality issues at the hatchery or from health issues that were observed when they were captured (*i.e.*, lesions, raw limbs). Arkansas State University researchers found four and one individual during 2005 and 2006 surveys, respectively. Hellbenders have declined in this stream from unknown causes. Possible reasons for the decline include water quality degradation, aquatic vegetation encroachment, collection for scientific purposes, and illegal commercial collection (Irwin 2008b, pers. comm.). Experts estimated the population in the Spring River to be at most 10 individuals, considered the population in this river to be functionally extirpated, and considered there to be minimal possibility of this stream being reinvaded under present conditions because of the magnitude of habitat degradation (Briggler *et al.* 2007, p. 83; Irwin 2008b, pers. comm.).

Eleven Point River—The Eleven Point River, a tributary of the Black River that occurs in Missouri and Arkansas, has been surveyed several times since the 1970s. Wheeler (1999, p. 10) analyzed historical data and reported that in 1978, 87 Ozark Hellbenders were captured in Oregon County, Missouri, over a 3-day period, yielding an average of 29 hellbenders per search day. From 1980 to 1982, 314 hellbenders were

captured in the same area in 9 collection days, yielding an average of 35 hellbenders per search day; hellbender body lengths over that period ranged from 4.7 to 17.8 in (119 to 451 mm) (Wheeler 1999, p. 10). In 1988, Peterson *et al.* (1988, p. 293) captured 211 hellbenders from the Eleven Point River and estimated hellbender density to be approximately one per 65.6 sq ft (20 sq m). Total lengths of these individuals ranged from 4.7 to 17.7 in (120 to 450 mm), with most between 9.8 and 13.8 in (250 and 350 mm). The average number of hellbenders captured per hour was 8.4 and 8.8 for the two sites sampled, or 67 and 70 hellbenders captured per search day (using the search day conversion method presented in the North Fork White River discussion). As noted previously, the abundance of hellbenders per search day is likely an overestimate, and may be better approximated as 35–40 hellbenders per search day since the reported capture rates do not appear to be relative to the number of surveyors.

In 1998, Wheeler (1999, p. 10) captured 36 Ozark Hellbenders over 4 days from the same localities as Peterson *et al.* (1988, p. 292), for an average of nine hellbenders per search day. These hellbenders were larger than those captured previously, with total lengths of 12.8 to 18.0 in (324 to 457 mm), and there were considerably fewer individuals in the smaller size classes. For comparison, a survey of localities in 2005 by Peterson *et al.* (1988, p. 293) resulted in a total of 31 hellbenders captured and yielded an average of 2.6 hellbenders captured per search day. Population declines and reduced recruitment in the Eleven Point River in Missouri are indicated by the results of survey data (Briggler 2011b, pers. comm.), although hellbenders are consistently reported during surveys in the Eleven Point River in Arkansas (Irwin 2011a, pers. comm.).

Recently in Arkansas (2005 and 2007), however, no more than two or three individuals were caught per search day. Specifically, the catch per person-hour in 2005 was 1.1 hellbenders and in 2007 the capture rate was 0.9 hellbenders per person-hour for surveys conducted on the Eleven Point River in Arkansas (Irwin 2008a, pers. comm.). In 2006, hellbender experts estimated the current Eleven Point River population to be 200 individuals in Arkansas and 100 individuals in Missouri (Briggler *et al.* 2007, p. 83).

Current River—The Current River was not surveyed extensively until the 1990s. Nickerson and Mays (1973a, p. 63) reported a large Ozark Hellbender population in this stream, but no

numbers were recorded. In 1992, Ziehmer and Johnson (1992, p. 2) found 12 hellbenders in 60 person-hours in Shannon County, Missouri, or approximately 5 hellbenders per search day (using the same search day conversion as presented in the North Fork White River discussion). These individuals ranged in length from 4.5 in (115 mm) to more than 15.0 in (380 mm; maximum length was not reported), with most between 13.0 and 15.0 in (330 and 380 mm). In 1999, 14 hellbenders were collected over 3 collection days (approximately 5 hellbenders per search day), also in Shannon County, Missouri, and the individuals ranged from 14.8 to 20.3 in (375 to 515 mm) in length, with most between 17.7 to 19.7 in (450 to 499 mm) (Wheeler 1999, p. 12). The average size of individuals increased by nearly 4 in (100 mm), and the reported increase in length suggests that recruitment may be absent in this population. In 2005 and 2006, researchers found 22 hellbenders throughout the Current River in 100 hours of searching (equivalent to 5.2 hellbenders per search day). In 2006, hellbender experts estimated the current population in the Current River to be 80 individuals (Briggler *et al.* 2007, p. 83).

Jacks Fork—Jacks Fork, a tributary of the Current River, was initially surveyed for Ozark Hellbenders in 1992 (Ziehmer and Johnson 1992, p. 2). Four hellbenders were collected over 66 person-hours, equating to roughly 1.5 hellbenders per search day. The individuals were large, ranging from 13.0 to 16.9 in (330 to 430 mm) in length. No hellbenders were found during investigations of Jacks Fork in 2003 nor were any found in 2006 during 7 person-hours of searching (Phillips 2010, pers. comm.).

Summary of Comments and Recommendations

In the proposed rule published on September 8, 2010 (75 FR 54561), we requested that all interested parties submit written comments on the proposal by November 8, 2010. We also contacted appropriate Federal, State, and local agencies; scientific experts; and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general comments were published in the West Plains Daily Quill (West Plains, Missouri), The Times Dispatch (Walnut Ridge, Arkansas), and The News-Leader (Springfield, Missouri). We did not receive any requests for a public hearing.

Between October 21, 2010, and October 28, 2010, the Service received five requests to extend the public

comment period for an additional 90 days. The reasons for requesting an extension centered on the Service's proposed determination that it was not prudent to designate critical habitat for the Ozark Hellbender. While the requests cited complexities of the issues involved and concerns regarding the water quality in the streams as the basis for an extension, no new information was provided that was not already outlined in the proposed rule. Therefore, we did not extend the public comment period and further delay the listing. We did, however, host a conference call with the requesters to provide information and answer questions regarding the Service's proposal.

We received 65 written comments, including comments from 3 peer reviewers. Fifty-seven comments supported the proposed listing; while six comments expressed neither support for, nor opposition to, the proposal. Eight comments supported a "similarity of appearance" listing for the Eastern Hellbender, with three commenters also supporting a separate listing for the Eastern Hellbender.

We reviewed all comments we received from the public and peer reviewers for substantive issues and new information regarding the listing of the Ozark Hellbender. All substantive information provided during the comment period has either been incorporated into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three individuals with scientific expertise that included familiarity with the species and its habitat, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three peer reviewers from whom we requested comments. The peer reviewers generally agreed that the description of the biology and habitat for the species was accurate and based on the best available information. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate. New and additional information on the biology of the species and its threats was provided and incorporated into the rulemaking as appropriate. In some cases, it has been indicated in the citations by "personal communication" (pers. comm.); while in other cases, the research citation is provided.

Peer Reviewer Comments

(1) *Comment:* In the proposed listing, the Service states that Dundee and Dundee (1965) recommended changing the taxonomic status of the Ozark Hellbender from species to subspecies due to the small amount of genetic variation between Ozark and Eastern Hellbenders. Dundee and Dundee (1965) recommended changing the taxonomic status based on morphology and ecology, not genetic variation.

Our Response: We corrected this statement and clarified the remaining section on taxonomy to reflect that subsequent genetic analyses further supported the subspecies designation by Dundee and Dundee (1965).

(2) *Comment:* The pathogen *Batrachochytrium dendrobatidis* has now been confirmed in all continents, including Asia (Goka *et al.* 2009).

Our Response: We reviewed the reference provided by the peer reviewer and have made the correction in this final rule to reflect the entire range of this pathogen.

(3) *Comment:* Two peer reviewers provided comments regarding the reference in the proposed rule to Pflingsten's (1990) caution that the failure to detect larvae could be interpreted to mean that larvae could occur in areas not surveyed. One peer reviewer relayed that two Eastern Hellbender larvae had been captured in Ohio in habitat similar to that occupied by adults. The peer reviewer also commented that a "retrospective" analysis of the data collected by Pflingsten for Eastern Hellbender populations in Ohio provides strong evidence that the lack of detection of a younger size class (*i.e.* larvae) was due to the lack of recruitment in most Ohio populations rather than Pflingsten's failure to survey sites occupied by larvae (Lipps 2010, pers. comm.). The peer reviewer suggested that a similar situation or phenomenon was likely responsible for the lack of recruitment in Ozark Hellbender populations (Lipps 2010, pers. comm.). A second peer reviewer provided two arguments supporting the explanation that lack of larvae detection in surveys is due to an actual lack of recruitment and not survey technique. He noted that several researchers have searched in several microhabitats (for example, gravel beds, smaller tributaries) in excess of 100 person-hours without detecting the presence of larvae, and that others have found larvae and juveniles of the Eastern Hellbender in the same microhabitats as adults.

Our Response: We concur that the inability to detect larval and juvenile

hellbenders is not solely a function of survey technique but most likely reflects an actual reduction or lack of recruitment in the populations. Information provided by the peer reviewers and other supporting references have been incorporated into this final rule.

(4) *Comment:* The Service should consider listing pesticides as a potential direct threat to the Ozark Hellbender. The peer reviewer supports this recommendation with several references, including statements in the proposed rule indicating that hellbenders would be vulnerable to multiple chemicals. The peer reviewer also states that pesticide registration and usage is listed as a potential Federal agency action that may require conference or consultation under Available Conservation Measures.

Our Response: In testing water samples collected from the North Fork, White, and Eleven Point rivers from 2003–2004, Solis *et al.* (2007; pp. 430,432) detected only two pesticides: metolachlor and tebuthiuron. Median concentrations of both chemicals were lower than median concentrations detected from 1992–1995 at various sites throughout the Ozark Plateau (Petersen *et al.* 1998; p. 24). Metolachlor and tebuthiuron concentrations in 2003–2004 were also lower than the Environmental Protection Agency (EPA) aquatic life benchmarks for the protection of aquatic species (U.S. EPA 2011). Atrazine, which can interfere with normal gonadal development and adversely affect fertility (PARC 2007), was not detected in water samples collected during 2003 and 2004 (Solis *et al.* 2007; pp. 430, 432). While it is possible that atrazine may be present at concentrations below detectable limits and thus potentially affect hellbenders, available data do not support the recommendation that pesticides are a direct threat.

(5) *Comment:* The Service states in the proposed rule that predation by introduced trout cannot be ruled out as a factor affecting the Ozark Hellbender and that it possibly contributes to the observed population declines. However, nonnative fish stocking is not included in the actions that would be reviewable under section 7(a)(2) of the Act or under actions that may require consultation with the Service. The Service should clarify if they lack the authority to review fish stocking in Ozark Hellbender habitat or explain why this action is not included.

Our Response: Section 7(a)(2) of the Act requires that each Federal agency insure that any action they authorize, fund, or carry out is not likely to

jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. If an agency receives Federal funding for stocking nonnative fish (such as from the Service's Wildlife and Sport Fish Restoration Program), or if this action is authorized by a Federal agency, the Service would work closely with our partners during the section 7(a)(2) consultation process to assess impacts to Ozark Hellbenders and avoid or minimize these impacts. In the proposed rule we provided a limited list of agency actions that may require conference or consultation for the Ozark Hellbender (see Available Conservation Measures). We have modified the list to also include federally funded activities. Because federally funded or authorized activities can include numerous actions, we did not provide a comprehensive list of all actions that may require section 7 consultation.

(6) *Comment:* One reviewer interpreted the Service's "not prudent" finding to indicate that the Service has determined that sections 7(a)(1) and 7(a)(2) of the Act can sufficiently contribute to the conservation and recovery of the Ozark Hellbender without protecting areas outside the geographical area occupied at the time of listing (through designation of critical habitat). The reviewer requested that the Service explain how we will protect areas outside the currently occupied locations if those areas are considered essential to the recovery of the species and critical habitat is not designated.

Our Response: As detailed under *Benefits to the Species from Critical Habitat Designation*, the Service recognizes that in some instances the designation of critical habitat can provide additional protection beyond that which is already provided through the section 7(a)(2) consultation process (see response to *Comment 13a* for additional information). One of these benefits is the protection of unoccupied habitat considered essential to the recovery of the species. It is necessary, however, to weigh this benefit against the increased threat of illegal collection to the taxa by designating critical habitat. In doing so, the Service believes that the conservation and recovery of Ozark Hellbenders can best be achieved by preventing the illegal removal of animals from the populations, a threat directly resulting from the publication of critical habitat maps and disclosure of specific locations of occupied sites.

(7) *Comment:* The Service includes "flipping large rocks within streams" as an action likely to result in violation of section 9 of the Act. Moving shelter

rocks used by hellbenders, even when returned to their original side down, may make the space beneath the rock unsuitable for hellbenders (personal observation by peer reviewer). Despite taking great effort to return rocks to their original positions, disturbing the "seal" of sedimentation around hellbender shelter rocks may result in the space being abandoned by hellbenders and becoming occupied by rock bass and other fish, thereby reducing the amount of suitable habitat available for hellbenders (Horchler 2010, p. 20). The Service should replace the word "flipping" with "disturbing." Furthermore, under 50 CFR 17.21 and 17.31, it is illegal to pursue or attempt to pursue an endangered species and this language should be included in the list of likely violations of section 9.

Our Response: Manipulation of shelter rocks to locate or capture hellbenders would in most cases be in the form of flipping (overturning) rocks. However, within the context of unauthorized destruction or alteration of hellbender habitat (for reasons other than to locate hellbenders), the microhabitat under or around the rock may be altered by disturbances other than just flipping. Therefore, we have replaced the word "flipping" with "disturbing." In response to the second part of the peer reviewer's comment, in this final rule, we have specifically identified "pursuing, or attempting to pursue" within those actions likely to result in a violation of section 9.

(8) *Comment:* One reviewer noted that many of the factors potentially contributing to hellbender declines may be operating synergistically to reduce survival. The reviewer provides the following examples: (1) Higher water temperatures due to siltation may lead to an environment favorable for pathogens; (2) poor water quality could contribute to lowered immune capabilities of hellbenders and make them more susceptible to infection from pathogens; and (3) reduced body condition due to water quality issues or pathogen infection could result in individuals becoming more vulnerable to predation (similar linkages with pesticides have been shown in other aquatic amphibians).

Our Response: Although we lack definitive data to support this assertion, it is likely that effects of some factors may enhance the effects of other impacts. Because this interaction could further contribute to the Ozark Hellbender's decline, we have referenced synergistic effects and cumulative effects under Factor E (Other Natural or Manmade Factors Affecting Its Continued Existence).

Public Comments

(9) *Comment:* Several commenters provided supporting data and information regarding the biology, ecology, life history, population estimates, threat factors affecting the Ozark Hellbender, and current conservation efforts.

Our Response: We thank all of the commenters for their interest in the conservation of this species and thank those commenters who provided information for our consideration in making this listing determination. Much of the information submitted was duplicative of information contained in the proposed rule; however, some comments contained information that provided additional clarity or support to, but did not substantially change, information already contained in the proposed rule. This information has been incorporated into this final rule, where appropriate.

(10) *Comment:* There was no mention in the proposed rule of other emerging bacterial and viral infections which may cause significant mortality and contribute rangewide to the decline of Ozark Hellbenders. To support this concern, the commenter noted that a flesh-eating bacterium (*Citrobacter* sp.) had been identified on an Ozark Hellbender in Missouri, and that symptoms present on the Missouri specimen are present on the majority of hellbenders captured in Arkansas. The commenter also stated that animals infected with *Batrachochytrium dendrobatidis* (the pathogen which causes amphibian chytrid fungus) may become immunosuppressed and thus more susceptible to these secondary infections.

Our Response: During the development of the proposed rule, factors causing the severe abnormalities observed in Ozark Hellbenders were unknown. Since that time, personnel from the Saint Louis Zoo and other hellbender experts have postulated that the abnormalities are likely caused by secondary bacterial and fungal infections (Briggler 2011a, pers. comm.). Therefore, we have incorporated this information into this final rule under Factor C (Disease or Predation). Although evidence is lacking to conclude that *Batrachochytrium dendrobatidis* (Bd) suppresses the immune response of animals (and thereby increases their vulnerability to secondary infections), we believe that Bd may be contributing to some of the abnormalities exhibited by hellbenders. Not all hellbenders with abnormalities, such as lesions and appendage loss, however, test positive for infection with

Bd (Briggler 2011a, pers. comm.). Therefore, we believe there are factors other than amphibian chytrid fungus that cause increased vulnerability of hellbenders to secondary infections and result in abnormalities.

(11) *Comment:* The Service needs to further investigate the threat of trout to larval hellbenders.

Our Response: Concern regarding the potential effect of nonnative trout was expressed by multiple commenters. Because nonnative trout are stocked in all rivers that historically and currently contain hellbenders, and because data from Gall (2008, pp. 48–49) indicate that larval Ozark Hellbenders do not recognize trout as predators, we agree that this topic warrants further investigation. Future conservation and recovery efforts for the Ozark Hellbender will include identifying and implementing research projects that will address the role of nonnative trout as a potential factor contributing to the decline of this subspecies. Should results from research studies indicate that nonnative trout are a threat to Ozark Hellbender populations, the Service will work with the States to avoid or minimize these effects.

(12) *Comment:* Several commenters concurred with the Service's decision not to designate critical habitat, citing the threat posed by illegal collection and the pet trade. However, 12 commenters expressed opposition to the Service's proposed determination not to designate critical habitat for the Ozark Hellbender. These comments generally centered on five main topics and are addressed individually below.

(12a) *Comment:* The Service cannot protect the Ozark Hellbender without designating critical habitat.

Our Response: Listed species and their habitat are protected by the Endangered Species Act whether or not they are in an area designated as critical habitat. To understand the additional protection that critical habitat may provide to an area, it is necessary to understand the protection afforded to any endangered or threatened species, even if critical habitat is not designated. Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (referred to as the consultation process). In consultations for species with critical habitat, Federal agencies are required to ensure that their activities do not destroy or adversely modify critical habitat. In most instances, particularly in occupied

habitat, the species protection benefits provided by the designation of critical habitat largely duplicate those already provided to the species without the designation of critical habitat by the "jeopardy standard." This is because when the Service evaluates the impacts of activities, we also look at impacts to the species habitat. Despite this overlap, the Service recognizes that, in some instances, designation of critical habitat could provide some benefits to the Ozark Hellbender (as described under *Benefits to the Species from Critical Habitat Designation*). These benefits, however, do not outweigh the increased illegal collection that will likely occur if critical habitat maps are published and the specific locations of currently occupied sites are disclosed (see discussion under Increased Threat to the Species Outweighs the Benefits of Critical Habitat Designation).

(12b) *Comment:* Multiple commenters questioned the degree of threat posed by illegal collection and believed that the publication of critical habitat maps would not increase the risk of unauthorized collection.

Our Response: Although the black market for smuggling and illegally selling protected reptiles and amphibians is widely recognized by herpetofauna experts and law enforcement officials, we realize that it may be necessary to provide additional information to support our concern. Therefore, we provided instances in this final rule under Factor B (Overutilization for Commercial, Recreational, Scientific, or Educational Purposes) to further evidence the threat of illegal collection, including: (1) A testimonial from an individual who collected more than 100 Ozark Hellbenders from the North Fork of the White River in the 1980s to sell for the pet trade; (2) the citation of two individuals in 1985 by Missouri Department of Conservation Agents for illegally collecting Ozark Hellbenders; (3) information referencing the unauthorized removal of more than 100 Ozark Hellbenders from the Spring River in the 1980s, and (4) recent information demonstrating that a demand for hellbenders still exists.

Because Ozark Hellbenders are not uniformly distributed throughout streams in which they occur, collecting is often focused on a known source or site, thereby threatening extirpation of subpopulations at the site. Publication of critical habitat maps would disclose these sites and facilitate removal by collectors.

(12c) *Comment:* Because only adult hellbenders are subject to illegal collection and larval hellbenders

occupy separate habitats from adults, designating critical habitat for all life stages will not increase the threat of illegal collection.

Our Response: The Service is unaware of any reasons for which nonadult Ozark Hellbenders would not be subject to illegal collection or of any information supporting this assertion. The contention that hellbender larvae drift downstream with the current and occupy different habitats than adults was expressed by several commenters who opposed the Service's proposed determination that designating critical habitat for this species is not prudent. We are not aware of information indicating that larval hellbenders drift downstream or that they occupy separate habitats from adults. On the contrary, the best available information indicates that, while larval hellbenders may occupy different microhabitats than adults (interstices of gravel rather than large cover rocks), larvae occupy the same stream reach segments as adults (Bishop 1941, pp. 48, 52; Nickerson and Mays 1973a, p. 12; Nickerson *et al.* 2003, pp. 624–625, 627; Briggler 2010c, pers. comm.; Horchler 2010, pers. comm.; Lipps 2010, pers. comm.; Phillips 2010, pers. comm.). Therefore, designating critical habitat for all hellbender life stages would not prevent unauthorized collecting.

(12d) *Comment:* The locations of hellbender sites are already available to the public; therefore, publishing critical habitat maps would not increase the threat of illegal collection.

Our Response: Information currently available to the public is limited and reveals only a small proportion of the total number of sites occupied by Ozark Hellbenders. The designation of critical habitat would result in publishing in the **Federal Register** precise information about the species and its habitat requirements, where it is found, and maps with geographic coordinates for all occupied locations. The Service is already aware of instances in which the publication of locality information for occupied sites resulted in the removal of almost all individuals from the location. Thus, publishing locations of the remaining occupied sites would only further facilitate illegal collection.

(12e) *Comment:* The habitat of the Ozark Hellbender does not comprise discrete points along the streams, but rather its habitat comprises stream reaches. Therefore, the Service can avoid disclosing exact locations to the public by designating large segments as critical habitat in streams occupied by Ozark Hellbenders. One commenter further noted that the Service has

designated large stream reaches for the Niangua darter and the Topeka shiner.

Our Response: When designating critical habitat, the Service must determine—based on the best available scientific information—the physical and biological features that are essential to the conservation of a species and which may require special management considerations or protection. Essential physical and biological features are specific habitat components that enable a species to fulfill its life cycle needs. Appropriate cover rocks or other crevices are necessary features to fulfill the life cycle needs of the Ozark Hellbender because they provide protection and nesting habitat. However, unlike the habitat for Niangua darters and the Topeka shiner, stream reaches containing suitable habitat for the Ozark Hellbender are not continuous. Areas with suitable habitat typically range from 100 to 400 yards (91 to 366 meters (m)) in length, and subpopulations within each river system are often separated by miles (kilometers) of unsuitable habitat (data from mark-recapture studies indicate that hellbenders rarely move between sites (Irwin 2009, pers. comm., Briggler 2010b, pers. comm.)). Therefore, by mapping the critical habitat and describing the physical and biological features essential to the conservation of the species, the Service would disclose the specific location of occupied sites and subject the hellbenders to collection.

(13) Comment: It is our understanding that the Saint Louis Zoo is currently engaged in propagation efforts and that the Missouri Department of Conservation plans to release captive-reared hellbenders into the Eleven Point River. This effort only addresses the Eleven Point River and not the Current River or the North Fork of the White River. In addition, we are concerned that these augmentation efforts will not be successful.

Our Response: Results from genetic studies (Crowhurst *et al.* 2011; pp. 640–643; Sabatino and Routman 2009; pp. 1239–1240, 1244) indicate that mixing Ozark Hellbenders among rivers could cause an outbreeding depression, or the reduction in fitness of offspring because of the genetic differences between parents. For this reason, it is unlikely that captive-reared individuals will be released into rivers other than those from which the eggs were collected. To date, the Missouri Department of Conservation has collected Ozark Hellbender eggs from the North Fork White River and the Eleven Point River, but has been unable to locate eggs from the Current River. Therefore, releases of

captive-reared individuals are planned only for those rivers from which eggs have been collected (North Fork White River and Eleven Point River). Specific areas where augmentation or reintroductions will occur, however, have yet to be identified. Such propagation efforts will be identified in the development of a future approved Federal recovery plan for the species that will be developed through cooperative partnerships with the Ozark Hellbender Work Group and other potentially affected Federal, State, and private entities.

Regarding the predicted success of propagation efforts, the Service believes that captive propagation efforts will likely be necessary to conserve and recover the Ozark Hellbender, until causes for the lack of recruitment in the wild can be definitively identified and addressed. When eggs are collected in the wild, larvae can be hatched and reared at significantly higher survivorship rates than those estimated from the wild. When individuals are reared to larger sizes and then released, substantially more hellbenders can survive to maturity and contribute to the population.

Summary of Changes From Proposed Rule

We fully considered comments from the public and peer reviewers on the proposed rule to develop this final listing of the Ozark Hellbender. This final rule incorporates changes to our proposed listing based on comments received that are discussed above and on newly available scientific and commercial information. Reviewers generally commented that the proposed rule was thorough and comprehensive. We made some technical corrections based on new, although limited, information. Based on comments we received during the public comment period, we also included additional information to provide further evidence of the threat of illegal collection. Information received supports the Service's decision to list the Ozark Hellbender as endangered.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the 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. 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

One of the most likely causes of the decline of the Ozark Hellbender in the White River system in Missouri and Arkansas is habitat degradation resulting from impoundments, ore and gravel mining, sedimentation, nutrient runoff, and nest site disturbance from recreational uses of the rivers (Williams *et al.* 1981, p. 99; LaClaire 1993, pp. 4–5). Both hellbender subspecies are habitat specialists that depend on consistent levels of dissolved oxygen, temperature, and flow (Williams *et al.* 1981, p. 97). Therefore, even minor alterations to stream habitat are likely to be detrimental to hellbender populations.

Impoundments

Impoundments impact stream habitat in many ways. When a dam is built on a free-flowing stream, riffle and run habitats are converted to lentic (still), deep-water habitat. As a result, surface water temperatures tend to increase, and dissolved oxygen levels tend to decrease (Allan and Castillo 2007, pp. 97–98, 323–324). Hellbenders depend upon highly vascularized lateral skin folds for respiration. Therefore, lakes and reservoirs are unsuitable habitat for Ozark Hellbenders, because these areas have lower oxygen levels and higher water temperatures (Williams *et al.* 1981, p. 97; LaClaire 1993, p. 5) than do fast-flowing, cool-water stream habitats. Impoundments also fragment hellbender habitat, blocking the flow of immigration and emigration between populations (Dodd 1997, p. 178). The resulting small, isolated populations are more susceptible to environmental perturbation and demographic stochasticity, both of which can lead to local extinction (Wyman 1990, p. 351).

In the upper White River, construction of Beaver, Table Rock, Bull Shoals, and Norfork dams in the 1940s and 1950s destroyed the potential hellbender habitat downstream of the impoundments and effectively isolated Ozark Hellbender populations. Norfork Dam was constructed on the North Fork in 1944 and has isolated Ozark

Hellbender populations in Bryant Creek from those in the North Fork. Furthermore, populations downstream of Beaver, Table Rock, Bull Shoals, and Norfolk dams were likely extirpated due to hypolimnetic releases from the reservoir. Hypolimnetic releases are cooler than normal stream temperatures because they are from a layer of water that is below the thermocline, and the water from this layer typically has reduced oxygen levels because it is noncirculating or does not “turn over” to the surface. The tailwater zones below dams also experience extreme water level fluctuations and scouring for several miles downstream. This can impact hellbender populations by washing out the pebbles and cobbles used as cover by juveniles and by creating unpredictable habitat conditions outside the Ozark Hellbender’s normal range of tolerance.

Impoundments can also affect hellbender habitat upstream by increasing sedimentation during periods of heavy rain because the flow of water is impeded by the presence of the reservoir. In 2008 and 2011, heavy rains and flooding resulted in an increase in water levels in excess of 10 to 15 feet (ft) (3 to 5 meters (m)) and significantly reduced flow velocity (Briggler 2011d, pers. comm.; Crabill 2011b, pers. obs.). Deposition of gravel from the 2008 flood event removed an estimated 30 percent of the available cover rocks and habitat at one of the most abundant Ozark Hellbender sites; while flooding in 2011 removed an additional 50 percent of the habitat at this site (Briggler 2011d, pers. comm.). During high water levels, Ozark Hellbenders at sites upstream of the reservoirs are also exposed to increased predation pressure by large predatory fishes. The increased water levels allow fish to expand upstream of the reservoir and have been observed in large numbers at upstream Ozark Hellbender sites (Roberts 2011, pers. comm.). The increased abundance of large predatory fish, such as brown trout and striped bass, at sites upstream of Norfolk Reservoir has even been noted by private landowners near these sites (Anon. 2010, pers. comm.).

Mining

Gravel mining, which continues to occur in a number of streams within the range of the Ozark Hellbender, has directly contributed to Ozark Hellbender habitat alteration and loss. Gravel mining, also referred to as dredging, results in stream instability, both up and downstream of the dredged portion (Box and Mossa 1999, pp. 103–104). Head cutting, in which the increase in transport capacity of a

dredged stream causes severe erosion and degradation upstream, results in extensive bank erosion and increased turbidity (Allan and Castillo 2007, p. 331). Reaches downstream of the dredged stream reach often experience aggradation (raised stream bed from sediment build up) as the sediment transport capacity of the stream is reduced (Box and Mossa 1999, p. 104). Gravel mining physically disturbs hellbender habitat in dredged areas, and associated silt plumes can impact various aspects of the hellbender’s life requisites (nesting habitat, prey, dissolved oxygen for egg development). In addition, these effects reduce crayfish populations, which are the primary prey species for Ozark Hellbenders. Because noncommercial gravel mining is not regulated by the States or by the U.S. Army Corps of Engineers, it is difficult to determine the extent of gravel mining within southern Missouri and northern Arkansas. However, an aerial survey conducted in 2001 reported an estimated 12 and 41 active mining sites in the North Fork of the White River and Current River watersheds, respectively (no data were reported for watersheds of the Eleven Point or Spring rivers) (Noell 2003, p. 7).

Portions of the Ozark Plateau have a history of being major producers of lead and zinc, and some mining activity still occurs in the southeastern Ozarks, although at levels that are lower than those recorded historically. Results of a U.S. Geological Survey (USGS) water quality study conducted from 1992 to 1995 in the Ozark Plateau (Peterson *et al.* 1998, pp. 12–13) revealed that concentrations of lead and zinc in bed sediment and fish tissue were substantially higher at sites with historical or active mining activity. These concentrations were high enough to suggest adverse biological effects, such as reduced enzyme activity or death of aquatic organisms. Because hellbenders have highly permeable skin and obtain most of their oxygen through subcutaneous respiration, they are particularly susceptible to absorbing contaminants such as lead and zinc. Furthermore, because Ozark Hellbenders are long lived, they may be at higher risk of bioaccumulation of harmful chemicals (Peterson *et al.* 1998, pp. 12–13). Although mining for lead and zinc no longer occurs within the range of the Ozark Hellbender, Petersen *et al.* (1998, p. 12) determined that elevated concentrations of lead and zinc were still present in the streams where mining occurred historically. Although it is possible for these metals to be transported and diluted, they will not

degrade over time; therefore, it is likely that lead and zinc concentrations found more than 10 years ago in these rivers would remain at similar concentrations today (Mosby 2008, pers. comm.). In addition, there are historical lead and zinc mining sites that are near Ozark Hellbender populations on the North Fork in Ozark County, Missouri (Mosby 2008, pers. comm.).

Increased lead and zinc contamination input to the Current River by way of the active Sweetwater Mine on Adair Creek in Reynolds County, Missouri, is a potential future risk. Adair Creek is a tributary of Logan Creek, a losing stream (loses water as it flows downhill) connected to Blue Spring, which discharges to the Current River. Although lead and zinc contaminants have been found in Logan Creek, there is no evidence that contaminants from Sweetwater Mine have migrated to Blue Spring. However, if the Sweetwater Mine’s current tailings dam on Adair Creek were to fail, large concentrations of lead and zinc would be added to Blue Spring and the Current River (Mosby 2008, pers. comm.). Although not common, failures of tailings mines have occurred on six occasions in Missouri since 1940, with several releasing tailings into nearby drainages or creeks (USCOLD 1994, pp. 99–144).

Water Quality

Despite the claim by some that many Ozark streams outwardly appear pristine, Harvey (1980, pp. 53–60) clearly demonstrated that various sources of pollution exist in the ground water in the Springfield and Salem plateaus of southern Missouri. Water in the Ozark Plateaus is contaminated by nutrients from increased human waste (in part due to rapid urbanization and increased numbers of septic systems), fertilizers (including land application of chicken litter (poultry manure, bedding material, and wasted feed)), logging, and expanded industrial agricultural practices such as concentrated animal feeding operations (Petersen *et al.* 1998, p. 6). This contamination was evidenced when water samples from the North Fork White and Eleven Point rivers in 2003–2004 contained concentrations of total phosphorus and total nitrogen exceeding the U.S. Environmental Protection Agency (EPA) recommended criteria two-thirds of the time (Solis *et al.* 2007, pp. 430–431). Agricultural land and livestock production comprises a large percentage of the land use within the Ozark Hellbender range and is a continuing source of contamination (Wheeler *et al.* 2003, p. 155). Missouri is the second largest beef

cattle-producing State in the nation, with the majority of animal units produced in the Ozarks. Both Arkansas and Missouri are leading States in poultry production. The National Water-Quality Assessment data collected in the Ozarks in 1992–1995 from wells and springs indicated that nitrate concentrations were strongly associated with the percentage of mostly agricultural land near the wells or springs (Petersen *et al.* 1998, p. 8).

Although nitrogen and phosphorus are essential plant nutrients that are found naturally in streams, elevated concentrations of these nutrients can cause increased growth of algae and aquatic plants in many streams and are detrimental to aquatic biota (Petersen *et al.* 1998, p. 6). Increased levels of nitrates (nitrate is a compound of nitrogen and oxygen and usually the most abundant form of nitrogen in the water) can also affect amphibians by inhibiting growth, decreasing survivability, and impairing their immune systems (Marco *et al.* 1999, p. 2837; Rouse *et al.* 1999, p. 801; Ortiz *et al.* 2004, pp. 235–236; Earl and Whiteman 2009, 1334–1335).

Increased recreational use (such as from canoeing, kayaking, rafting, inner tube floating, and small horsepower motor boating) also impacts the water and habitat quality in rivers inhabited by the Ozark Hellbender. From 2003 to 2008, the Missouri Department of Natural Resources included an 8-mi (13-km) stretch of the Jacks Fork River in the U.S. EPA's 303(d) list of impaired waters not meeting water quality standards for organic wastes (fecal coliform). Likely sources of the contamination include runoff from a commercial horse trail ride outfitter, horse stream crossings, and effluent from campground pit-toilets (Davis and Richards 2002, pp. 1, 3, and 36).

The 303(d) list included additional rivers inhabited by Ozark Hellbenders. A 21-mi (34-km) stretch of the Eleven Point River was listed as impaired due to unacceptable levels of chlorine and atmospheric deposition of mercury. Increased mercury levels have been implicated as a potential cause in the decline of other aquatic amphibians, such as the northern dusky salamander (*Desmognathus fuscus fuscus*; Bank *et al.* 2006, pp. 234–236). Water quality monitoring on both the North Fork White and Eleven Point Rivers in Missouri detected estrogenic compounds that have been demonstrated to adversely impact aquatic organisms, although concentrations were lower than those shown to adversely affect aquatic organisms (Solis *et al.* 2007, p. 430).

Nevertheless, this evidence indicates that hellbenders in the North Fork White and Eleven Point Rivers in Missouri are exposed to a variety of organic chemicals with potential estrogenic activity, and the total effect of these chemicals remains unknown. The Spring River has also suffered from many water quality perturbations over recent decades. In the late 1980s, the West Plains (Missouri) wastewater treatment plant failed, depositing all stored waste into the recharge area for the Spring River. In addition, the majority of the Ozarks region in Missouri and Arkansas is composed of karst topography (caves, springs, sinkholes, and losing streams), which can further facilitate the transport of potential contaminants.

Siltation

Sediment inputs from land use activities have contributed to, and continue to contribute to, habitat degradation. Hellbenders are intolerant of sedimentation and turbidity (Nickerson and Mays 1973a, pp. 55–56), which can impact them in several ways:

- (1) Sediment deposition on cover rocks reduces or removes suitable habitat for adults and can cover and suffocate eggs.
- (2) Sediment fills interstitial spaces in pebble or cobble beds, reducing suitable habitat for larvae and subadults (FISRWG 1998, chapter 3, pp. 19, 25).
- (3) Suspended sediment loads can cause water temperatures to increase, and cause more particles to absorb heat, thereby reducing dissolved oxygen levels (Allan and Castillo 2007, pp. 323–324).

(4) Sedimentation can impede the movement of individuals and colonization of new habitat (Routman 1993, p. 412).

(5) The Ozark Hellbender's highly permeable skin causes them to be negatively affected by sedimentation. Various chemicals, such as pesticides, bind to silt particles and become suspended in the water column when flushed into a stream. The hellbender's permeable skin can allow direct exposure to these chemicals, which can be toxic (Wheeler *et al.* 1999, pp. 1–2).

(6) Sedimentation may result in a decline of prey abundance by embedding cover rocks.

Timber harvest and associated activities (construction and increased use of unpaved roads, skid trails, and fire breaks) are prominent in many areas within the range of the Ozark Hellbender and increase terrestrial erosion and sedimentation into streams. Peak stream flows often rise in watersheds with timber harvesting

activities, due in part to compacted soils resulting from construction of roads and landings (where products are sorted and loaded for transportation) and vegetation removal (Allan and Castillo 2007, p. 332; Box and Mossa 1999, pp. 102–103). The cumulative effects of timber harvest on sedimentation rates may last for a couple of decades, even after harvest practices have ceased in the area (Frissell 1997, pp. 102–104).

In addition to those constructed for timber harvest, other roads which are improperly designed and maintained can cause marginally stable slopes to fail, and also capture surface runoff and channel it directly into streams (Allan and Castillo 2007, pp. 321–322, 340). Erosion from roads contributes more sediment than the land harvested for timber (Box and Mossa 1999, p. 102).

Unrestricted cattle access to streams increases erosion and subsequent sediment loads (Clary and Kinney 2002, p. 145). This is particularly a concern for the Eleven Point River in Arkansas (Irwin 2008b, pers. comm.).

Disturbance

Habitat disturbance affects hellbender survival in multiple rivers. Most rivers and streams inhabited by hellbenders are extremely popular with canoeists, kayakers, rafters, inner tube floaters, or operators of low-horsepower motorboats. Canoe, kayak, and motor and jet boat traffic continues to increase on the Jacks Fork, Current, Eleven Point, and North Fork Rivers. On the North Fork River, an average of five canoes per weekday were observed in 1998, and in 2004, that figure increased to 21 canoes per weekday (Pitt 2005, pers. comm.). Hellbenders encountered with gashes in their heads suggest that watercraft traffic likely impacts these animals. New roads, boat ramps, and other river access points have been constructed, which lead to increased river access and increased disturbance to hellbenders (Briggler *et al.* 2007, p. 64). Off-road vehicle (ORV) recreation is also widespread throughout the Ozarks region. ORVs frequently cross rivers inhabited by hellbenders and are driven in riverbeds where the water is shallow enough to enable this form of recreation. The force delivered by a boat or ORV hitting a rock could easily injure or kill a hellbender, in addition to displacing or disrupting cover rocks. ORV activity also increases erosion and sedimentation by exposing bare erodible soils in areas with frequent activity.

The practice of removing large rocks and boulders (by hand, machinery, or dynamite) to reduce damage to canoes is common on many hellbender streams (Nickerson and Mays 1973a, p. 56;

Wheeler *et al.* 1999, p. 4). It has been reported that rocks are possibly removed from streams for home landscaping projects (Briggler *et al.* 2007, p. 62), although data to support this assertion is lacking. Rock turning and flipping is also done by crayfish hunters, herpetofauna enthusiasts, and researchers (Briggler *et al.* 2007, pp. 61 and 66). The areas under these large rocks are important habitat for cover and nest sites; therefore, overturning or removing these rocks can diminish available cover and nest sites for hellbenders.

Summary of Habitat Destruction and Modification

The threats to the Ozark Hellbender from habitat destruction and modification are occurring throughout the entire range of the subspecies. These threats include impoundments, mining, water quality degradation, siltation, and disturbance from recreational activities.

The effects of impoundments on Ozark Hellbenders are significant because impoundments alter both upstream and downstream habitat directly, isolate populations, change water temperatures and flows below reservoirs, and increase exposure to predatory fish immediately upstream of the impoundments. Remaining Ozark Hellbender populations are small and isolated, in part due to increased impoundments over time, making hellbenders vulnerable to individual catastrophic events and reducing the likelihood of recolonization after localized extirpations.

Habitat destruction and modification from siltation and water quality degradation present a significant and immediate threat to the Ozark Hellbender. Siltation and water quality degradation are caused by human and livestock wastes, agricultural runoff, mine waste, and activities related to timber harvesting. Increased siltation may affect hellbenders in a variety of ways, such as suffocating eggs, eliminating suitable habitat for all life stages, reducing dissolved oxygen levels, increasing contaminants (that bind to sediments), and reducing prey populations. Increased nitrate levels, along with other contaminants from agricultural runoff and increased urbanization, have been detected in hellbender streams. These contaminants not only pose a threat directly to the Ozark Hellbender but also to the aquatic ecosystems upon which this species depends.

Pressure from recreational uses (for example, boat traffic, horseback riding, and ORV use) in streams inhabited by Ozark Hellbenders has increased

substantially on an annual basis, directly disturbing the habitat. Most hellbender rivers are popular with canoeists, kayakers, rafters, inner tube floaters, and motorboat operators. Removing large rocks and boulders to reduce damage to canoes is a common practice. Gardeners remove rocks for use in landscaping. Crayfish hunters, herpetofauna enthusiasts, and independent researchers (without scientific permits) turn and flip rocks. This disturbance is significant because areas under large rocks are important habitat for cover and nest sites; therefore, overturning and removing these rocks reduces available cover and nest sites for hellbenders. The threats of rock removal and overturning are expected to continue or even increase as these recreational activities grow in popularity.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Anecdotal reports and other information indicate that Ozark Hellbenders have been collected for commercial and scientific purposes (Trauth *et al.* 1992, p. 85; Nickerson and Briggler 2007, pp. 208–209). Although commercial collecting of Ozark Hellbenders has never been permitted by the Arkansas Game and Fish Commission (Irwin 2011b, pers. comm.) nor by the Missouri Department of Conservation (Briggler 2011a, pers. comm.), Nickerson and Briggler (2007, pp. 207–212) determined that large numbers of Ozark Hellbenders have been sold for the pet trade. Because of their protected status in Missouri and Arkansas, any actions involving interstate or foreign commerce of Ozark Hellbenders collected from these States would also be prohibited by the Federal Lacey Act (16 U.S.C. 3371–3378).

In Arkansas, hellbenders may be collected with a scientific collecting permit from the AGFC; however, no permits are being issued currently or are anticipated to be issued in the future because the State acknowledges the severely imperiled status of the subspecies (Irwin 2008b, pers. comm.). Missouri imposed a moratorium on hellbender scientific collecting from 1991 to 1996 and has since issued only limited numbers of scientific collecting permits for research (Horner 2008, pers. comm.). Despite these restrictions, unauthorized collecting for the pet trade remains a threat throughout the range because of the willingness of individuals to collect hellbenders illegally (Briggler 2011a, pers. comm.).

The illegal and legal collection of hellbenders for research purposes,

museum collections, zoological exhibits, and the pet trade has undoubtedly been a contributing factor to hellbender declines. Nickerson and Briggler (2007, pp. 208–211) documented the removal of 558 hellbenders (approximately 300 animals illegally) from the North Fork White River from 1969 to 1989. At least 100 of these were collected in the mid-1980s by individuals from Alabama (Figg 1992, pers. comm.). One of these collectors contacted the Missouri Department of Conservation in 1992 out of remorse and provided details about collecting the hellbenders (Figg 1992, pers. comm.). According to the individual, animals were exported to Japan and labeled as Eastern Hellbenders because Ozark Hellbenders were protected. The individual also relayed that he knew where to search for hellbenders by reading the published literature. In 1985, Missouri Department of Conservation agents apprehended two other individuals illegally collecting Ozark Hellbenders, among other protected species, from the North Fork White River (McNair 2011, pers. comm.). The two individuals were cited and fined for “possession of a protected species.”

Anecdotal information suggests unauthorized collection of Ozark Hellbenders on the Spring River in Arkansas contributed to the recent population crash, as reaches of the Spring River that formerly contained 35 to 40 hellbenders have had no individuals present for more than 10 years (Irwin 2008b, pers. comm.). The decline is linked to unauthorized collecting because Ozark Hellbenders were located in one small, easily accessible area of the Spring River, and no other event (such as a storm or chemical spill) had occurred in that area that would explain such a rapid decline (Irwin 2008b, pers. comm.). At another Spring River site, personnel from a local canoe rental reported that commercial collectors took more than 100 Ozark Hellbenders in 2 days (Trauth *et al.* 1992, p. 85), which also likely impacted the population. Amphibians such as the hellbender, a relatively slow-moving, aquatic species, may be collected with little effort, making them even more susceptible to this threat.

While large collecting events appear to have occurred primarily in the 1980s, the unauthorized collection of hellbenders for the pet trade remains a major concern. In 2001, an advertisement in a Buffalo, New York, newspaper was selling hellbenders for \$50 each (Mayasich *et al.* 2003, p. 20). In 2003, a pet dealer in Florida posted an Internet ad that offered “top dollar” for large numbers of hellbenders,

wanted in groups of at least 100 (Briggler 2007, pers. comm.). Also in 2003, a person in Pennsylvania had an Internet posting stating specifically that an Ozark Hellbender was wanted, no matter the price or regulatory consequence (Briggler 2007, pers. comm.); while in 2010 a person posted an Internet ad looking for wholesale lots of hellbenders (Briggler 2010a, pers. comm.). At the 2005 Hellbender Symposium, it was announced that U.S. hellbenders were found for sale in Japanese pet stores, which is likely the largest market for this species (Briggler 2005, pers. comm.). Further evidence of the current demand for hellbenders overseas includes an Eastern Hellbender declared for export to Europe in 2010 (Tabor 2010, pers. comm.) and a hellbender (subspecies not specified) declared in 2005 for export to Japan (LEMIS 2008). The Law Enforcement Management Information System (LEMIS) is the Service's law enforcement data system and includes information on imported and exported wildlife. Numbers provided by LEMIS declarations reports, however, can differ greatly from actual export numbers when animals are collected illegally and not declared. As Ozark Hellbenders become rarer, their market value is likely to increase. In fact, listing the subspecies as endangered may also enhance the subspecies potential commercial value as the rarity of the subspecies is made public.

Unlike many U.S. species listed under the Act, the Ozark Hellbender has commercial trade value. Due to the market demand and the apparent willingness of individuals to collect hellbenders illegally, we believe that any action that publicly discloses the location of hellbenders (such as publication of specific critical habitat maps or locations) puts the species in further peril. For example, due to the threat of unauthorized collection and trade, the Missouri Department of Conservation and Arkansas Game and Fish Commission have implemented extraordinary measures to control and restrict information on the locations of Ozark Hellbenders and thus no longer make location and survey information readily available to the public.

Recreational fishing may also negatively impact Ozark Hellbender populations due to animosity towards hellbenders, which some anglers believe to be poisonous and to interfere with fish production (Gates *et al.* 1985, p. 18). In addition, there are unpublished reports of hellbenders accidentally killed by frog or fish gigging (spearing), when a hellbender may get speared inadvertently (Nickerson and Briggler

2007, pp. 209, 212). The MDC reports that gigging popularity and pressure have increased, which increases the threat to hellbenders during the breeding season when they tend to move greater distances and congregate in small groups where they are an easy target for giggers (Nickerson and Briggler 2007, p. 212). The gigging season for various species of suckers spans the reproductive season of the Ozark Hellbender in the North Fork White River and also overlaps that of the hellbender in other river basins. The sucker gigging season opens September 15, during the peak breeding period when hellbenders are most active and, therefore, most exposed.

Gigging is popular in hellbender streams to such a degree that marks are often noticed on the bedrock and the river bottom from giggers' spears (Briggler 2007, pers. comm.). Although the chance of finding a giggered hellbender can be limited (due to presence of scavengers, the fast decomposition rate of amphibians, and the possibility of giggers removing the specimen), two giggered hellbenders were found along the stream bank on the North Fork White River in 2004 (Huang 2007, pers. comm.). In their studies of Missouri hellbenders, Nickerson and Mays (1973a, p. 56) found dead giggered specimens, and they reference data showing how susceptible the species is to this threat. Ozark Hellbenders are sometimes unintentionally caught by anglers. However, catching hellbenders while fishing is not a frequent occurrence and is not believed to be a significant threat to the species, especially if anglers follow instructions posted by the Missouri Department of Conservation to remove the hook or cut the fishing line and return the hellbender to the stream (Briggler 2009, pers. comm.).

Summary of Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Ozark Hellbender is a rare and unique amphibian that has experienced extensive collection from the wild for various reasons. Due to the continued decline of the Ozark Hellbender and the history of its collection, State agencies in Missouri and Arkansas have implemented measures to reduce the threat of collection. These measures include moratoriums on issuance of scientific collecting permits; prohibiting the collection, possession, and sale of hellbenders under appropriate State wildlife statutes; and controlling information on the location of hellbenders. The unauthorized collection of Ozark Hellbenders for

illegal commercial sale in the pet trade, however, continues to be a significant threat.

C. Disease or Predation

Disease (Chytridiomycosis)

Background—Chytridiomycosis is a highly infectious amphibian disease caused by the pathogen *Batrachochytrium dendrobatidis* (Bd, or amphibian chytrid fungus), and has been demonstrated to infect and kill all life stages of an increasing number of amphibian species worldwide (Berger *et al.* 1998, pp. 9031–9036). The Ozark Hellbender is now included on the ever-increasing global list of amphibian species potentially affected by this fatal pathogen (Speare and Berger 2011, pp. 1–9).

The chytrid fungus attacks the keratinized tissue of amphibians' skin, which can lead to clinical signs of disease presence, such as thickened epidermis, lesions, body swelling, lethargy, abnormal posture, loss of righting reflex, and death (Daszak *et al.* 1999, pp. 737–738; Bosch *et al.* 2001, p. 331; Carey *et al.* 2003, p. 130). It is believed that the fungus originated from Africa with the African clawed frog (*Xenopus laevis*), used throughout the United States in the 1930s and 1940s for pregnancy testing. This pathogen is now found on all continents including Asia, where it was recently documented (Weldon *et al.* 2004, pp. 2100–2105; Speare and Berger 2005, pp. 1–9; Goka *et al.* 2009, pp. 4765–4767).

Currently, there are two theories on the development of the Bd as a global amphibian pathogen. One theory is that the fungus is not a new pathogen, but has increased in virulence or in host susceptibility caused by other factors (Berger *et al.* 1998, p. 9036). The other, more widely supported theory is that Bd is an introduced species whose spread has been described as an epidemic 'wave-like' front (Lips *et al.* 2006, pp. 3166–3169; Morehouse *et al.* 2003, p. 400).

B. dendrobatidis lives in aquatic systems in which it 'swims' (using spores) through the water and reproduces asexually. The fungus develops most rapidly at 73.4 °F (23 °C) in culture, with slower growth rate at 82.4 °F (28 °C) and reversible stop of growth at 84.2 °F (29 °C; Daszak *et al.* 1999, p. 741). The temperatures in Ozark streams are ideal for the spread and persistence of this pathogen. Based on U.S. Geological Survey water data from 1996–2006, the maximum temperature of these hellbender streams is 77.0 to 80.6 °F (25 to 27 °C), although the average water temperature over one

year (for Eleven Point, Current, and North Fork White River) is approximately 59.0 to 60.8 °F (15 to 16 °C) (Barr 2007, pers. comm.).

Persistence of Bd may be further enhanced by saprophytic development (obtaining nourishment from dead or decaying material in water; Daszak *et al.* 1999, p. 740). Johnson and Speare (2003, pp. 923–924) concluded that the fungus can survive saprophytically outside the amphibian host for up to 7 weeks in lake water and up to 3 to 4 weeks in tap water. Further, Carey *et al.* (2003, p. 130) stated that amphibians can be infected when placed either in water containing zoospores that were placed specifically in the water, or in water from which infected animals have been recently removed. The possibility that Bd can develop for even a short period of time outside the amphibian host may greatly increase its impact and accelerate host population declines (Carey *et al.* 2003, p. 130). Also, the possibility of long-term survival of the pathogen as a saprophyte may explain the lack of recolonization of streams from which amphibians, such as the Ozark Hellbender, have been extirpated (Daszak *et al.* 1999, p. 740). Moreover, hellbenders that are not already infected with Bd are continually at risk because temperatures are ideal for the persistence of the fungus in the water (without a host) for a long period.

Habitat specializations and a variety of underlying predisposing environmental factors may make an animal more vulnerable to exposure to the pathogen, especially for species such as the Ozark Hellbender that carry out their life cycle in aquatic rather than terrestrial habitats (Carey *et al.* 2003, p. 131). Since the Ozark Hellbender lives in an aquatic system throughout its entire life, there is no possibility for relief from this fungus. Climate change is one of the environmental factors that has been indicated as a key promoter in the spread of the Bd pathogen (Pounds *et al.* 2006, pp. 161–167). Rachowicz *et al.* (2006, pp. 1676–1682) found that chytridiomycosis was implicated in the local extirpations of two species of frog, and they conclude with high confidence that large-scale warming was the key factor in the disappearances of these two species. Although environmental factors (for example, increased UV-B, chemical pollution, climate change) may predispose amphibian populations to pathogens, evidence suggests that cofactors are not required for chytridiomycosis to cause mass amphibian deaths (Daszak *et al.* 1999, p. 741).

Overall, chytridiomycosis has been implicated in local population

extirpations, sustained population declines, and possibly species extinctions for many amphibian species (Berger *et al.* 1998, pp. 9031–9036; Bosch *et al.* 2001, pp. 331–337). Chytrid fungi are the best supported pathogens related to amphibian declines, with more than 93 species worldwide affected as of 2005 (Collins and Storer 2003, pp. 89–98; Daszak *et al.* 2003, pp. 141–150; Speare and Berger 2005, p. 1). For example, in surveys conducted by Lips *et al.* (2006, pp. 3165–3166) in Costa Rica and Panama, during only a few months of surveying, frog and salamander species richness and amphibian density declined by more than 60 percent and 90 percent, respectively. The declines were attributed to the prevalence of chytrid fungus in amphibian habitats (Lips *et al.* 2006, pp. 3165–3166).

Disease in captive hellbenders—The St. Louis Zoo maintains a captive population of Ozark and Eastern Hellbenders. In March 2006, there was a power outage in the Zoo's herpetarium, including the area where the hellbenders are held. Soon after the power outage, which may have stressed the hellbenders, possibly reducing their immunity, several hellbenders were observed "with substrate (rocks) sticking to the skin and many were floating" (Duncan 2007, pers. comm.). More than 75 percent of the captive population whose death occurred from March 2006 through April 2007 (59 individuals) likely resulted either directly or indirectly from Bd (Duncan 2007, pers. comm.).

Disease in wild hellbenders—As a result of the mortalities in the St. Louis Zoo hellbender population, in 2006 the Missouri Department of Conservation began testing wild hellbenders in Missouri for infection by the pathogen. All Ozark Hellbender streams surveyed had individual hellbenders that tested positive for the pathogen (Briggler 2008b, pers. comm.). Data from 2006 and 2007 show that, for the presence of *B. dendrobatidis* within the Current River, 20 percent of the population was positive (heavily positive in a few locations, indicating higher concentrations of the fungus); within the Eleven Point River (Missouri and Arkansas), 16 percent was positive (positives spread throughout river); and within the North Fork of the White River, 15 percent was positive (positives spread throughout river) (Briggler 2008b, pers. comm.). These results indicate the minimum number of infected individuals because polymerase chain reaction (PCR) tests for *B. dendrobatidis* may produce false negative results if the infection is

localized in different tissues than were analyzed (Beard and O'Neill 2005, p. 594). The only Ozark Hellbender river not surveyed for the pathogen was the Spring River, where the subspecies is considered functionally extirpated (Irwin 2008a, pers. comm.). During future surveys, all animals encountered (new and recaptures) will be tested for the presence of *B. dendrobatidis*.

The immediacy of the threat from chytridiomycosis has been significantly heightened since the Bd pathogen has been found to occur in all known extant populations of the Ozark Hellbender. Exact effects of the fungus on Ozark Hellbender populations remains unknown, but infected individuals of other amphibian species have experienced decreased growth rates (Davidson *et al.* 2007, p. 1773) and reduced survivability (Pilliod *et al.* 2010, pp. 1264–1265). Hellbenders may be particularly sensitive to thickening of the epidermis caused by Bd (Daszak *et al.* 1999, pp. 737–738) as more than 90 percent of their oxygen is obtained through cutaneous respiration (Guimond and Hutchison, p. 1263).

Abnormalities

Wheeler *et al.* (2002, pp. 250–251) investigated morphological aberrations in the Ozark Hellbender over a 10-year period. They obtained deformity data from salamanders that were examined during population and distributional surveys in the Eleven Point River, North Fork of the White River, and Spring River dating back to 1990. They reported a variety of abnormal limb structures, including missing toes, feet, and limbs. Additional abnormalities encountered include epidermal lesions, blindness, missing eyes, and bifurcated limbs. Three hellbenders were documented with tumors on their bodies in the Spring River in Arkansas. Briggler (2011b, pers. comm.) is evaluating and compiling additional information on these abnormalities and lesions, including the frequency of occurrence. Several hellbenders with these abnormalities were x-rayed and are being analyzed by Jeff Briggler, Missouri Department of Conservation. One hellbender with extreme abnormalities (all limbs missing) was euthanized and sent to the USGS National Wildlife Health Center for necropsy, where the conclusive cause for the individual's missing limbs and digits could not be determined.

In 2004, 72 percent of Ozark Hellbenders captured had abnormalities present. For reference, 49 percent of Eastern Hellbenders captured in Missouri had abnormalities (Briggler 2007, pers. comm.). In 2006, 90 percent

of Ozark Hellbenders surveyed from the Eleven Point River (Missouri), 73 percent from the Current River, and 67 percent from the North Fork of the White River had abnormalities (Briggler 2007, pers. comm.). In general, abnormalities in Ozark Hellbenders are becoming increasingly common and severe, often to a level that the animals are near death (for example, missing digits on all or most limbs, missing all or most limbs; Briggler 2007, pers. comm.). Most, if not all, hellbenders collected in the past decade from the Spring River have had some type of major malformity or lesions (Davidson 2008, pers. comm.). In fact, a hellbender found in the Spring River in 2004 was missing all four feet and was covered in lesions and a fungal growth externally and inside its mouth; this animal died within 15 minutes of capture (Davidson 2008, pers. comm.).

The current belief is that secondary bacterial and fungal infections are causing the observed abnormalities on Ozark Hellbenders (Briggler 2011a, pers. comm.). While these pathogens likely naturally occur on the animals, it appears that some unknown factor is increasing the hellbenders' susceptibility to these infections. In hellbenders infected with Bd, there may be a connection between the chytrid fungus and presence of abnormalities such as lesions, digit and appendage loss, and epidermal sloughing. Although evidence is lacking to conclude that infection by Bd causes immunosuppression, it has been hypothesized that the pathogen increases the vulnerability of hellbenders to secondary bacterial and fungal infections and thus is associated with the abnormalities (Irwin 2010, pers. comm.). However, not all hellbenders exhibiting the abnormalities described above test positive for infection by the fungus. Therefore, while the Bd pathogen may cause some hellbenders to be more susceptible to other infections, including those responsible for lesions and appendage loss, it appears that additional unknown factors are underlying the increased vulnerability.

While the cause of the observed abnormalities is uncertain, the presence of these physical impairments (and the frequency with which they occur) is likely contributing to Ozark Hellbender declines by reducing survivorship and reproduction. Lesions on the feet and absence of appendages altogether seemingly would reduce motility and foraging ability, and possibly increase vulnerability of hellbenders to predators. Blindness or missing eyes may also decrease survivability; while

the overall stress imposed on affected individuals has the potential to reduce breeding activities and thus decrease recruitment.

Predation

Trout stocking has increased in recent years both in Missouri and Arkansas. While no trout are native to Missouri, both nonnative brown trout (*Salmo trutta*) and nonnative rainbow trout (*Oncorhynchus mykiss*) have been sporadically introduced into Ozark area waters for recreational fishing purposes since the 1800s. The 2003 MDC Trout Management Plan calls for increased levels of stocking as well as increasing the length of cold-water-stream stretches that will be stocked with brown and rainbow trout (Missouri Department of Conservation 2003, pp. 31–32). Nonnative trout are stocked in all rivers that historically and currently contain Ozark Hellbenders ((MDC 2003, pp. 24–26, AGFC 2004, p. 4). In Arkansas, the Arkansas Game and Fish Commission is currently working with the U.S. Army Corps of Engineers to improve cold water releases from mainstem dams along the White River, to improve conditions for trout below the reservoirs (U.S. Army Corps of Engineers 2008, pp. 1–40). In addition, highly predacious tiger muskies (hybrids between Northern pike and muskellunge (*Esox masquinogy* x *E. lucius*)) were introduced into the Spring River in Arkansas in 1989.

Introduced fishes have had dramatic negative effects on populations of amphibians throughout North America (Bradford 1989, pp. 776–778; Funk and Dunlap 1999, pp. 1760–1766; Gillespie 2001, pp. 192–196; Pilliod and Peterson 2001, pp. 326–331; Vredenburg 2004, pp. 7648–7649). Rainbow trout and brown trout are considered opportunists in diet, varying their diet with what is available, including larval amphibians (Smith 1985, p. 231; Pflieger 1997, pp. 224–225). Brown trout grow bigger and tolerate a wider range of habitats than do rainbow trout and, therefore, may be a more serious threat to hellbenders, particularly at the larval stage. Dunham *et al.* (2004, pp. 19–24) assessed the impacts of nonnative trout in headwater ecosystems in western North America. The authors documented at least eight amphibian species that exhibited negative associations with nonnative trout in mountain lakes, specifically regarding the occurrence or abundance of larval life stages of native amphibians. Also, salamander species, such as the long-toed salamander (*Ambystoma macrodactylum*), have been extirpated from waterbodies in high-elevation lakes in western North

America due to stocked nonnative trout (Pilliod and Peterson 2001, p. 330).

Preliminary data suggest that larval hellbenders from declining populations in Missouri do not recognize brown trout as dangerous predators. In contrast, larvae from more stable southeastern (U.S.) populations that co-occur with native trout show “fright” responses to brown trout (Mathis 2008a, pers. comm.). The failure of hellbender larvae to recognize trout as a threat is likely a nonadaptive response that makes this amphibian more susceptible to predation. A recent study conducted by Gall (2008, pp. 1–86) confirmed results found with this preliminary data on Missouri hellbender populations.

Gall (2008, p. 3) examined hellbender (Ozark and eastern) predator-prey interactions by (1) studying the foraging behavior of predatory fish species (native and nonnative (trout)) in response to the presence of hellbender secretion (a potentially noxious chemical cue produced by stressed hellbenders), (2) comparing the number of secretion-soaked food pellets consumed by rainbow and brown trout, and (3) comparing the response of larval hellbenders to chemical stimuli between native predatory fishes and nonnative trout. Gall (2008, pp. 23, 30–31) determined that brown trout were attracted to the secretion emitted by hellbenders, and hellbender secretions were more palatable to brown trout than to rainbow trout. Also, although hellbenders in Missouri exhibited only weak fright responses when exposed to trout stimuli, they responded with strong fright responses to other native predatory fish.

Gall (2008, p. 63) suggested that the limited evolutionary history between salmonids (brown and rainbow trout) and hellbenders in Missouri is likely responsible for the weak fright behavior exhibited by hellbenders in response to trout stimuli. Although brown and rainbow trout are a threat to hellbenders, results from this study indicate that rainbow trout are less of an immediate concern than brown trout (Gall 2008, pp. 63–64). This may be due to the difference in diet of the two species; rainbow trout maintain a predominately invertebrate diet throughout their lives and brown trout switch from predominately invertebrate prey to predominately vertebrate prey (including salamanders) at about 8.7 in (22 cm) in length (Gall 2008, p. 60). Gall (2008, p. 63) provided evidence that predation by introduced trout cannot be ruled out as a factor affecting the Ozark Hellbender and possibly contributes to their decline.

In addition to brown trout and four other native predatory fish, walleye (*Stizostedion vitreum*) have been stimulated to approach prey more often and faster in the presence of hellbender secretions (Gall 2008, pp. 23–24). Although walleye are native, stocking the species at greater densities than those occurring naturally may increase predation pressures on hellbender larvae stocked in hellbender streams, because walleye share similar activity periods with hellbenders (Mathis 2008b, pers. comm.).

Summary of Disease or Predation

The discovery of the presence of *Batrachochytrium dendrobatidis* (Bd, or amphibian chytrid fungus) in 2006 within all remaining populations of the Ozark Hellbender has made increased protection even more important to the persistence of this subspecies (Utrup 2007, pers. comm.). The threat from chytridiomycosis is significant and immediate because: (1) It is proven to be a fatal pathogen to Ozark Hellbenders in captivity, and (2) in the wild, all streams with extant Ozark Hellbender populations have individuals that tested positive for the pathogen (Briggler 2008b, pers. comm.). In addition, although it is unclear if there is a connection to chytridiomycosis, abnormalities found on Ozark Hellbenders are increasingly severe, often to a level short of mortality (Briggler 2008a, pers. comm.).

Nonnative trout are stocked in all rivers that historically and currently contain hellbenders in Missouri. Predation of larval hellbenders by nonnative trout and other piscivorous fish possibly contributes to the decline of Ozark Hellbender populations in Missouri and may be a growing concern if predatory fish continue to be stocked (or are stocked in larger numbers) in hellbender streams.

D. The Inadequacy of Existing Regulatory Mechanisms

In Arkansas, hellbenders may be collected with a scientific collecting permit from the AGFC; however, no permits are anticipated to be issued now or in the future because the State acknowledges the severely imperiled status of the subspecies (Irwin 2008b, pers. comm.). Although Arkansas does not have a State endangered and threatened species list, the State considers the Ozark Hellbender a nongame species and prohibits collection without a permit. The Ozark Hellbender is a State-endangered species in Missouri, which prohibits importation, exportation, transportation, sale, purchase, taking, and possession of

the species without a permit. MDC placed a moratorium on hellbender scientific collecting from 1991 to 1996 and has since allowed only limited numbers of scientific collecting permits, and only for those projects contributing to conservation and recovery efforts (Briggler 2011d, pers. comm.). Despite receiving maximum protection by both States, continued unauthorized collecting for the pet trade has been documented and remains a threat throughout the range.

State regulations for gigging and for trout stocking do not protect the Ozark Hellbender. The gigging season for various species of suckers spans the reproductive season of the Ozark Hellbender in the North Fork White River and overlaps that of the hellbender in other river basins as well. The sucker gigging season opens annually on September 15, during the peak breeding period when hellbenders are most active and, therefore, most exposed. The 2003 MDC Trout Management Plan calls for increased levels of stocking as well as increasing the length of cold water streams that will be stocked with brown and rainbow trout (MDC 2003, pp. 31–32). In Arkansas, the Arkansas Game and Fish Commission is currently working with the U.S. Army Corps of Engineers to improve cold water releases from mainstem dams along the White River to improve conditions for trout below the reservoirs (U.S. Army Corps of Engineers 2008, pp. 1–40).

Clean Water Act

Although the Clean Water Act of 1972 (CWA (Pub. L. 92–500)) resulted in an overall gain in water quality in streams, degraded water quality still is a significant factor affecting highly sensitive aquatic organisms such as the Ozark Hellbender because a number of activities responsible for habitat degradation are outside of regulatory oversight. There are no regulatory requirements to implement Best Management Practices (BMPs) to protect water quality from timber management actions. Existing BMPs by the Arkansas Forestry Commission and Missouri Department of Conservation lack mandatory requirements for implementing methods to reduce aquatic resource impacts associated with timber management. Timber harvest activities (for example, logging decks, increased use of unpaved roads, improperly designed and maintained roads, skid trails, fire breaks) may result in erosion and sedimentation. Additionally, there are no laws or regulations that preclude livestock from grazing in riparian corridors and wading

in streams and rivers. Nonpoint pollution sources (for example, animal and human waste, agricultural practices, increased road construction) may be causing much of the degraded water quality throughout the Ozark Hellbender's range. The degradation is more apparent in stretches of rivers that are not within federally or State protected lands, such as in the Eleven Point River in Arkansas (Irwin 2008b, pers. comm.). While portions of the Eleven Point River watershed in Missouri are owned by the Federal Government and managed to protect stream and riparian areas from erosion, the entire watershed in Arkansas is privately owned with increased threat from stream bank clearing and unrestricted livestock access, which have an increased effect on remaining Ozark Hellbender populations (Irwin 2008b, pers. comm.).

The court's decision in *American Mining Congress v. U.S. Army Corps of Engineers* (D.D.C. 1997) resulted in the U.S. Army Corps of Engineers deregulating gravel removal activities under section 404 of the CWA. The court found that “de-minimus” or incidental fallback of sand and gravel into the stream from which it was being excavated did not constitute the placement of fill by the mining operation. Hence, the court ruled that the Army Corps of Engineers had exceeded their authority in requiring a permit for this activity. Although these activities no longer require a Clean Water Act 404 permit, commercial operations in Missouri must apply for a State permit through the Missouri Department of Natural Resources Land Reclamation Program. Modifications of stream channels associated with gravel mining, as well as the removal of pebbles and cobble that are important microhabitat for larvae and subadults, possibly contribute to the decline of Ozark Hellbenders in these systems.

Lacey Act

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371–3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. This prohibition of the Lacey Act would apply in instances where a person engages in a prohibited act with an Ozark Hellbender unlawfully collected from Federal lands, such as those Federal lands within the range of the Ozark Hellbender that are owned and managed by the U.S. Forest Service or the National Park Service. It is unlawful

under section 3372(a)(2)(A) of the Lacey Act Amendments of 1981 to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State.

Because it is a violation of Missouri and Arkansas wildlife codes and regulations to sell, purchase, or engage in any actions relating to the commercial trade of Ozark Hellbenders (for example, import, export, ship, or transport), any interstate or foreign commerce of the Ozark Hellbender would result in a violation of the Lacey Act Amendments of 1981. However, if an illegally obtained hellbender is not identified to the Ozark subspecies, it would be difficult for a wildlife inspector to identify it as the prohibited taxon. Although the prohibitions and penalties of the Lacey Act Amendments of 1981 provide some protection for the Ozark Hellbender, this law, by itself, does not adequately prevent or reduce the illegal commercial trade of hellbenders.

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The unauthorized collection and trade of Ozark Hellbenders within the United States and internationally is of growing concern, particularly as the subspecies' rarity increases and, consequently, commercial value increases. Therefore, concurrent with the proposal to list the Ozark Hellbender as endangered, the Service proposed on September 8, 2010, to include both hellbender subspecies in Appendix III of CITES. CITES is an international agreement between governments with the purpose of ensuring that international trade in wild animals and plants does not threaten their survival. CITES listing of the Ozark Hellbender would aid in curbing unauthorized international trade of hellbenders.

CITES can list species in one of three appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. Appendix II also includes species that CITES must regulate so that trade in other listed species may be brought under effective control (for example, because of similarity of appearance between listed species and other species). Appendix III includes native species identified by any Party country that needs to be regulated to prevent or

restrict exploitation; under Appendix III, that Party country requests the help of other Parties to monitor and control the trade of that species. Based on the criteria described in 50 CFR 23.90, the Eastern and the Ozark hellbenders qualify for listing in CITES Appendix III. Listing all hellbenders in Appendix III is necessary to allow us to adequately monitor international trade in the taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies. Appendix III listings will lend additional support to State wildlife agencies in their efforts to regulate and manage hellbenders, improve data gathering to increase our knowledge of trade in hellbenders, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. The final rule for the CITES Appendix III listing is being published concurrently in today's **Federal Register**.

Summary of the Inadequacy of Existing Regulatory Mechanisms

Some existing regulatory mechanisms provide protection for the Ozark Hellbender and its habitat. Existing Federal and State water quality laws can be applied to protect water quality in streams occupied by the hellbender, but several factors contributing to degradation of water quality remain outside government regulatory authority. The requirement for a U.S. Army Corps of Engineers dredge and fill permit under section 404 of the Clean Water Act has resulted in an overall gain in water quality. However, ongoing gravel mining in hellbender streams is no longer regulated by the Corps of Engineers under section 404 of the Clean Water Act. Although the Lacey Act provides some protection, the current regulatory mechanisms are not adequate to protect Ozark Hellbenders from unauthorized collection for commercial sale in the pet trade. The Service also finalized listing the Eastern and Ozark hellbender in Appendix III of CITES concurrently in today's **Federal Register**. Nonetheless, the CITES listing applies only to the export of hellbenders from the United States. Current regulations also do not protect Ozark Hellbenders from gigging by anglers or potential predation by introduced nonnative trout.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small, Isolated Populations—The small size and isolation of remaining populations of the Ozark Hellbender

make it vulnerable to extinction due to genetic drift, inbreeding depression, and random or chance events (Smith 1990, pp. 311–321). Inbreeding depression can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosome abnormalities (Smith 1990, pp. 311–321). Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994, pp. 58–62). Numerous authors (such as Noss and Cooperrider 1994, pp. 58–62; Thomas 1994, p. 374) have indicated that the probability of extinction increases with decreasing habitat availability. 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) (Gilpin and Soule 1986, pp. 25–33; Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148–150).

The loss of genetic diversity in Ozark Hellbenders is illustrated by Routman's (1993, pp. 410–415) study, in which hellbender populations from different rivers demonstrated very little within-population variability, and relatively high between-population variability. Due to this population fragmentation, local extirpations cannot be naturally repopulated. Current factors negatively affecting the habitat of the Ozark Hellbender may exacerbate potential problems associated with its low population numbers and the isolation of those small populations from each other, which increases the chances of this subspecies going extinct or making it less able to recover or adapt to catastrophic events.

Genetic studies have repeatedly demonstrated very low genetic diversity in hellbender populations, which could contribute to the decline of the species through inbreeding depression (Kucuktas *et al.* 2001, p. 135). The current combination of population fragmentation, disease, and habitat degradation will prohibit this species from recovering without the intervention of conservation measures designed to facilitate hellbender recovery.

Recruitment and Reproductive Capability—The hellbender's late sexual maturity leads to a higher risk of death prior to reproduction and to lengthened generation times (Congdon *et al.* 1993, pp. 831–832). Hellbender specimens less than 5 years of age are uncommon (Taber *et al.* 1975, pp. 636–637;

Pfingsten 1990, p. 49), and recent research has indicated that the age structure has shifted, resulting in the prevalence of older individuals (Pfingsten 1990, p. 49; Wheeler *et al.* 2003, pp. 153, 155).

Because hellbenders are long-lived, a population may seemingly not be highly dependent on recruitment to remain extant (Mayasich *et al.* 2003, p. 22). Empirical and theoretical evidence suggests, however, that overlapping generations within a population (high survivorship among juveniles) is necessary to maintain stable populations (Congdon *et al.* 1993, pp. 830–832) and maintain genetic diversity by facilitating gene flow among older and younger individuals (Ellner and Hairston 1994, pp. 413–415). Wheeler *et al.* (2003, p. 155) postulated that the lack of sufficient recruitment may have impeded the population stability of Ozark Hellbenders and the ability of the populations to maintain genetic diversity.

Pfingsten (1990, p. 49) cautioned that lack of larvae detection could mean that larvae occupy a microhabitat that has yet to be surveyed. However recent information indicates that the lack of larvae and juveniles in populations is not a function of survey technique, but instead reflects a true reduction in recruitment (Lipps 2010, pers. comm.; Phillips 2010, pers. comm.).

Unger (2003, pp. 30–36) compared several measures of sperm production between male Ozark and Eastern hellbenders in Missouri and Eastern Hellbender males from more stable populations in North Carolina and Georgia. Sperm counts were significantly lower for males from both tested Missouri populations than for males from southeastern populations. Populations were not significantly different with respect to sperm viability and motility. The sperm of Missouri males had proportionally smaller heads for their tail lengths; this difference was relatively small, but was statistically significant. Because motility and viability appeared unaffected, artificial fertilization might be a viable conservation technique, however, limited efforts to date have been successful (Unger 2003, pp. 65–66).

The extremely low number or lack of juveniles in most Ozark Hellbender populations is a significant sign that little reproduction has occurred in these populations for several years. Late age of reproductive maturity, when paired with a long lifespan, can disguise population declines resulting from activities that occurred years earlier until the adults begin dying and numbers begin declining from lack of

recruitment. The present distribution and status of Ozark Hellbender populations in the White River system in Arkansas and Missouri are exhibiting such a decline (Wheeler *et al.* 2003, p. 155).

Climate Change—Because the Ozark Hellbender is an aquatic salamander totally dependent upon an adequate water supply and has specific habitat requirements (*i.e.*, dissolved oxygen and low water temperatures); we expect that climate change could significantly alter the quantity and quality of hellbender habitat and thus impact the species in the future. Potential adverse effects from climate change include increased frequency and duration of droughts (Rind *et al.* 1990, p. 9983; Seager *et al.* 2007, pp. 1181–1184; Rahel and Olden 2008, p. 526) and an increased virulence of nonnative parasites and pathogens to native species from warming temperatures (Rahel and Olden 2008, p. 525). If the health of hellbenders is already compromised by other environmental stressors, elevated water temperatures could increase susceptibility to bacterial and fungal infections, especially for those hellbenders infected with Bd (Wanner 2011, pers. comm.).

Climate warming may also decrease groundwater levels (Schindler 2001, p. 22) or significantly reduce annual stream flows (Moore *et al.* 1997, p. 925; Hu *et al.* 2005, p. 9); while the increased drought conditions and prolonged low flows associated with climate change may favor the establishment and spread of nonnative species (Rahel and Olden 2008, pp. 526, 529–530). Low or interrupted stream flows could have devastating effects on Ozark Hellbenders populations by causing direct mortality from desiccation (during periods of interrupted flows) and reduced fitness and reproduction due to stress, decreased prey availability, and lower dissolved oxygen. Additionally, it is projected that stream basin discharges may be further impacted by synergistic effects of changes in land cover and climate change in the Missouri Ozarks (Hu *et al.* 2005, p. 9).

Summary of Other Natural or Manmade Factors Affecting Its Continued Existence

The small size and isolation of Ozark Hellbender populations, loss of genetic diversity, lack of recruitment, and potential effects from climate change could exacerbate other factors negatively affecting the subspecies and increase the risk of extinction. These additional factors are particularly detrimental when combined with other

threats affecting the hellbender, such as of habitat loss, water quality degradation, chytridiomycosis, and unauthorized collection and trade. In addition, effects from some threats likely interact synergistically to enhance effects from other factors (for example, compromised health from water quality or pathogen issues may increase predation risks).

Determination for the Ozark Hellbender

Although no clear estimates exist for how many Ozark Hellbenders historically inhabited Missouri and Arkansas, surveys over recent years have documented a severe decline in all populations. To illustrate this decline, consider the current total range-wide population estimate of 590 (Briggler *et al.* 2007, p. 83) compared to the results of one 1973 study indicating approximately 1,150 hellbenders within less than 1.2 mi (2 km) of one occupied river (Nickerson and Mays 1973b, p. 1165).

In addition to the severe population declines, the known factors negatively affecting and subsequent threats to the Ozark Hellbender have continued to increase since we elevated the species to candidate status in 2001 (66 FR 54808; October 30, 2001). In particular, the discovery of the presence of *Batrachochytrium dendrobatidis* (chytridiomycosis) in 2006 within all remaining populations of the Ozark Hellbender has made increased protection even more important to persistence of this subspecies (Utrup 2007, pers. comm.).

The decrease in Ozark Hellbender population size and the shift in age structure are likely caused in part by a variety of historical and ongoing activities. It is believed that one of the primary causes of these trends is habitat destruction and modification from siltation and water quality degradation. The sources include industrialization, agricultural runoff from livestock production and pasture land, mine waste, and activities related to timber harvesting. Increased siltation affects hellbenders in a variety of ways, such as suffocating eggs, eliminating suitable habitat for all life stages, reducing dissolved oxygen levels, increasing contaminants (that bind to sediments), and reducing prey populations. Trout stocking continues to occur on hellbender streams both in Missouri and Arkansas. The reduced numbers of larval and subadult hellbenders observed may be attributed to predation by nonnative trout. Increased nitrate levels, along with a variety of other contaminants from agricultural runoff and increased urbanization, have been

detected in hellbender streams, which not only negatively affects hellbenders directly but also the Ozark aquatic ecosystems in general. Impoundments alter habitat directly, isolate populations, change water temperatures and flows below reservoirs, and increase predation at sites immediately above reservoirs. Remaining Ozark Hellbender populations are small and isolated, in part due to reservoir construction that makes hellbenders vulnerable to individual catastrophic events and reduces the likelihood of recolonization after localized extirpations.

Recreational pressure (for example, boat traffic, horseback riding, and ORV use) in streams inhabited by Ozark Hellbenders has increased substantially on an annual basis, directly disturbing the habitat. Fish and frog gigging popularity and pressure continue to increase, presenting a threat to hellbenders during the breeding season (Nickerson and Briggler 2007, pp. 209–211). The increase in number or size of recreational boats and inner tubes, commercial horse trail ride outfitters, and ORV use has increased disturbance and contamination (for example, fecal coliform).

The unauthorized collection of hellbenders, especially for the pet trade, remains a major concern, particularly with market values continually increasing. Existing regulations targeting this significant threat, including State laws, have not been completely successful in preventing the unauthorized collection and trade of Ozark Hellbenders.

The combined impact of degraded environmental conditions, along with the possible increased susceptibility to chytridiomycosis due to these threats, has created a situation in which the Ozark Hellbender is currently in danger of extinction throughout all of its range. Researchers and managers agree that, while a solution will hopefully be reached to directly address the presence of the chytrid fungus within Ozark Hellbender populations, all other factors significantly affecting the hellbender must be ameliorated to prevent the imminent extinction of this subspecies.

Based on an August 2006 PHVA model, hellbender experts concluded that the Ozark Hellbender metapopulations are expected to decline by more than 50 percent in 12 to 16 years, the viability of all individual populations will be significantly reduced within 20 to 25 years with estimates of fewer than 100 individuals, and a reduction in genetic diversity by as much as 90 percent will occur. These projections may be optimistic because they are based on best-case density

estimates and assume that hellbender populations within each river system are continuous, and the prevalence of chytrid fungus and its possible effects on hellbenders was not taken into consideration. Hellbenders do not travel great distances, however, and subpopulations within each river system are often separated by miles (kilometers) of unsuitable habitat resulting in fragmented populations. These models projected the Ozark Hellbender subspecies to be functionally extinct within 20 years (Briggler *et al.* 2007, pp. 88–90 and 97).

We determine foreseeable future on a case-by-case basis, taking into consideration a variety of species-specific factors such as lifespan, genetics, breeding behavior, demography, threat-projection timeframes, and environmental variability. Based on the observed population decline in the subspecies and the threats as discussed, we find that the Ozark Hellbender is currently in danger of extinction throughout all of its range.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Ozark Hellbender. Section 3 of the Endangered Species Act defines an endangered species as “* * * any species which is in danger of extinction throughout all or a significant portion of its range” and 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.” Due to multiple threats to the Ozark Hellbender and the ongoing population decline, this subspecies is increasingly threatened with extinction. Based on the immediate and ongoing significant threats to the subspecies throughout its entire range, we find the subspecies to be in danger of extinction throughout all of its range. Therefore, the Ozark Hellbender meets the definition of an endangered species under the Act, rather than a threatened species because the threats are occurring now, making the subspecies in danger of extinction at the present time. Because threats extend throughout the entire range, it is unnecessary to determine if the Ozark Hellbender is in danger of extinction throughout a significant portion of its range. Therefore, on the basis of the best scientific and commercial information available, we are listing the Ozark Hellbender as an endangered species throughout its entire range.

Critical Habitat

Prudency Determination

Background

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, we 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 circumstances 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. We have determined that both circumstances apply to the Ozark Hellbender. This determination involves a weighing of the expected increase in threats associated with a critical habitat designation against the benefits gained by a critical habitat designation. An explanation of this “balancing” evaluation follows.

Increased Threat to the Taxon by Designating Critical Habitat

The unauthorized collection of Ozark Hellbenders for the pet trade is a factor contributing to hellbender declines (Nickerson and Briggler 2007, p. 214) and remains a significant threat today, particularly with increasing international market values. For a detailed discussion on the threat of commercial collection, see factor B (Overutilization for commercial, recreational, scientific, or educational purposes).

The process of designating critical habitat would increase human threats to the Ozark Hellbender by increasing the vulnerability of this species to unauthorized collection and trade through public disclosure of its locations. Designation of critical habitat requires the publication of maps, and a very specific narrative description of critical habitat areas in the **Federal Register**. The degree of detail in those maps and boundary descriptions is far greater than the general location descriptions provided in this final rule to list the species as endangered. Furthermore, a critical habitat designation normally results in the news media publishing articles in local newspapers and special interest Web sites, usually with maps outlining critical habitat. We believe that the publication of maps and descriptions

outlining the locations of this critically imperiled taxon will further facilitate unauthorized collection and trade, as collectors will know the exact locations where Ozark Hellbenders occur.

Supporting our concern is an instance of illegal collection of a federally listed North Carolina mountain plant immediately following the publication of critical habitat maps (USFWS 2001; pp. 51448–51449). With critical habitat maps in hand, collectors visited local Forest Service district offices and asked directions to the sites. Because the plant was not previously known to be desired by rare plant collectors and had never been offered for sale in commercial trade, there was no likely cause for concern. However, following the visit by collectors, several plants were discovered missing. The actual removal of the plants could be documented because each individual plant had previously been mapped, and the carefully covered excavations where plants had been removed could be discerned.

Given that the current population estimate for Ozark Hellbenders is very small, the removal of even a few individuals from a particular habitat patch could cause local extirpations in those patches. If individual patches are lost, populations within each river become more fragmented, and the likelihood of gene flow is reduced.

Ozark Hellbenders are easily collected because they are slow moving and have extremely small home ranges. Therefore, publishing specific location information would provide a high level of assurance that any person going to a specific location would be able to successfully locate and collect specimens. In addition, the majority of past collecting events have involved individuals travelling from other States to collect Ozark Hellbenders. Publication of critical habitat maps would allow these individuals to more efficiently and effectively target collecting sites by delineating all the occupied areas within the Ozark Hellbender range. It is commonly known that hellbenders are found by surveying specific habitats and over-turning rocks of certain dimensions. In designating critical habitat, those specific habitat features would be described in detail, and maps would disclose the specific sections of streams where collectors could look to capture hellbenders. Furthermore, the detailed information in a critical habitat designation would provide collectors with more information than is currently available to them through previously published reports. Those previously published reports no longer contain current information on the location of

Ozark Hellbenders, and those reports only disclose locations for a small portion of the total number of hellbender sites.

Due to the threat of unauthorized collection and trade, the Missouri Department of Conservation and the Arkansas Game and Fish Commission have implemented extraordinary measures to control and restrict information on the locations of Ozark Hellbenders. These agencies have expressed to the Service serious concerns with publishing maps and boundary descriptions of Ozark Hellbender areas associated with critical habitat designation (Briggler and Irwin 2008, pers. comm.; Ziehmmer 2010, pers. comm.). State hellbender experts believe that designating critical habitat could negate their efforts to restrict access to locality data that could significantly affect future efforts to control the threat of unauthorized collection and trade of Ozark Hellbenders.

Benefits to the Species From Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain those physical and biological features that relate to the ability of the area to periodically support the species) to serve its intended conservation role for the species.

Critical habitat only provides protections where there is a Federal nexus, that is, those actions that come under the purview of section 7 of the Act. Critical habitat designation has no application to actions that do not have a Federal nexus. Section 7(a)(2) of the Act mandates that Federal agencies, in consultation with the Service, evaluate the effects of their proposed action on any designated critical habitat. Similar to the Act’s requirement that a Federal

agency action not jeopardize the continued existence of listed species, Federal agencies have the responsibility not to implement actions that would destroy or adversely modify designated critical habitat. Critical habitat designation alone, however, does not require that a Federal action agency implement specific steps toward species recovery.

The species occurs exclusively on private lands in Arkansas. In Missouri, Ozark Hellbenders occur primarily on lands managed by the National Park Service (Ozark National Scenic Riverways) and U.S. Forest Service (Mark Twain National Forest). We anticipate that some actions on non-Federal lands will have a Federal nexus (for example, requirement for a permit to discharge dredge and fill material from the U.S. Army Corps of Engineers) for an action that may adversely affect the hellbender. There is also the potential that some proposed actions by the National Park Service and U.S. Forest Service may adversely affect the hellbender. However, both of these Federal agencies are implementing measures to ensure the conservation and recovery of the hellbender on lands they manage, including active involvement in the Ozark Hellbender Working Group.

In those circumstances where it has been determined that a Federal action (including actions involving non-Federal lands) may affect the hellbender, the action would be reviewed under section 7(a)(2) of the Act. We anticipate that the following Federal actions are some of the actions that could adversely impact the Ozark Hellbender: Instream dredging, channelizing, impounding water, streambank clearing, moving large rocks within or from streams, discharging fill material into the stream, or discharging or dumping toxic chemicals or other pollutants into a hellbender stream system. Under section 7(a)(2) of the Act, project impacts would be analyzed, and the Service would determine if the Federal action would jeopardize the continued existence of the hellbender. The designation of critical habitat would require a Federal agency to determine if their proposed action would likely result in the destruction or adverse modification of critical habitat. Consultation with respect to critical habitat will provide additional protection to a species only if the agency action would result in the destruction or adverse modification of the critical habitat but would not jeopardize the continued existence of the species. In the absence of critical habitat, areas that support the Ozark

Hellbender will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as appropriate. Federal actions affecting the hellbender even in the absence of designated critical habitat areas will still benefit from consultation pursuant to section 7(a)(2) of the Act and may still result in jeopardy findings.

Another potential benefit to the Ozark Hellbender from designating critical habitat is that such a designation serves to provide technical assistance and information to landowners, State and local governments, and the public regarding the potential conservation value of an area. Generally, providing this information helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the affected species. Simply publicizing the proposed listing of the species also serves to notify and provide technical assistance and information to landowners, State and local governments, and the public regarding important conservation values. However, the Ozark Hellbender Working Group has developed a comprehensive outreach and education program that targets a diverse audience, including public and private landowners, organizations, and the media (OHWG 2010, pp. 11–12).

The Ozark Hellbender Working Group, formed in 2001, is composed of personnel from Federal and State agencies, academia, zoos, nonprofit organizations, and private individuals. The Ozark Hellbender outreach actions implemented to date include producing and distributing stickers, posters, and videos; publishing magazine articles; working with media outlets (newspaper and television) on hellbender stories; giving presentations to local County Commissioners and other community groups; providing a profile of the Ozark Hellbender in the Missouri Department of Conservation's Fishing Regulations Pamphlet; and providing annual technical assistance to volunteers like the Missouri Department of Conservation's Stream Teams working in hellbender streams. In view of the extensive, ongoing efforts to outreach and promote Ozark Hellbender conservation, we believe that the designation of critical habitat would provide limited additional outreach value.

Increased Threat to the Species Outweighs the Benefits of Critical Habitat Designation

Upon reviewing the available information, we have determined that the designation of critical habitat would increase the threat to Ozark Hellbenders from unauthorized collection and trade. We believe that the risk of increasing this significant threat by publishing location information in a critical habitat designation outweighs the benefits of designating critical habitat.

A limited number of U.S. species listed under the Act have commercial value in trade. The Ozark Hellbender would be one of them. Due to the market demand and willingness of individuals to collect hellbenders without authorization, we believe that any action that publicly discloses the location of hellbenders (such as critical habitat) puts the species in further peril. Because Ozark Hellbenders are in danger of extinction, a focused and comprehensive approach to reducing threats is required. Several measures are currently being implemented to address the threat of unauthorized collection and trade of hellbenders, and additional measures will be implemented once this listing determination is in effect. One of the basic measures to protect hellbenders from unauthorized collection and trade is restricting access to information pertaining to the location of Ozark Hellbenders. Publishing maps and narrative descriptions of Ozark Hellbender critical habitat would significantly affect our ability to reduce the threat of unauthorized collection and trade.

Therefore, based on our determination that critical habitat designation would facilitate an increased threat of illegal take and collection of the Ozark Hellbender, we find that the potential negative impacts associated with the designation of critical habitat outweigh any benefit of designation.

Summary of Prudency Determination

We have determined that the designation of critical habitat could facilitate unauthorized collection and subsequent illegal trade of the Ozark Hellbender. The Ozark Hellbender is valued in the pet trade, and that value is likely to increase as the species becomes rarer. Although critical habitat designation may provide some benefits to the conservation of the Ozark Hellbender by highlighting areas important for conservation, such benefits would be minimal. We have concluded that, even though some benefit from designation may exist, the increased threat to the Ozark Hellbender

from unauthorized collection and illegal trade outweighs any benefit to the taxon. A determination not to designate critical habitat also supports the measures taken by the States to control and restrict information on Ozark Hellbender and no longer to make locality data and survey information readily available to the public. We have, therefore, determined that it is not prudent to designate critical habitat for the Ozark Hellbender, because 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.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition of the species and its status by the public, landowners, and other agencies; recovery actions; requirements for Federal protection; and prohibitions against certain practices. Recognition through listing results in public awareness of the conservation status of the species and encourages conservation actions by Federal and State governments, private agencies and groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and calls for recovery actions to be carried out. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is 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. If a species is listed subsequently, section 7(a)(2) requires Federal agencies, including the Service, to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require conference or consultation for the Ozark Hellbender as described in the preceding paragraph include, but are not limited to: stream alterations, development of new waste water facilities that may impact water quality, stream bank clearing, timber harvesting,

construction of recreational trails and facilities adjacent to streams, water withdrawal projects, pesticide registration and usage, agricultural assistance programs, mining, road and bridge construction, Federal loan programs, and any federally funded activities. Activities will trigger consultation under section 7 of the Act if they may affect the Ozark Hellbender as addressed in this rule. Under Section 7(a)(1) and during formal consultation procedures under Section 7(a)(2), the Service, in cooperation with Federal agencies, may outline conservation measures that can provide benefits to the Ozark Hellbender.

The listing of the Ozark Hellbender initiates the development and implementation of a rangewide recovery plan for this species. A recovery plan establishes a framework for interested parties to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities, outline future research needs, identify possible partners, and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe site-specific management actions necessary to conserve the Ozark Hellbender. Additionally, under section 6 of the Act, we will be able to grant funds to the States of Missouri and Arkansas for management actions, research studies, or propagation needs that may be necessary for the conservation of the Ozark Hellbender. During State environmental review processes in Missouri and Arkansas, BMPs can be provided to reduce any potential impacts to Ozark Hellbenders and Ozark Hellbender habitat. Finalizing the rule to add Ozark and Eastern Hellbenders to Appendix III of CITES will contribute to the conservation of Ozark Hellbender by discouraging the unauthorized collection and illegal trade of hellbenders.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. As such, these prohibitions will be applicable to the Ozark Hellbender. The prohibitions, in part, 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 or export, deliver, receive, carry transport, or ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to

possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts. Certain exceptions apply to our agents and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving threatened and endangered wildlife under certain circumstances. We codified the regulations governing permits for endangered and threatened species at 50 CFR 17.22 and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities.

It is our policy, 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 and associated regulations at 50 CFR 17.31. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within a species' range. We believe that the following activities are unlikely to result in a violation of section 9 of the Act:

(1) Activities authorized, funded, or carried out by Federal agencies, when such activities are conducted in accordance with an incidental take statement issued by us under section 7 of the Act;

(2) Any action carried out for scientific research or to enhance the propagation or survival of Ozark Hellbenders that is conducted in accordance with the conditions of a 50 CFR 17.22 permit;

(3) Any incidental take of Ozark Hellbenders resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued under 50 CFR 17.22. Non-Federal applicants may design a habitat conservation plan (HCP) for the species and apply for an incidental take permit. HCPs may be developed for listed species and are designed to minimize and mitigate impacts to the species to the maximum extent practicable.

We believe the following activities will likely be considered a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized pursuing, or attempting to pursue, killing, collecting, handling, or harassing of individual Ozark Hellbenders at any life stage;

(2) Sale or offer for sale of any Ozark Hellbender as well as delivering, receiving, carrying, transporting, or

shipping any Ozark Hellbender in interstate or foreign commerce and in the course of a commercial activity;

(3) Unauthorized destruction or alteration of the species habitat (for example, instream dredging, channelizing, impounding of water, streambank clearing, removing large rocks from or disturbing large rocks within streams, or discharging fill material) that actually kills or injures individual Ozark Hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering;

(4) Violation of any discharge or water withdrawal permit within the species' occupied range that results in the death or injury of individual Ozark Hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering; and

(5) Discharge or dumping of toxic chemicals or other pollutants into waters supporting the species that actually kills or injures individual Ozark Hellbenders by significantly impairing their essential behavioral patterns, including breeding, feeding, or sheltering.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities may constitute a future violation of section 9 of the Act to the Field Supervisor of the Service's Columbia Field office (see **ADDRESSES**). You may request copies of the regulations regarding listed wildlife from and address questions about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437; Phone 612-713-5350; Fax 612-713-5292.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. 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)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this rule is available on the Internet

at <http://www.regulations.gov> or upon request from the Field Supervisor, Columbia, Missouri Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary author of this final rule is staff of the Columbia (Missouri) Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by adding an entry for “Hellbender, Ozark” in alphabetical order under AMPHIBIANS to the List of Endangered and Threatened Wildlife 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						
* * * * *							
	AMPHIBIANS						
* * * * *							
Hellbender, Ozark	<i>Cryptobranchus alleganiensis bishopi</i>	AR, MO ..	Entire	E	795	NA	NA
* * * * *							

Dated: September 26, 2011.
Rowan W. Gould,
Acting Director, U.S. Fish and Wildlife Service.
 [FR Doc. 2011–25690 Filed 10–5–11; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service

50 CFR Part 23

[Docket No. FWS–R9–IA–2009–0033; 96300–1671–0000–R4]

RIN 1018–AW93

Inclusion of the Hellbender, Including the Eastern Hellbender and the Ozark Hellbender, in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are listing the hellbender (*Cryptobranchus alleganiensis*), a large aquatic

salamander, including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention). This listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies. Listing hellbenders in Appendix III of CITES is necessary to allow us to adequately monitor international trade in the taxon; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies.

DATES: This listing will become effective April 3, 2012.

ADDRESSES: You may obtain information about permits for international trade in this species and its subspecies by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703–358–2104 or

800–358–2104; facsimile: 703–358–2281; e-mail: managementauthority@fws.gov; Web site: <http://www.fws.gov/international/index.html>.

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone 703–358–2104; facsimile 703–358–2280. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On September 8, 2010, we published in the **Federal Register** (75 FR 54579) a document proposing the listing of the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of CITES. We accepted public comments on that proposal for 60 days, ending November 8, 2010. We have reviewed and considered all public comments we received on the proposed

rule (see the Summary of Comments and Our Responses section below). Our final decision reflects consideration of the information and opinions we have received.

Species Information

The hellbender (*Cryptobranchus alleganiensis*) is a large aquatic salamander attaining a maximum length of 29 inches (74 centimeters) (Petranka 1998, p. 140). Native to cool, fast-flowing streams of the central and eastern United States (Briggler *et al.* 2007, p. 8), the hellbender usually avoids water warmer than 68 °Fahrenheit (20 °Celsius) (Stuart *et al.* 2008, p. 636). Although two hellbender subspecies are recognized, the eastern hellbender and the Ozark hellbender, the taxonomic differentiation between hellbender subspecies is not agreed upon by experts, and discussion continues on whether the eastern hellbender and the Ozark hellbender are distinct species or subspecies (Mayasich *et al.* 2003, p. 2).

Hellbender subspecies are most easily identified by geographic range (Mayasich *et al.* 2003, p. 2). The Ozark hellbender inhabits streams that drain south out of the Ozark Plateau in the highlands of Missouri and Arkansas (Sabatino and Routman 2008, p. 2). All other populations of hellbenders, including those inhabiting streams draining northward from the Ozarks, belong to the eastern hellbender subspecies (Sabatino and Routman 2008, p. 2). Irrespective of the taxonomic differentiation of hellbenders, all currently recognized hellbender subspecies of *Cryptobranchus alleganiensis* are included in this CITES Appendix-III listing. For further information about hellbenders, you may refer to our proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54579).

CITES

CITES, an international treaty, regulates the import, export, re-export, and introduction from the sea of certain animal and plant species. CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Convention on September 13, 1973, and it entered into force on July 1, 1975, after it had been ratified by the required 10 countries. Currently 175 countries have ratified, accepted, approved, or acceded to CITES; these countries are known as Parties.

The text of the Convention and the official list of all species included in its three Appendices are available from the

CITES Secretariat's Web site at <http://www.cites.org> or upon request from the Division of Management Authority at the address provided in the **ADDRESSES** section above.

Section 8A of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), designates the Secretary of the Interior as the U.S. Management Authority and U.S. Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The original U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10462, February 22, 1977), after the first meeting of the Conference of the Parties (CoP) was held. The CoP meets every 2 to 3 years to vote on proposed resolutions and decisions that interpret and implement the text of the Convention and on amendments to the list of species in CITES Appendices I and II. The current U.S. CITES regulations (50 CFR part 23) took effect on September 24, 2007.

CITES Appendices

Species covered by the Convention are listed in one of three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade, and are generally prohibited from commercial trade. Appendix II includes species that, although not necessarily threatened with extinction now, may become so unless the trade is strictly controlled. It also lists species that CITES must regulate so that trade in other listed species may be brought under effective control (e.g., because of similarity of appearance between listed species and other species). Appendix III includes native species, identified by any Party, that are regulated to prevent or restrict exploitation, where the Party requests the help of other Parties to monitor and control the trade of the species.

To include a species in or remove a species from Appendices I or II, or to transfer a species between these two Appendices, a Party must propose an amendment to the Appendices for consideration at a meeting of the CoP. The adoption of such a proposal requires approval of at least two-thirds of the Parties present and voting. However, a Party may add a native species to Appendix III unilaterally at any time, without the vote of other Parties, under Articles II and XVI of the Convention. Likewise, if the status of an Appendix-III species improves or new information shows that it no longer needs to be listed, the listing country may remove the species from Appendix III without consulting the other CITES Parties, although consultation with other range countries is recommended

prior to adding or removing a species to Appendix III.

Inclusion of native U.S. species in Appendix III provides the following benefits:

(1) An Appendix-III listing ensures the assistance of the other CITES Parties, through the implementation of CITES permitting requirements in controlling international trade in the species.

(2) Listing U.S. native species in Appendix III would, in appropriate cases, enhance the enforcement of State and Federal conservation measures enacted for the species by regulating international trade in the species, particularly by preventing trade in illegally acquired specimens. Shipments containing CITES-listed species receive greater scrutiny from border officials in both the exporting and importing countries. When a shipment containing a non-listed species is exported from the United States, it is a lower inspection priority for the Service than a shipment containing a CITES-listed species. Furthermore, many foreign countries have limited legal authority and resources to inspect shipments of non-CITES-listed wildlife. Appendix-III listings for U.S. species will give these importing countries the legal basis to inspect such shipments and deal with CITES violations when they detect them.

(3) Another practical outcome of listing a species in Appendix III is that records are kept and international trade in the species is monitored. We will gain and share new information on such trade with State fish and wildlife agencies, and others who have jurisdiction over resident populations of the Appendix-III species. They will then be able to better determine the impact of the trade on the species and the effectiveness of existing State management activities, regulations, and cooperative efforts.

(4) When any live CITES-listed species (including an Appendix-III species) is exported (or imported), it must be packed and shipped according to the International Air Transport Association (IATA) Live Animals Regulations to reduce the risk of injury and cruel treatment. This requirement helps to ensure the survival and humane treatment of the animals while they are in transport.

Listing a Native U.S. Species in Appendix III

Article II, paragraph 3, of CITES states that "Appendix III shall include all species which any Party identifies as being subject to regulation within its jurisdiction for the purpose of

preventing or restricting exploitation, and as needing the cooperation of other parties in the control of trade." Article XVI, paragraph 1, of the Convention states further that "Any Party may at any time submit to the Secretariat a list of species which it identifies as being subject to regulation within its jurisdiction for the purpose mentioned in paragraph 3 of Article II. Appendix III shall include the names of the Parties submitting the species for inclusion therein, the scientific names of the species so submitted, and any parts or derivatives of the animals or plants concerned that are specified in relation to the species for the purposes of subparagraph (b) of Article I."

At the ninth meeting of the Conference of the Parties to CITES (CoP9), held in the United States in 1994, the Parties adopted Resolution Conf. 9.25 (amended at the 10th, 14th and 15th meetings of the CoP), which provides additional guidance to Parties regarding listing species in Appendix III. The Resolution provides specific criteria for listing species in Appendix III, and we have adopted these criteria in our CITES-implementing regulations (50 CFR 23.90(c)), which state that, for a Party to list a species in Appendix III, all of the following criteria must be met:

- (1) The species must be native to the country listing the species.
- (2) The species must be protected under that country's laws or regulations to prevent or restrict exploitation and control trade, and the laws or regulations are being implemented.
- (3) The species is in international trade, and there are indications that the cooperation of other Parties would help to control illegal trade.
- (4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat, and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinions on the potential effects of the listing.

We have complied with the criteria outlined in 50 CFR 23.90(c) as follows:

23.90(c)(1): Hellbenders are native to the United States.

23.90(c)(2): Hellbenders occur in Alabama, Arkansas, Georgia, Illinois, Indiana, Kentucky, Maryland, Mississippi, Missouri, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. Hellbenders are regulated by State laws and regulations throughout their range. In most States, the species is protected and take is generally prohibited. For further information on the conservation status of hellbenders, you may refer to our proposed rule

published in the **Federal Register** on September 8, 2010 (75 FR 54579).

23.90(c)(3): We have documented hellbenders in international trade. At the 2005 Hellbender Symposium (June 19–22, 2005, Lakeview, Arkansas), it was reported that U.S.-origin hellbenders were found for sale in Japanese pet stores, which is likely the largest overseas market for this species (Briggler, pers. comm. with Okada, 2005). Listing all hellbenders in Appendix III would enlist the assistance of other Parties in our efforts to monitor and control trade in hellbenders.

23.90(c)(4): Because hellbenders are endemic to the United States, consultation with other range countries is not applicable. Although we have documented hellbenders in international trade, the information on the number of hellbenders that enter international trade is limited to such an extent that there are no known major importers of hellbenders. We have consulted with the CITES Secretariat and the Animals Committee regarding our proposal to list hellbenders in Appendix III. The Secretariat and the Animals Committee have informed us that our proposal to list hellbenders in Appendix III is consistent with Resolution Conf. 9.25 (Rev. CoP15) and they have not raised any objections to this proposed listing.

For further information about the listing process, you may refer to our proposed rule published in the **Federal Register** on September 8, 2010 (75 FR 54579).

Permits and Other Requirements

The export of an Appendix-III species listed by the United States requires an export permit issued by the Service's Division of Management Authority (DMA). DMA will issue a permit only if the applicant obtained the specimen legally, without violating any applicable U.S. laws, including relevant State wildlife laws and regulations, and the live specimen is packed and shipped according to the IATA Live Animals Regulations to reduce the risk of injury and cruel treatment. DMA, in determining if the applicant legally obtained the specimen, is required to consult relevant State and Federal agencies. Since the conservation and management of these species is primarily under the jurisdiction of State agencies, we will consult those agencies to ensure that specimens destined for export were obtained in compliance with State laws and regulations. Unlike species listed in Appendices I and II, a non-detriment finding is not required by the Service's Division of Scientific Authority (DSA) for export of an

Appendix-III species. However, DSA will monitor and evaluate the trade to assess whether there is a conservation concern that would require any further Federal action. With a few exceptions, any shipment containing wildlife must be declared to a Service Wildlife Inspector upon export and must comply with all applicable regulations.

Process, Findings, and Fees

To apply for a CITES permit, an applicant is required to furnish to DMA a completed CITES export permit application (with a check or money order to cover the cost of processing the application). You may obtain information about permits for international trade in this species and its subspecies by contacting the U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone: 703-358-2104 or 800-358-2104; facsimile: 703-358-2281; e-mail: managementauthority@fws.gov; Web site: <http://www.fws.gov/international/index.html>. We will review the application to decide if the export meets the criteria in 50 CFR part 23.

In addition, live animals must be shipped to reduce the risk of injury, damage to health, or cruel treatment. We carry out this CITES requirement by stating clearly on all CITES permits that shipments must comply with the IATA Live Animals Regulations. The Service's Office of Law Enforcement (OLE) is authorized to inspect shipments of CITES-listed species during export to ensure that they comply with these regulations. Additional information on permit requirements is available from DMA (see the **ADDRESSES** section above); additional information on declaration of shipments, inspection, and clearance of shipments is available upon request from OLE at: U.S. Fish and Wildlife Service, Office of Law Enforcement, 4401 North Fairfax Drive, MS-LE-3000, Arlington, VA 22203; telephone 703-358-1949; facsimile 703-358-2271; e-mail: lawenforcement@fws.gov; Web site: <http://www.fws.gov/le>. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

Lacey Act

Under section 3372(a)(1) of the Lacey Act Amendments of 1981 (16 U.S.C. 3371-3378), it is unlawful to import, export, transport, sell, receive, acquire, or purchase any wildlife taken, possessed, transported, or sold in violation of any law, treaty, or regulation of the United States. This prohibition of the Lacey Act would

apply in instances where hellbenders were unlawfully collected from Federal lands, such as those Federal lands within the range of hellbenders that are owned and managed by the U.S. Forest Service or the National Park Service.

It is unlawful under section 3372(a)(2)(A) of the Lacey Act to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State. Because many State laws and regulations prohibit or strictly regulate the take of hellbenders, certain acts with hellbenders acquired unlawfully under State law would result in a violation of the Lacey Act Amendments of 1981 and thus provide for federal enforcement due to a violation of State law.

Previous Federal Actions

In a series of five notices published in the **Federal Register** between 1982 and 1994 (47 FR 58454, 50 FR 37958, 54 FR 554, 56 FR 58804, and 59 FR 58982), we identified the hellbender (*Cryptobranchus alleganiensis*) as a taxon native to the United States with a listing candidate status under the Endangered Species Act of category 2. At that time, taxa included in category 2 were those taxa for which we had information indicating that it was possibly appropriate to list such taxa as endangered or threatened, but for which persuasive data were not sufficiently available to support proposed rules.

We first identified the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*) as a candidate species in a notice of review published in the **Federal Register** on October 30, 2001 (66 FR 54808). We gave the Ozark hellbender a listing priority number (LPN) of 6 due to nonimminent threats of a high magnitude.

On May 11, 2004, we received a petition dated May 4, 2004, from the Center for Biological Diversity to list 225 candidate species, including the Ozark hellbender. We received another petition on September 1, 2004 (dated August 24, 2004), from The Missouri Coalition for the Environment and Webster Groves Nature Study Society requesting emergency listing of the Ozark hellbender. Based on information presented in that petition, we determined that emergency listing was not warranted at that time. We notified the petitioners of this determination in November 2004.

In a May 11, 2005, notice published in the **Federal Register** (70 FR 24870), we changed the LPN of the Ozark hellbender from 6 to 3 because of the increased immediacy of threats since

the Ozark hellbender was elevated to candidate status in 2001. The threat of particular concern was the annual increases in recreational pressures on rivers the Ozark hellbender inhabits.

On September 8, 2010, we published two documents in the **Federal Register**: (1) A proposed rule to list the Ozark hellbender as federally endangered under the Endangered Species Act of 1973, as amended (75 FR 54561); and (2) a proposed rule to list the hellbender, including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender, in Appendix III of CITES (75 FR 54579). The proposed CITES Appendix-III listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of the species and its subspecies.

Summary of Comments and Our Responses

In our proposed rule (September 8, 2010; 75 FR 54579), we asked all interested parties to submit comments or suggestions, particularly comments concerning:

(1) Biological, trade, or other relevant data concerning any threats (or lack thereof) to this species (including subspecies), and regulations that may be addressing those threats.

(2) Additional information concerning the range, distribution, and population size of this species (including subspecies).

(3) Any information on the biological or ecological requirements of this species (including subspecies).

(4) Any information regarding legal or illegal collection of or trade in this species (including subspecies).

The comment period for the proposed rule lasted for 60 days, ending November 8, 2010. We received a total of 17 comments during the comment period. We received comments from seven State agencies, seven private individuals providing five comments, three zoos, one Federal agency, and one nongovernment organization. Of these commenters, 16 supported the proposal, and 1 expressed support for restoring the Ozark hellbender population; no commenters opposed the CITES Appendix-III listing of the hellbender and its subspecies. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: Several commenters provided supporting data and information regarding the biology, range, distribution, life history, threats, and current conservation efforts affecting hellbenders.

Our Response: We thank all the commenters for their interest in the conservation of hellbenders and thank those commenters who provided information for our consideration in making this CITES Appendix-III listing determination. Some information submitted was duplicative of the information contained in the proposed rule; some comments contained information that provided additional clarity or support to information contained in the proposed rule.

The New York Division of Fish, Wildlife & Marine Resources (DFWMR) commented that the eastern hellbender is present in just two watersheds and is in serious decline in the State of New York. DFWMR reports that estimates of hellbender populations at historic locations in one watershed have shown declines of 44 percent from as recently as the 1980s and that a recent basin-wide survey in the other watershed turned up only two individual hellbenders at sites occupied by numerous hellbenders as recently as the 1990s.

The West Virginia Division of Natural Resources Wildlife Resources Section (WVDNR Wildlife Resources)

commented that it surveyed 23 known sites for the eastern hellbender during the summer of 2010. WVDNR Wildlife Resources found hellbenders occurring at just 12 of the 23 sites and reports that sedimentation is one of the greatest threats to hellbenders in West Virginia.

The Tennessee Wildlife Resources Agency (TWRA) commented that hellbender populations in middle Tennessee appearing healthy in the early to mid-1990s were in obvious decline in the last decade. TWRA reports that the cause of this decline is uncertain but that habitat degradation from anthropogenic sources appears to be a contributing factor. Further, TWRA reports that, although hellbender populations in eastern Tennessee are more abundant and more widely distributed than those in middle Tennessee, several of those hellbender populations may be declining similarly to those in middle Tennessee.

The Georgia Department of Natural Resources Wildlife Resources Division (GADNR) commented that the known distribution of the eastern hellbender in Georgia is largely confined to watersheds within the Tennessee River drainage. GADNR reports that a 2005 survey of stream segments in 21 different locations in the proximity of historic hellbender occurrence records found hellbenders occurring in 13 locations, 9 of which were thought to be habitats sustaining healthy hellbender populations. Hellbenders were not

found at eight of the sites sampled, suggesting extirpation or significant declines of hellbender populations within these watersheds. GADNR provided information indicating that sedimentation originating from unimproved road surfaces, makeshift campsites along stream banks, past agricultural practices, and other forms of land disturbance have impacted numerous hellbender streams, with some streams degraded to such an extent that they may never again support hellbenders.

The Missouri Department of Conservation (MDC) commented that population numbers of both the Ozark and eastern hellbender subspecies continue to decline since the 1970s and have shifted in age structure, with large, mature individuals being most prevalent and young age classes being virtually absent. MDC reports that population viability models show that all hellbender populations have a high probability of extinction in the future.

The North Carolina Zoological Park (NCZP) commented that, since 2004, it has collaborated with the North Carolina Wildlife Commission to survey four of the five North Carolina river drainage systems known to support hellbender populations. NCZP surveys found hellbenders completely absent from at least 10 sites where they occurred historically and found numerous other sites with significantly depleted hellbender populations. NCZP surveyed several sites that continue to support large hellbender populations with normal age-class distributions, which indicates populations are stable at these sites. However, several other sites surveyed by NCZP maintained hellbender communities with abnormal age-class distributions. These sites contained large numbers of adult hellbenders without juveniles or larvae present or with only small numbers of juveniles or larvae present. Accordingly, NCZP disputes the conclusions of two recent publications (Mayasich *et al.* 2003 and Briggler *et al.* 2007) that characterize hellbender populations in North Carolina as stable.

Issue 2: Several comments concerned trade and the illegal collection of hellbenders. WVDNR Wildlife Resources commented that, while hellbenders have no legal protection in West Virginia, hellbenders can be illegally collected from States bordering West Virginia, and that if the collector is confronted by law enforcement, the collector could fraudulently state that the hellbenders were legally taken in West Virginia. Similarly, one commenter stated that, with at least one State allowing for the commercial take

of hellbenders, exporters are provided a loophole by which all exported hellbenders may be easily declared as having been collected legally from a State allowing commercial take. GADNR commented that informal surveys over the past 10 years of a hellbender population at a location anecdotally reputed to be a location for illegal collection of hellbenders for the pet trade suggest a recent population decline resulting at least in part from illegal collection. Citing an internet blog posting, MDC commented that illegal collection of and trade in hellbenders may be on the rise. MDC commented further that a participant from Japan at the 4th Hellbender Symposium held in Corbin, Kentucky, in 2009 provided some relevant information relating to the high demand for U.S. hellbenders in Japan.

Our Response: Existing State laws have not been completely successful in preventing the unauthorized collection of and trade in hellbenders. A CITES Appendix-III listing will lend additional support to State wildlife agencies in their efforts to regulate and manage hellbenders, improve data gathering to increase our knowledge of trade in hellbenders, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. Furthermore, listing hellbenders in CITES Appendix III will enlist the assistance of other Parties in our efforts to monitor and control trade in this species.

Issue 3: Two comments concerned the threat of chytridiomycosis (also known as chytrid fungus disease). WVDNR Wildlife Resources commented that hellbenders from two counties in 2010 were positive for chytrid fungus and that, given the virulent nature of this pathogen and the consequences of shipping it worldwide, any hellbenders originating from West Virginia should be quarantined and tested (at the exporter's expense) or confiscated.

Our Response: Our September 8, 2010, proposed rule (75 FR 54579) did not specifically address chytridiomycosis, a highly infectious amphibian disease caused by the pathogen *Batrachochytrium dendrobatidis*, as a threat to hellbenders, but rather directed those interested in more information on the threats contributing to the decline of hellbenders to see our proposal to list the Ozark hellbender as federally endangered (75 FR 54561) under the Endangered Species Act of 1973, as amended, which published on the same day as our proposed rule to include hellbenders in CITES Appendix III. We agree that chytrid fungus is recognized

to have a significant negative effect on hellbenders. However, unless a State or Federal law specifically requires quarantine or testing because of the threat posed by chytrid fungus, a CITES Appendix-III listing will not address this particular threat.

Issue 4: One commenter suggested that hellbenders would be better protected if they were listed in CITES Appendix I or II, rather than Appendix III. While supporting an Appendix-III listing of both subspecies of hellbenders, the commenter requests that the Service propose listing the Ozark hellbender in Appendix I and the eastern hellbender in Appendix II at the next CoP. In addition, while the Maryland Department of Natural Resources (MDNR) commented that it fully supports an Appendix-III listing of hellbenders, MDNR further stated that it would be supportive of including hellbenders in Appendix I or Appendix II if these additional measures are deemed necessary in the future.

Our Response: To implement the Convention, the CITES Parties meet periodically to review what species in international trade should be regulated and other aspects of the implementation of CITES. Prior to a CoP, we solicit recommendations for amending Appendices I and II, as well as recommendations for resolutions, decisions, and agenda items for discussion at the CoP. We invite such recommendations via a notice published in the **Federal Register** that includes a public comment period. The appropriate time to request inclusion of the species in Appendix I or II is during that public comment period. We will publish in the **Federal Register** notices that, together with announced public meetings, provide an opportunity to participate in the development of the U.S. submissions to and negotiating positions for the next meeting of the Conference of the Parties to CITES (CoP16). Our regulations governing this public process are found in 50 CFR 23.87. CoP16 is tentatively scheduled to be held in Pattaya, Thailand, during March 3–16, 2013.

In the interim, international trade data and other relevant information gathered as a result of a CITES Appendix-III listing will help us determine whether we should propose the species for inclusion in Appendix I or II, remove it from Appendix III, or retain it in Appendix III. If, after monitoring the trade of any U.S. CITES Appendix-III species and evaluating its status, we determine that the species meets the CITES criteria for listing in Appendix I or II, based on the criteria contained in 50 CFR 23.89, we will consider whether

to propose the species for inclusion in Appendix I or II.

Decision To List All Hellbenders in CITES Appendix III

Based on the recommendations contained in Resolution Conf. 9.25 (Rev. CoP15) and the listing criteria provided in our regulations at 50 CFR 23.90, analysis of the public comments received on our proposed rule (75 FR 54579), and all information available to us, the hellbender qualifies for listing in CITES Appendix III. Despite the protected status of hellbenders in many States, declines have been evident throughout the range of the hellbender. Listing hellbenders in CITES Appendix III is necessary to allow us to adequately monitor international trade in the taxon; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve this species and its subspecies.

Accordingly, we are listing the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*), in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies. The term “readily recognizable” is defined in our regulations at 50 CFR 23.5 and means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part, product, or derivative of any CITES wildlife or plant, unless such part, product, or derivative is specifically exempt from the provisions of CITES or 50 CFR part 23.

Our regulations at 50 CFR 23.90 require us to publish a proposed rule and a final rule for a CITES Appendix-III listing even though, if a proposed rule is adopted, the final rule would not result in any changes to the Code of Federal Regulations. Instead, this final rule will result in DMA notifying the CITES Secretariat to amend Appendix III by including the hellbender, including its two subspecies, the eastern hellbender and the Ozark hellbender, in Appendix III of CITES for the United States.

Subsequent to today’s publication in the **Federal Register** of this final rule to

list this species and its subspecies in CITES Appendix III, we will notify the CITES Secretariat. An Appendix-III listing becomes effective 90 days after the Secretariat notifies the CITES Parties of the listing. The effective date of this rule has been extended to give the CITES Secretariat sufficient time to notify all Parties of the listing. The listing will take effect on the date listed in the **DATES** section of this document.

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) 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.

(b) Whether the rule will create inconsistencies with other Federal agencies’ actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), 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. The Department of the Interior certifies that this action will not have a significant effect on a substantial number of small entities for the reasons discussed below.

This final rule establishes the means to monitor the international trade in a species native to the United States and does not impose any new or changed restriction on the trade of legally acquired specimens. Based on current exports of hellbenders, we estimate that

the costs to implement this rule will be less than \$2,000,000 annually due to the costs associated with obtaining permits.

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. This final rule:

(a) Will 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) Will 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 (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes 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 tribal governments,” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps

upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

(b) This rule will not impose a legally binding duty on non-Federal Government entities or private parties and will not impose an unfunded mandate of more than \$100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts and products, that are subject to the requirements of CITES.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information that we will collect under this final rule on FWS Form 3-200-27 is covered by an existing OMB approval and has been assigned OMB control number 1018-0093, which expires on 2/28/2014. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

This rule has been analyzed under the criteria of the National Environmental Policy Act, the Department of the Interior procedures for compliance with NEPA (Departmental Manual (DM) and 43 CFR 46), and Council on Environmental Quality regulations for implementing the procedural provisions of NEPA (40 CFR 1500-1508). This rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement or evaluation is not required. This rule is a regulation that is of an administrative, legal, technical, or procedural nature, and its environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis under NEPA. The Service has determined that this rule is categorically excluded from further NEPA (42 U.S.C.

4321 *et seq.*) review as provided by 516 DM 2, Appendix 1.9, of the Department of the Interior National Environmental Policy Act Revised Implementing Procedures and 43 CFR 46.210(i). No further documentation will be made.

Takings (Executive Order 12630)

In accordance with Executive Order (E.O.) 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have determined that this final rule will not have significant takings implications because there are no changes in what may be exported.

Federalism (Executive Order 13132)

In accordance with E.O. 13132 (Federalism), this final rule will not have significant Federalism effects. A Federalism assessment is not required because this final rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this final rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this final rule. We have consulted the States, through the Association of Fish and Wildlife Agencies, on this action. The CITES Technical Work Group of the Association of Fish and Wildlife Agencies has concluded that including hellbenders in CITES Appendix III is warranted in order to help ensure conservation of the species in the wild and to assist State agencies in regulating harvest and trade.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

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 have a responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial

Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We determined that this final rule will have no effect on Tribes or tribal lands.

Energy Supply, Distribution, or Use (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions 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. This final rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this final rule is not a significant energy action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this final rule is available on the Internet at <http://www.regulations.gov> or upon request from the Division of Management Authority, U.S. Fish and Wildlife Service (see the **ADDRESSES** section above).

Author

The primary author of this final rule is Clifton A. Horton, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 212, Arlington, VA 22203; telephone 703-358-1908; facsimile 703-358-2298.

Amendment to CITES Appendix III

For the reasons given in the preamble, we amend Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) by adding the hellbender (*Cryptobranchus alleganiensis*), including its two subspecies, the eastern hellbender (*Cryptobranchus alleganiensis alleganiensis*) and the Ozark hellbender (*Cryptobranchus alleganiensis bishopi*). This listing includes live and dead whole specimens, and all readily recognizable parts, products, and derivatives of this species and its subspecies.

As a result of this action, exporters must obtain an export permit issued by the Service's Division of Management

Authority, pack and ship live specimens according to the IATA Live Animals Regulations, and follow all applicable regulations pertaining to the export of wildlife, including declaration of the shipment to a Service wildlife inspector upon export.

Dated: September 26, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011-25689 Filed 10-5-11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 100825389-1597-02]

RIN 0648-BA13

Fishing Capacity Reduction Program for the Southeast Alaska Purse Seine Salmon Fishery

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

ACTION: Final rule.

SUMMARY: NMFS establishes regulations to implement a fishing capacity reduction (buyback) program and an industry fee system to repay a \$23,476,500 loan for the Southeast Alaska Purse Seine Salmon Fishery (Reduction Fishery). The fee system involves future landings of the Reduction Fishery. This action's intent is to permanently reduce the most fishing capacity at the least cost and establish the fee system.

DATES: Effective November 7, 2011.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from Paul Marx, Chief, Financial Services Division, NMFS, Attn.: SE Alaska Purse Seine Salmon Rulemaking, 1315 East-West Highway, Silver Spring, MD 20910 or by calling Michael A. Sturtevant (see **FOR FURTHER INFORMATION CONTACT**).

Send comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule to Michael A. Sturtevant at the address specified above and also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503

(Attention: NOAA Desk Officer) or e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7825.

FOR FURTHER INFORMATION CONTACT: Michael A. Sturtevant at (301) 427-8799, fax (301) 713-1306, or michael.a.sturtevant@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Southeast Alaska purse seine salmon fishery is a commercial fishery in Alaska state waters and adjacent Federal waters. It encompasses the commercial taking of salmon with purse seine gear, and participation is limited to fishermen designated by the Alaska Commercial Fisheries Entry Commission (CFEC). In 2008, a pilot capacity reduction program, conducted by the Southeast Revitalization Association (SRA), using a reverse auction, purchased 35 limited entry permits in the Southeast Alaska Salmon fishery, reducing the number of Alaska permits in this fishery to 380. Approximately 200 permits are currently being fished.

This rule implements a voluntary buyback program loosely modeled on the aforementioned Alaska pilot program.

This rule establishes the administrative process for the Program, including the role of the SRA, application procedures, evaluation of the Reduction Plan by NMFS, process for conducting a referendum, and fee payment and collection provisions.

This Program is different from the other industry financed fishing capacity reduction programs undertaken by NMFS in several aspects: (1) It is the first permit-only buyback, *i.e.*, fishing history is not being retired and there are no restrictions on how the vessel to which the relinquished permit applies can be used; (2) there are no Federal permits involved, whereas all other NMFS supported reduction programs have included the buying and relinquishing of Federal permits; and (3) it is anticipated to attract mainly latent permits.

II. Statutory and Regulatory Basis for the Program

The Southeast Alaska purse seine salmon fishery is managed under Alaska law and regulatory requirements defined under Title 5 Alaska Administrative Code Section 33.100. The Alaska Department of Fish & Game (ADF&G) develops and implements conservation measures for this fishery and a state limited entry permit issued by the CFEC is required for participation

in the fishery. The authority for the SRA to conduct this Program is Alaska Statute 16.40.250.

The measures contained in this rule to establish the Program are based on the Consolidated Appropriations Act of 2005 (Section 209 of Title II of Division B of Pub. L. 108-447). Subsequently, that Federal law was amended by Section 121 of Public Law 109-479 (the Magnuson-Stevens Reauthorization Act of 2006), reducing the loan amount to no more than a \$25 million 40-year loan (with repayment fees capped at three percent) and clarifying the respective roles of NMFS and the SRA relative to development and implementation of the Program. On December 26, 2007, Public Law 110-161 appropriated \$235,000 for the cost of guaranteeing the loan amount (*i.e.*, loan subsidy cost). Due to a 6.1 percent rescission to meet Congressional budgetary limits, the original appropriation of \$250,000 was reduced to \$234,765, thus lowering the maximum loan ceiling to \$23,476,500. NMFS' authority to make this loan resides in sections 1111 and 1112 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1279(f) and 1279(g) (MMA) (title XI)).

The Federal statute authorizing this Program waives all of the fishing capacity reduction program requirements of the Magnuson-Stevens Act (Sections 312(b)-(e)) codified at 16 U.S.C. 1801 *et seq.* except for Sections (b)(1)(C) and (d) which state: (1) It must be cost-effective; and (2) it is subject to a referendum approved by a majority of permit holders.

Program Overview

Unlike buybacks conducted under Federal statutes where permits are permanently revoked, under the Alaska Constitution the state may reissue permits in the future if the fishery becomes too exclusive. An "optimum number" study by the CFEC would be required before any decision could be made on whether the fishery has become too exclusive. There is no direct management of this fishery by NMFS or any other Federal agency.

Participation in the Program is voluntary and is open to any holder of a valid entry permit issued by the CFEC to operate in the Southeast Alaska purse seine salmon fishery. The Program is essentially divided into six phases: (1) Enrollment; (2) bid selection; (3) plan submission and approval; (4) referendum; (5) implementation; and (6) the loan repayment fee collection. Each of these six phases will be discussed later in this preamble. Only Southeast Salmon Purse Seine Entry Permits voluntarily submitted for removal from

the Reduction Fishery are subject to the reduction effort. Fishing history, the fishing vessel itself, and other assets associated with the permits are not required to be relinquished as part of this reduction effort. Fees for repayment of the loan will be calculated upon the annual ex-vessel value of all salmon harvested in the Southeast Alaska purse seine fishery and will be collected from those who continue fishing in the Reduction Fishery after implementation of the Program set forth in § 600.1107 of subpart M of part 600 of Title 50 of the Code of Federal Regulations.

On May 23, 2011, NMFS published proposed regulations in the **Federal Register** (76 FR 29707) to implement the program. This final rule implements the program with changes as described below and will be effective on November 7, 2011.

III. Summary of Comments and Responses

NMFS received five comments in response to the proposed rule. Three were from individuals, one from the Alaska Commercial Fisheries Entry Commission, and one from the SRA. The three individuals each expressed opposition to the Program for a variety of reasons.

Comment 1: Each of the three individuals expressed concerns that the Program would make it more difficult for new participants to enter the fishery by increasing the cost of permits.

Response: Although permit values have been increasing over the last few years, many factors are influencing the rising prices including higher catch levels of pink salmon and higher salmon prices. If permit holders believe the Program would further exacerbate the permit values, they will have the opportunity to vote against the Program in a referendum.

Comment 2: Two of the individuals expressed concern that the Program will be comprised of inactive fishing permits.

Response: NMFS acknowledges that inactive permits will likely be removed from the fishery. However, the permits could be fished in the future if no action is taken. The permit holders must decide if the cost of removing these latent permits is worth an additional 3% fee on future catch and will make that decision in the referendum.

Comment 3: Two of the individuals expressed concern about inactive permit holders who may hold permits for speculative purposes, dominating the referendum and buying back inactive permits.

Response: NMFS acknowledges that inactive permit holders constitute a

significant portion of the fishery. The authorizing legislation requires approval from a majority of permit holders. NMFS believes that limiting the ability of certain permit holders to vote in the referendum could be perceived as arbitrary and is contrary to the statute.

Comment 4: Two commenters requested that the enrollment process be clarified to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA.

Response: NMFS agrees the enrollment process needs to be clarified to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA, and has accordingly revised § 600.1107(c)(2)(v)(A).

Comment 5: Two commenters noted an inconsistency in the enrollment process and requested that NMFS allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

Response: NMFS acknowledges the inconsistency and has changed both § 600.1107(c)(3) and § 600.1107(d)(1) to reflect that the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

Comment 6: Two commenters requested that NMFS clarify the bid selection process in the event that two identical bids are received on the same day and suggested that a random method be used such as drawing lots.

Response: NMFS agrees that the language in § 600.1107(d)(3) should be less ambiguous and has revised the language to state that in the event of a tie, the first bid received, if known, shall be selected. If the receipt time cannot be determined, neither bid will be accepted. A permit holder can ensure the receipt time is documented when using a reliable express delivery service. This solution is more equitable than some random method such as drawing lots, which could merely lead to further disputes as to the integrity of that process.

Comment 7: Two commenters stated that the referendum voting process does not provide sufficient time for NMFS to determine the accuracy of eligible voters, issue ballots, and for fishermen to return the ballots. They recommended providing a period of 21 days to conduct the referendum.

Response: NMFS agrees that the voting period should be expanded and has revised § 600.1107(e)(3) to allow a voting period of 21 to 30 days.

Comment 8: Two commenters requested that the list of eligible referendum voters to be published in the **Federal Register** contain a 7-day period to accept comments from the public.

Response: NMFS agrees that the public needs an opportunity to comment about any discrepancy before the referendum occurs but believes more time is necessary and therefore has revised § 600.1107(e)(3)(i) to allow the public 15 days to comment.

IV. Summary of Revisions

NMFS revises the following sections of the regulations of subpart M to 50 CFR part 600:

(1) *Section 600.1107(c)(2)(v)(A).* This section is revised to note that the initial determination that an application conforms to the prescribed requirements is made by an independent accounting firm and not the SRA.

(2) *Section 600.1107(c)(3).* This section is amended to allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(3) *Section 600.1107(d)(1).* This section is also amended to allow the SRA a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(4) *Section 600.1107(d)(3).* This section is revised to state that in the event of a tie, the first bid received, if known, shall be selected. If the receipt time cannot be determined, neither bid will be accepted.

(5) *Section 600.1107(e)(3).* This section is revised to allow a voting period of not less than 21 days and not more than 30 days.

(6) *Section 600.1107(e)(3)(i).* This section is revised to provide the public with a 15 day period to accept comments on the list of eligible referendum voters to be published in the **Federal Register**.

V. Enrollment Phase

Participants who wish to relinquish their permits are required to complete a Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment form. A copy of these documents will be mailed by the SRA to each person who is the holder of record of a valid entry permit issued by CFEC to operate in the Reduction Fishery. A copy of those documents is appended to this final rule.

The Bid identifies the eligible bidder and specifies requirements with which the bidder must comply upon acceptance of bid.

The Relinquishment Contract is the agreement entered into by the bidder and the SRA whereby the bidder agrees to relinquish a permit upon acceptance of the bid and before payment of the bid amount.

The Conditional Notice is the CFEC form restricting renewal and transfer of each permit for which a bid was accepted.

The Conditional Relinquishment is the CFEC form signed by the bidder to voluntarily give up a permit and to agree to abide by the terms in that form upon SRA acceptance of the bid.

To participate in the Capacity Reduction Program, a Permit Holder submits a fully completed and executed Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment. Each application must be submitted to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, Alaska 99801. The Bid and other required documents must be received by the SRA no later than the bid closing date identified in the above mentioned mailing to Permit Holders. Once submitted, a bid is irrevocable and cannot be withdrawn or amended. If a Permit Holder holds more than one permit, the Permit Holder must submit a separate Bid for each permit that he/she offers to relinquish.

By submitting a Bid, the Permit Holder warrants and represents that he/she has read and understood the terms of the Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment, and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid.

By submitting the Bid, the permit holder expressly acknowledges that he/she makes an irrevocable offer to relinquish a permit for a specific price to CFEC, and once having submitted the Bid, the bidder is not entitled to withdraw or in any way amend the Bid. The permit would be relinquished for the price set forth in the Bid contingent on acceptance by the SRA at the closing of the Selection Process. Any attempted withdrawal by a bidder will be invalid, and the Bid will remain a binding, irrevocable offer, unaffected by the attempted withdrawal.

VI. Bid Selection Phase

The SRA will begin the Selection Process upon its receipt of the first application and will continue until: (1) The bid closing date specified by SRA; or (2) the ranking of the next lowest bid would cause the total program costs to exceed \$23.5 million

During the selection process, the SRA, in consultation with CFEC, will examine each submitted Bid for consistency and the necessary elements, including the validity of the permit and whether any authorized party holds a security interest in the permit. The SRA will notify the Permit Holder if the Bid is non-conforming and, in such cases, the Permit Holder may submit a revised, conforming Bid if within the prescribed period (*i.e.*, until the bid closing date). A Bid that is submitted by the Permit Holder but is not accepted by the SRA, including a nonconforming bid that is not revised by the bid closing date, will be deemed terminated and both the Permit Holder and the SRA will have no further obligation. The SRA will rank all conforming bids by using a reverse auction in which the SRA ranks the bid with the lowest dollar amount and successively ranks each additional bid with the next lowest dollar amount, until there are no more bids or the ranking of the next lowest bid would cause the total program cost to exceed \$23,476,500. In the event of a tie with bids which results in the tied bids exceeding \$23,476,500, the SRA will select the tied bid received first. If the receipt time cannot be determined, neither bid will be accepted.

Upon termination of the selection process, the SRA shall determine whether the number of ranked bids it is willing to accept is sufficient to achieve a substantial reduction in harvest capacity and increases economic efficiencies (*i.e.*, increases harvesting productivity) for those Permit Holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, the SRA will send CFEC the Conditional Notice form restricting renewal and transfer of each permit for which a bid was accepted.

Once the SRA completes the selection process and after the bid closing date, the SRA will sign all accepted Bids and the SRA will notify each Permit Holder, via certified mail, of the effective date of the Bid. While the Bid is an irrevocable offer, it remains subject to the requirement for an industry referendum (VI. below). Bid selection occurs prior to the referendum because the Reduction Plan resulting from the Bid selection process is the course of action upon which the referendum participants are voting.

VII. Plan Submission and Approval Phase

Within 30 days after the conclusion of the selection process, the SRA will submit the Reduction Plan to NMFS for final approval on behalf of the Secretary of Commerce (Secretary). The aggregate

of all Bids, Relinquishment Contracts, Conditional Notices, and Conditional Relinquishments signed by permit holders whose bids are accepted by the SRA will together, with supporting rationale, constitute the Reduction Plan. The supporting rationale must demonstrate that the Reduction Plan would permanently reduce the most harvesting capacity in the Reduction Fishery at the least cost, increase harvesting productivity for post-reduction permit holders participating in the fishery, and improve flexibility in the conservation and management of the fishery. The Reduction Plan will include a listing of accepted bids arranged by bid amount from lowest to highest bid attended by a statement from the SRA that all other bids received, if any, were higher than the largest dollar amount of the last bid accepted.

The primary requirements for the Assistant Administrator of NMFS, on behalf of the Secretary, to approve a Reduction Plan are specified at § 600.1107(e)(2). Among other requirements, the Assistant Administrator of NMFS must find that the Reduction Plan is consistent with the amended Consolidated Appropriations Act of 2005 and the applicable sections of the Magnuson-Stevens Act.

VIII. The Referendum

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1010 stipulate procedural and other requirements for NMFS to conduct referenda on fishing capacity reduction programs, and § 600.1017(a)(1)-(4) stipulate prohibitions related to voting in a referendum. The proposed § 600.1107(e)(3) makes those framework referenda requirements applicable to this Program.

If NMFS approves the Reduction Plan, NMFS will conduct a referendum to determine the industry's willingness to repay a fishing capacity reduction loan for purchase of the permits identified in the Reduction Plan. NMFS will publish a notice in the **Federal Register** requesting votes by Permit Holders on whether to accept or reject the Reduction Plan for implementation. NMFS will issue ballots to eligible voters, tally votes received, and notify voters on the outcome of the referendum.

A successful referendum by a majority of the Permit Holders in the Reduction Fishery would bind all parties and complete the reduction process. An unsuccessful referendum would void accepted Bids and other supporting

documents without further obligation from the SRA or the bidders.

IX. Implementation Phase

Within 60 days after a successful referendum, CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. NMFS, after receiving the notice of the retired permits, will then tender the accepted bid amounts to the accepted bidders. If the SRA accepts a total number of bids in an aggregate amount less than \$23,476,500, any remaining funds could be available for reduction payments as part of a later, separate Reduction Plan.

The Reduction Loan will be amortized over a forty-year term. The Reduction Loan's original principal amount may not exceed \$23,476,500, but may be less if the ultimate reduction cost is less. The final Reduction Loan periodic payment amount will be determined by NMFS analysis of the ability of the post-reduction fishery to service the debt. The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. The framework provisions of §§ 600.1012–600.1017 will apply to any reduction loan, fee payment and collection set forth in this rule to the extent they do not conflict with this rule.

X. Loan Repayment Fee Collection

Post-reduction Permit Holders operating in the fishery will be obligated to pay a fee for the repayment of the loan in accordance with § 600.1107(f). The fee will be expressed as a percentage of the ex-vessel price of all salmon harvested and landed in the fishery. For example, if the fee is three percent and the ex-vessel value is \$0.50, then the fee per pound of salmon will equal \$0.015 per pound. The amount of such fee will be calculated by NMFS on an annual basis as the principal and interest payment amount necessary to amortize the loan over a 40-year term. The maximum fee rate is three percent of total ex-vessel production revenues. In the event that payments made under the Reduction Plan at the maximum fee level are insufficient to repay the Reduction Loan within the 40-year term, NMFS will extend the term of the repayment until the Reduction Loan is paid in full.

Fees must be assessed and collected on all salmon harvested in the fishery. Although the fee could be up to three percent of the ex-vessel price of all post-reduction landings, the fee will be less than three percent if NMFS projects that a lesser rate can amortize the Reduction Loan over the 40-year term.

It is possible that the fishery may not open during some years. Consequently, the fishery will not produce fee revenue with which to service the Reduction Loan during these years. However, interest will continue to accrue on the principal balance. When this happens, if the fee is not already at the maximum three percent, NMFS will increase the fee to the maximum three percent in the next season that the fishery is open, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until the principal and interest payments become current. Once all principal and interest payments are current, NMFS will make annual determinations on adjusting the fee rate.

The dealer who first purchases the salmon landed in the fishery ("fish buyer") will be responsible for collecting and submitting the repayment fees to NMFS on a monthly basis. Both Alaska Department of Fish and Game daily fish tickets and the State of Alaska's Commercial Operator Annual Report (COAR) produced annually each March following the close of the previous season will be used to monitor fee collection.

The current Fishing Capacity Reduction Framework regulatory provisions of § 600.1013 (Fee payment and collection), § 600.1014 (Fee collection deposits, disbursements, records, and reports), § 600.1015 (Late charges), § 600.1016 (Enforcement), § 600.1017 (Prohibitions and penalties), and § 600.1017(a)(8)–(16) in particular, will apply to any fee collection in this fishery.

The framework rule's provisions at § 600.1014 governs how fish buyers must deposit, and later disburse to NMFS, the fees which they have collected as well as how they must keep records of, and report about, collected fees. Under the framework rule's provisions at § 600.1014, fish buyers must, at the end of each business week, deposit collected fees in federally insured accounts. Fees will be submitted to NMFS monthly and are due no later than fifteen (15) calendar days following the end of each calendar month. Fee collection reports must accompany these disbursements. Fish buyers must maintain specified fee collection records for at least three years and submit to NMFS annual reports of fee collection and disbursement activities by February 1 of each calendar year.

Under § 600.1015, the late charge to fish buyers for fee collection, deposit, and/or disbursement will be one and one-half (1.5) percent per month of the fee due. The full late charge will apply

to the fee for each month or portion of a month that the fee remains unpaid.

To provide more accessible services, streamline collections, and save taxpayer dollars, fish buyers may disburse collected fee deposits to NMFS by using a secure Federal system on the Internet known as *Pay.gov*. *Pay.gov* enables fish buyers to use their checking accounts to electronically disburse their collected fee deposits to NMFS. Fish buyers who have access to the Internet should consider using this quick and easy collected fee disbursement method. Fish buyers may access *Pay.gov* at: <https://www.pay.gov/paygov/>.

Fish buyers who do not have access to the Internet or who simply do not wish to use the *Pay.gov* electronic system must disburse collected fee deposits to NMFS by sending a check to our lockbox at: NOAA Fisheries Southeast Alaska Salmon Purse Seine Buyback, P.O. Box 979002, St. Louis, MO 63197–9000.

Fish buyers must complete a fee collection report for each disbursement. Fish buyers using *Pay.gov* will find an electronic fee collection report form to accompany electronic disbursements. Fish buyers who do not use *Pay.gov* must include a hard copy fee collection report with each of their disbursements and may access the NMFS Web site for a PDF version of the fee collection report at: http://www.nmfs.noaa.gov/mb/financial_services/buyback.htm.

Before the fee's effective date, NMFS will separately mail a copy of the final rule, along with detailed fee payment, collection, deposit, disbursement, recording, and reporting information and guidance, to each fish seller and buyer of whom NMFS has notice. The fact that any fish seller or buyer might not, for whatever reason, receive a copy of the notice or of the information and guidance does not relieve the fish seller or buyer from his/her fee obligations under the applicable regulations.

All parties interested in this action should carefully read the following framework rule sections, whose detailed provisions apply to the fee system for repaying the reduction program's loan:

1. § 600.1012;
2. § 600.1013;
3. § 600.1014;
4. § 600.1015;
5. § 600.1016; and
6. § 600.1017.

NMFS, in accordance with the framework rule's provisions at § 600.1013(d), establishes the initial fee for the program's reduction fishery as 3 percent of the annual ex-vessel value of all salmon harvested in the fishery.

Please see the framework rule's provisions at § 600.1000 for the

definition of “delivery value” and of the other terms relevant to this rule. Each disbursement of the reduction loan’s principal amount will begin accruing interest as of the date of each such disbursement. This loan’s interest rate is the applicable rate, which the U.S. Treasury determines at the end of the fiscal year, plus two percent.

XI. Specific Performance

The proposed regulatory provisions at § 600.1107(g) mirror the Bid’s provisions for Specific Performance. Development of a capacity reduction program provides a unique opportunity for permit holders to manage capacity themselves. Failure of an accepted bidder to perform the obligations under the Relinquishment Contract will result in irreparable damage to the SRA and other Permit Holders. Therefore, money damages are inadequate to redress the harm caused to the bidders by a breach of contract. Specific performance is the only adequate remedy.

XII. Enforcement/Prohibitions and Penalties

The provisions and requirements of § 600.1016 and § 600.1017 shall also apply to fish sellers and fish buyers subject to this fishery. Specifically, the final rule amends § 600.1017 by adding language that prohibits buyers from buying fish from reduction fishery participants who do not pay the required landing fee and prohibits reduction fishery participants from selling fish to buyers who do not collect the fees.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the provisions of the Magnuson-Stevens Act, and Title II, Section 209 of Public Law 108–447 as amended by Section 121 of Public Law 109–479.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with the National Environmental Policy Act, NMFS prepared an environmental assessment (EA) for this rule. The assessment discusses the impact of this final rule on the natural and human environment and integrates a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA). NMFS will send the assessment, the review and analysis to anyone who requests a copy (see **ADDRESSES**).

NMFS prepared a FRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), to describe the

economic impacts this rule would have on small entities. NMFS intends the analysis to aid the agency in considering regulatory alternatives that could minimize the economic impact on affected small entities. The rule does not duplicate or conflict with other Federal regulations.

Summary of FRFA

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$4 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned or cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. Small entities within the scope of this rule include individual U.S. vessels, Permit Holders, and dealers. There are no disproportionate impacts between large and small entities.

Description of the Number of Small Entities

Most firms operating in the Reduction Fishery have annual gross revenues of less than \$4 million. The FRFA analysis estimates that most of the 212 active vessels that participated in 2008 are considered small entities. The ownership characteristics of vessels operating in the Reduction Fishery are not available and, therefore, it is not possible to determine with certainty if they are independently owned and operated or affiliated in one way or another with a larger parent company. However, because the action would not result in changes to allocation percentages and participation is voluntary, net effects would be expected to be minimal relative to the status quo.

The final rule’s impact would be positive for both those whose bids NMFS accepts and for post-reduction harvesters whose landing fees repay the reduction loan because the Bidders and harvesters would have voluntarily assumed the impact:

1. Bidders would have volunteered to make bids at dollar amounts of their own choice. Presumably, no Bidder would volunteer to make a bid with an amount that is inconsistent with the Bidder’s interest; and

2. Reduction loan repayment landing fees would be authorized, and NMFS could complete the Reduction Program, only if a majority of Permit Holders voted in favor of the Reduction Plan. Presumably, harvesters who are not selected would not vote in favor of the Reduction Plan unless they concluded that the Reduction Program’s

prospective capacity reduction was sufficient to enable them to increase their post-reduction revenues enough to justify the fee.

3. Those participants remaining in the fishery after the buyback will incur additional fees of up to 3 percent of the ex vessel production value of post reduction landings. However, the additional costs should be mitigated by reducing the possibility that latent permits will be activated thus reducing harvest levels and stabilizing year-to-year price fluctuations. NMFS believes that this final rule would affect neither authorized harvest levels nor harvesting practices.

Other than the preferred alternative, which is being implemented in this rule, NMFS considered the no action alternative in developing this action. NMFS rejected the no action alternative considered in the EA because if it failed to act, NMFS would not be in compliance with the mandate of Section 209 of the authorizing legislation to establish a buyback program. In addition, the Southeast Alaska purse seine salmon fishery would remain overcapitalized. Overcapitalization reduces the potential net value that could be derived from the salmon resource by dissipating rents, driving variable operating costs up, and imposing economic externalities on the fishermen. Overcapitalization has diminished the economic viability of members of the fleet and increased the economic and social burden on fishery dependent communities.

This final rule contains information collection requirements subject to the Paperwork Reduction Act (PRA). The Office of Management and Budget (OMB) previously approved this information collection under OMB Control Number 0648–0376.

NMFS amends the existing OMB control number as a result of the implementation of this capacity reduction program. The revision has been submitted to OMB for approval. NMFS estimates that the public reporting burden for this information collection totals 878 respondents with a total response time of 38,653 hours. NMFS estimates that each respondent will take an average of 4 hours for submitting a Bid (which includes executing the Bid Agreement and the Reduction Contract) and 4 hours for voting in a referendum. Persons affected by this rule would also be subject to other collection-of-information requirements referred to in the proposed rule and also approved under OMB Control Number 0648–0376. These requirements and their associated response times are: Completing and

filing a fish ticket (10 minutes), submitting monthly fish buyer reports (2 hours), submitting annual fish buyer reports (4 hours), and fish buyer/fish seller reports when a person fails either to pay or to collect the loan repayment fee (2 hours).

These response estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Public comment is sought regarding: Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Interested persons may send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to both NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to, and no person is subject to a penalty for failure to comply with, an information collection subject to the PRA requirements unless that information collection displays a currently valid OMB control number.

This action would not result in any adverse effects on endangered species or marine mammals.

List of Subjects in 50 CFR Part 600

Fisheries, Fishing capacity reduction, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs—business, Reporting and recordkeeping requirements.

Dated: September 30, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 600, subpart M, is amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

Subpart M—Specific Fishery or Program Fishing Capacity Reduction Regulations

■ 1. The authority citation for 50 CFR part 600, subpart M, is revised to read as follows:

Authority: 5 U.S.C. 561, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 1861a(b) through (e), 46 App. U.S.C. 1279f and 1279g, section 144(d) of Division B of Pub. L. 106–554, section 2201 of Pub. L. 107–20, and section 205 of Pub. L. 107–117, Pub. L. 107–206, Pub. L. 108–7, Pub. L. 108–199, Pub. L. 108–447, Pub. L. 109–479, Pub. L. 110–161, Section 209 of Title II of Division B of Pub. L. 108–447, Section 121 of Pub. L. 109–447, Section 121 of Pub. L. 109–479, Pub. L. 110–161, and 46 U.S.C. 53701 *et seq.*

■ 2. Section 600.1107 is added to subpart M to read as follows:

§ 600.1107 Southeast Alaska Purse Seine Salmon Fishery capacity reduction program, including fee payment and collection system.

(a) *Purpose.* This section implements the fishing capacity reduction program for the Southeast Alaska purse seine salmon fishery enacted by Section 209 of Public Law 108–447 and amended by Section 121 of Public Law 109–479, with appropriations authorized by Section 121 of Public Law 109–479 and Public Law 110–161. The intent of the program is to permanently reduce, through an industry-financed permit buyback, the most harvesting capacity in the Reduction Fishery at the least cost, increase harvesting productivity for post-reduction Permit Holders and improve flexibility in the conservation and management of the fishery. Fishery participants will finance this program through a federal loan that will be repaid over 40 years through a fee collection system. The intent of the fee collection system is to establish the post-reduction Permit Holders' obligation to repay the Reduction Loan's principal and accrued interest over the repayment term, and to ensure repayment of the loan.

(b) *Definitions.* Unless otherwise defined in this section, the terms defined in § 600.1000 of subpart L of this part expressly apply to this section. The following terms have the following meanings for the purpose of this section:

Acceptance means SRA acceptance of a bid.

Act means Section 209 of Title II of Division B of Public Law 108–447, Consolidated Appropriations Act of 2005, as amended by Section 121 of Public Law 109–447, Magnuson-Stevens Reauthorization Act of 2006.

Authorized party means the individuals authorized by the Permit Holder on the application form to execute and submit Bids, protests and other documents and/or notices on behalf of the Permit Holder.

Bid means a bidder's irrevocable offer to relinquish a permit.

Bid amount means the dollar amount submitted by a bidder.

Bidder means a permit holder who submits a bid.

Commercial Fisheries Entry Commission (CFEC) means the Alaska state commission mandated to conserve and maintain the economic health of Alaska's commercial fisheries by limiting the number of participating fishers, by issuing permits and vessel licenses to qualified individuals in both limited and unlimited fisheries, and by providing due process hearings and appeals.

CFEC documents means any documents issued by the CFEC in connection with the Southeast Alaska purse seine salmon fishery.

Conditional notice means the CFEC form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement (Appendix B to § 600.1107).

Conditional relinquishment means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid (Appendix C to § 600.1107).

Fishery means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

Magnuson-Stevens Act means the Magnuson-Stevens Fishery Conservation and Management Act codified at 16 U.S.C. 1801 *et seq.*

Permit (Southeast Salmon Purse Seine Entry Permit) means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

Permit holder means an individual who at the time of bidding is the holder of record of a permit.

Reduction fishery means the Southeast Alaska Purse Seine Salmon Fishery.

Reduction loan means the loan used to purchase the relinquished permits pursuant to the approved Reduction Plan.

Reduction loan amount means the Reduction Loan's original principal amount up to \$23,476,500.

Reduction plan means the aggregate of all Bids, Relinquishment Contracts, Conditional Notices, Conditional Relinquishments, and supporting documents and rationale, submitted to the Secretary for approval.

Relinquishment contract means the contract that any Permit Holder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i)) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount (Appendix A to § 600.1107).

Secretary means the Secretary of Commerce or his/her designee.

Southeast Revitalization Association (SRA) means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

(c) *Enrollment in the capacity reduction program*—(1) *Distribution*. The SRA shall mail a copy of the following four documents via certified mail to each Permit Holder: Bid; Fleet Consolidation Relinquishment Contract (Relinquishment Contract); Conditional Notice to CFEC and Request by Permit Holder; and (Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit. Such mailing shall include a closing date after which the SRA will not accept new bids.

(2) *Application*. Any Permit Holder, regardless of whether having received the mailing described in paragraph (c)(1) of this section, may participate in the Capacity Reduction Program by submitting all of the following documents to the SRA no later than the bid closing date:

- (i) A fully executed Bid consistent with Appendix A to this section;
- (ii) A photocopy of the permit evidencing the applicant's qualification as a participant in the fishery;
- (iii) A fully executed Relinquishment Contract: Southeast Alaska Salmon Purse Seine Permit Holders consistent with the appendix B to this section;
- (iv) A fully executed Conditional Notice to CFEC and Request by Permit Holder consistent with the appendix C to this section; and
- (v) A fully executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit consistent with the appendix D to this section.

(A) The submitted Bid shall include the following information: Name, address, telephone number, social security number, and (if available) electronic mail address of the submitting Permit Holder, permit number, and whether any authorized party holds a security interest in the permit. Each application must be submitted to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, Alaska 99801. The initial determination that an application conforms to the prescribed requirements is made by this independent accounting firm and not the SRA.

(B) The SRA or the independent accounting firm will notify the Permit Holder if the Bid is non-conforming and, in such cases, the Permit Holder may submit a revised, conforming Bid

within the prescribed period (*i.e.*, until the bid closing date).

(3) *Enrollment period*. Applications that meet all requirements will be accepted until the bid selection process is completed but no later than the bid closing date specified by the SRA. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process.

(4) *Effective date*. The effective date of any Bid shall be when the SRA has completed the selection process and signed the Bid.

(5) *Notice*. The SRA will notify each Accepted Bidder, via certified mail, of the effective date of the Bid Agreement.

(6) *Conflicts*. Where terms and conditions in the Bid, Relinquishment Contract, Conditional Notice, and Conditional Relinquishment conflict with this regulation, the terms and conditions in the regulation are controlling.

(d) *Bid selection process*. The fishing capacity removed by the Reduction Plan shall be represented by the total number of valid CFEC permits, whether active or latent, that are voluntarily offered by Permit Holders and selected by the SRA up to an aggregate amount of \$23,476,500. Due to a rescission of funds, the underlying appropriations for this Reduction Program were reduced from \$250,000 to \$234,765, resulting in a loan ceiling of \$23,476,500.

(1) *Overview*. The Selection Process shall begin upon the receipt by the SRA of the first application and shall continue until: The bid closing date specified by the SRA (paragraph (c)(1) of this section); or the ranking of the next lowest bid would cause the total program costs to exceed \$23,476,500. The SRA will have a period of 21 days after the bid closing date to consult with CFEC and examine bid results to complete the selection process. When either one of these events is reached, the Selection Process shall be completed.

(i) During the selection process, the SRA in consultation with the CFEC shall examine each submitted Bid for consistency and the necessary elements, including the validity of the permit and whether any authorized party holds a security interest in the permit.

(ii) [Reserved]

(2) *Bids*. By submitting the Bid, the bidder expressly acknowledges that he makes an irrevocable offer to relinquish to CFEC a permit for a specific price, and once having submitted the Bid, the bidder is not entitled to withdraw or in any way amend the Bid. The permit will be relinquished for the price set forth in the Bid contingent on such Bid being accepted by the SRA at the closing of

the Selection Process. Any attempted withdrawal by a bidder shall be invalid, and the Bid shall remain a binding, irrevocable offer, unaffected by the attempted withdrawal. Any bid that is submitted by a Permit Holder but is not accepted by the SRA shall be deemed terminated and both the Permit Holder and the SRA will have no further obligation with respect to the Bid.

(i) If a Permit Holder holds more than one permit, the Permit Holder must submit a separate Bid for each permit that he/she offers to relinquish.

(ii) By submitting a Bid, the Permit Holder warrants and represents that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment, and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid Agreement.

(3) *Ranking*. The SRA shall rank all conforming bids by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest bid would cause the total program cost to exceed \$23,476,500. In the event of a tie with bids which results in the tied bids exceeding \$23,476,500, the SRA will select the tied bid first received, if known. If the receipt time cannot be determined, neither bid will be accepted.

(4) *Acceptance and post-acceptance restriction of renewals and transfers*. Upon expiration of the bid closing date, the SRA shall determine whether the number of ranked bids it is willing to accept is sufficient to achieve a substantial reduction in harvest capacity and increased economic efficiencies for those Permit Holders remaining in the fishery. If the SRA makes such a determination and thereafter accepts bids, the SRA shall send CFEC the Conditional Notice form restricting renewal and transfer of each permit for which a bid was accepted. The Bid, Relinquishment Contract, Conditional Notice and Conditional Relinquishment are terminated for any rejected bid and the applicant is no longer bound by the terms of these documents.

(e) *Plan submission and approval*—(1) *Submitting the reduction plan*. Within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, consisting of the aggregate of all Bid Agreements, Relinquishment Contracts, Conditional Notices and Conditional Relinquishments, together with

supporting documents and rationale, to NMFS for final approval on behalf of the Secretary. The Reduction Plan shall include a listing of accepted bids arranged by bid amount from lowest to highest bid, attended by a statement from the SRA that all other bids received were higher than the largest dollar amount of the last bid accepted.

(2) *Required findings.* In order to approve a Reduction Plan, the Assistant Administrator of NMFS, on behalf of the Secretary, must find that: The Reduction Plan is consistent with the amended Consolidated Appropriations Act of 2005 and applicable sections of the Magnuson-Stevens Act, particularly that it is cost-effective; the Reduction Plan will result in the maximum sustained reduction in fishing capacity at the least cost; and the Reduction Plan will increase harvesting productivity for post-reduction Permit Holders participating in the fishery.

(3) *The referendum.* If NMFS approves the Reduction Plan and subsequent to the publication of a final rule resulting from this rule, NMFS shall conduct a referendum to determine the industry's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Reduction Plan. NMFS shall publish a notice in the **Federal Register** requesting votes by Permit Holders on whether to accept or reject the Reduction Plan for implementation. The notice shall state the starting and ending dates and times of the voting period, which shall be not less than twenty one (21) nor more than thirty (30) calendar days from the date of such notice.

(i) Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record, and will provide a 15 day period to make these changes. If, in NMFS' discretion, the comments received in response to such notice warrants it, or for other good cause, NMFS may modify such list by publishing another notice in the **Federal Register**. NMFS shall issue ballots to eligible voters, tally votes, and notify voters whether the referendum was successful or unsuccessful in approving the Reduction Plan consistent with the provisions of § 600.1010.

(ii) A successful referendum by a majority of the Permit Holders in the Reduction Fishery shall bind all parties and complete the reduction process. NMFS shall publish a notice in the **Federal Register** advising the public

that the referendum was successful. Thereafter the Reduction Program shall be implemented.

(iii) The provisions of § 600.1010 and § 600.1017(a)(1)–(4) shall apply to any referendum on the Reduction Plan of this section to the extent that they do not conflict with this section or with subpart M of this part.

(f) *Implementation—(1) Reduction payments.* Within 60 days of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notification, NMFS will then tender the accepted bid amounts to the Permit Holders. Reduction payments may not exceed \$23,476,500 and if the SRA accepts a total number of bids in an aggregate amount less than \$23,476,500, any remaining funds would be available for reduction payments as part of a later, separate Reduction Plan conforming to these regulations. Upon NMFS tendering the reduction program's payments to the selected Permit Holders, each such Permit Holder must permanently stop all fishing with the relinquished permit(s).

(2) *Repayment term.* As authorized by the Act, the Reduction Loan shall be amortized over a forty (40) year term. The Reduction Loan's original principal amount may not exceed \$23,476,500, but may be less if the ultimate reduction cost is less. The final Reduction Loan periodic payment amount will be determined by NMFS' analysis of the ability of the post-reduction fishery to service debt. The provisions of §§ 600.1012–600.1017 shall apply to any reduction loan, fee payment and collection under this section to the extent they do not conflict with this section or with subpart M of this part.

(3) *Loan repayment.* Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with this section. In the event that payments made under the Reduction Plan are insufficient to pay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.

(i) *Interest.* The Reduction Loan's interest rate will be the U.S. Treasury's cost of borrowing equivalent maturity funds plus two percent. NMFS will determine the Reduction Loan's initial interest rate when NMFS borrows from the U.S. Treasury the funds with which to disburse reduction payments. Interest will begin accruing on the Reduction Loan from the date on which NMFS disburses such loan. The initial interest rate will change to a final interest rate at the end of the Federal fiscal year in

which NMFS borrows the funds from the U.S. Treasury. The final interest rate will be two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed and will not vary over the remainder of the reduction loan's 40-year term. The Reduction Loan will be subject to a level debt amortization. There is no prepayment penalty.

(ii) *Fees.* Post-reduction Permit Holders operating in the fishery shall be obligated to pay the fee in accordance with paragraph (f) of this section. The amount of such fee will be calculated by NMFS on an annual basis as the principal and interest payment amount necessary to amortize the loan over a 40-year term. The fee shall be expressed as a percentage of the ex-vessel value of all salmon harvested and landed in the fishery. In the event that payments made under the Reduction Plan are insufficient to repay the Reduction Loan within the 40-year term, NMFS shall extend the term of the repayment until the Reduction Loan is paid in full.

(A) Fees must be assessed and collected on all salmon harvested in the fishery. Although the fee could be up to three percent of the ex-vessel price of all post-reduction landings, the fee will be less than three percent if NMFS projects that a lesser rate can amortize the Reduction Loan over the 40-year term. To verify that the fees collected do not exceed three percent of the fishery revenues, NMFS will compare the annual total of principal and interest due with the latest available annual revenues in the fishery to ensure that it is equal to or less than three percent of the total ex-vessel production revenues. In the event that any of the components necessary to calculate the next year's fee are not available, or postponed, the fee will remain at the previous year's amount until such time as new calculations are made and communicated to the post-reduction fishery participants.

(B) If the fishery does not open during a year, interest will continue to accrue on the principal balance even though no fee revenue will be generated. When this happens, if the fee is not already at the maximum three percent, NMFS shall increase the fee to the maximum three percent, apply all subsequent fee revenue first to the payment of accrued interest, and continue the maximum fee rates until the principal and interest payments become current. Once all principal and interest payments are current, NMFS will make a determination about adjusting the fee rate.

(iii) *Collection*. The buyer who first purchases the salmon landed in the fishery shall be responsible for collecting and submitting the repayment fees to NMFS monthly. The fees shall be submitted to NMFS no later than fifteen (15) calendar days following the end of each calendar month.

(iv) *Recordkeeping and reporting*. The dealer who first purchases the salmon landed in the fishery shall be responsible for compliance with the applicable recordkeeping and reporting requirements.

(A) All requirements and penalties set forth in the provisions of §§ 600.1013 (Fee payment and collection), 600.1014 (Fee collection deposits, disbursements, records, and reports), 600.1015 (Late charges), and 600.1017 (Prohibitions and penalties) shall apply to any dealer who purchases salmon in the fishery, and to any fee collection under this section, to the extent they do not conflict with this section or with subpart M of this part.

(B) [Reserved]

(g) *Specific performance under the relinquishment contract*. The parties to the Relinquishment Contract have agreed that the opportunity to develop and submit a capacity reduction program for the fishery under the terms of the Act is both unique and finite. The failure of a Permit Holder, whose bid was accepted, to perform the obligations under the Relinquishment Contract will result in irreparable damage to the SRA and all the other Permit Holders. Accordingly, the parties to the Relinquishment Contract expressly acknowledge that money damages are an inadequate means of redress and agree, that upon failure of the Permit Holder to fulfill his/her obligations under the Relinquishment Contract, that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

(h) *Enforcement for failure to pay fees*. The provisions and requirements of § 600.1016 (Enforcement) shall also apply to fish sellers and fish buyers subject to this fishery.

(i) *Prohibitions and penalties*. Fish buyers are prohibited from purchasing fish from fish sellers who do not pay the required landing fees. Fish sellers are prohibited from selling to fish buyers who do not pay the required landing fees.

Appendix A to § 600.1107—Bid

This Bid (Bid) is entered between the individual named in section III, 11(a) of the Agreement and the Southeast Revitalization Association (SRA).

I. Definitions

Unless otherwise defined, the following terms have the following meanings for the purpose of this Agreement.

Acceptance means SRA acceptance of a Bid.

Act means Section 209 of Title II of Division B of Public Law 108–447, Consolidated Appropriations Act of 2005; as amended by Section 121 of Public Law 109–447, Magnuson-Stevens (MSA) Reauthorization Act of 2006.

Bid means a bidder's irrevocable offer to relinquish a permit.

Bid amount means the dollar amount submitted by a bidder.

Bidder means a permit holder who submits a bid.

Conditional notice means the Commercial Fisheries Entry Commission (CFEC) form that any Bidder must sign and agree to abide by upon submission of a Bid Agreement.

Conditional relinquishment means the CFEC form that any Permit Holder, agreeing to relinquish a permit, must sign and agree to abide by upon SRA acceptance of the bid.

Fishery means the Southeast Alaska administrative area as defined under Title 5 Alaska Administrative Code Section 33.100 for salmon with purse seine gear.

Permit means a valid entry permit issued by CFEC to operate in the Southeast Alaska purse seine salmon fishery.

Permit holder means an individual who at the time of bidding is the holder of record of a permit.

Reduction plan means the aggregate of all Bids, Relinquishment Contracts (Appendix B), Commercial Fisheries Entry Commission ("CFEC") Conditional Notice and Conditional Relinquishment (Appendices C & D), and supporting documents and rationale; submitted to the Secretary for approval.

Referendum means the voting procedure to determine the Permit Holder's willingness to repay a fishing capacity reduction loan to purchase the permits identified in the Plan.

Relinquishment contract means the contract that any bidder agreeing to relinquish a permit pursuant to Alaska Statute (A.S. 16.43.150(i) must sign and agree to abide by upon acceptance of the Bid, and before payment of the bid amount.

Secretary means the Secretary of Commerce or his/her designee.

Southeast Revitalization Association (SRA) means the qualified fishery association authorized to develop and implement this capacity reduction program under Alaska Statute 16.40.250 and Federal law.

II. Recitals

Whereas Alaska Statute 16.40.250 and the Act authorize a fishing capacity reduction program for the fishery;

Whereas, within 30 days of concluding the selection process, the SRA shall submit the Reduction Plan, together with supporting documents and rationale, to NMFS for final approval on behalf of the Secretary;

Whereas, the reduction Plan's express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and

management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, the SRA can implement the Reduction Plan only after giving notice to all Permit Holders and subsequent approval of the reduction Plan by referendum.

Whereas, the Agreement submitted by the bidder and the SRA is an integral element of the Reduction Plan.

Now, therefore, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the SRA and bidder agree as follows:

III. Terms and Conditions

1. *Form*. By completing and submitting this Bid to the SRA the bidder hereby offers to permanently relinquish, and have the CFEC revoke, the permit. The SRA signing the Bid and subsequent NMFS payment to bidder in the exact bid amount set forth in section III, 11(f) of the Bid is full and complete consideration.

2. *Irrevocable*. The bidder expressly acknowledges that by submitting the Bid he/she makes an irrevocable offer to relinquish the permit and once having submitted the Bid is not entitled to withdraw or in any manner amend the Bid. The receipt date that the SRA marks on the Bid constitutes the date of the bidder's submittal.

3. *Warranty*. The bidder warrants and represents that he/she is the holder of record of the permit, according to the CFEC records, and that he/she has read and understands the terms of the Program Regulations, Bid, Relinquishment Contract, Conditional Notice and the Conditional Relinquishment and has had the opportunity to seek independent legal counsel regarding such documents and the consequences of submitting the Bid.

4. *Validity*. The SRA, in consultation with the CFEC, shall examine each Bid for completeness and consistency. The SRA shall notify the bidder if the Bid is non-conforming. In such cases, the bidder may submit a revised, conforming Bid within the prescribed period (*i.e.*, until the bid closing date).

5. *Ranking*. The SRA shall rank the bid amount entered in section III, 11(f) of this Bid by using a reverse auction in which the SRA ranks the Bid with the lowest dollar amount and successively ranks each additional Bid with the next lowest dollar amount until there are no more Bids or the ranking of the next lowest Bid would exceed the total program cost. In the event of a tie with bids which results in the tied bids exceeding \$23,476,500, the SRA will select the tied bid first received.

6. *Acceptance and Rejection*. If the Bid is accepted, the SRA shall formally notify the bidder in writing. If the SRA rejects the Bid, the SRA will formally notify the bidder in writing and the Bid shall terminate without further obligation.

7. *Restriction of Transfer of permit*: Upon acceptance, the SRA will send the CFEC the Conditional Notice, restricting transfer of the permit until such time as: The SRA notifies the bidder that the Plan is not in compliance with the Act and will not be approved; or NMFS notifies the bidder the referendum was unsuccessful.

8. *Payment.* Within 60 days from the close of the voting period of a successful referendum, the CFEC will provide notice to NMFS of the permits retired from the Reduction Fishery. Upon receiving such notice, NMFS will then tender the accepted bid amounts to the Permit Holders.

9. *Specific Performance.* The failure of a bidder whose Bid was accepted to comply with the terms of this Bid will result in irreparable damage to the SRA and its members because the Bid was part of the basis for the Plan submitted to the Secretary for approval. Accordingly, the SRA and bidder expressly acknowledge that money damages are an inadequate means of redress and agree that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

10. *Submission.* This Bid must be submitted within the prescribed period to the SRA, c/o Elgee, Rehfeld, Mertz, LLC, Professional Plaza Building B, 9309 Glacier Highway, Suite B-200, Juneau, AK 99801.

11. *Complete Bid Information:* To fully and accurately complete this Bid, the bidder must fully complete the following questions and provide an exact photocopy of the permit. The Bidder must further sign this form, Appendices B, C, and D to § 600.1107, and acknowledge the signature before a notary public.

(a) **BIDDER'S NAME.** This must be the full and exact legal name of record of the person bidding. Insert the name of the bidder.

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(b) **BIDDER'S ADDRESS OF RECORD.** Insert the full and exact address of record for the bidder.

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(c) **BIDDER'S TELEPHONE NUMBER.** Insert the full and exact telephone number of the bidder.

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(d) **BIDDER'S ELECTRONIC MAIL ADDRESS** (if available). Insert the full and exact e-mail address of the bidder.

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(e) **PERMIT.** Insert the full and exact permit number(s) of the bidder. Enclose with this Bid an exact photocopy of the permit.

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(f) **BID AMOUNT.** Insert, in U.S. dollars, the bid's full and exact amount, both in words and numbers.

In words	In numbers
	\$

(g) **SECURITY INTERESTS.** Insert the name of any authorized third party that may hold a security interest in the permit.

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(h) **SOCIAL SECURITY NUMBER.** Insert the full and exact social security number of the bidder.

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(i) **BID SIGNATURE.** In compliance with applicable law and this Bid, the bidder submits the above bid amount as an offer to the SRA for the permanent relinquishment of his/her permit. By completing the sections above and signing below, the bidder acknowledges that the bidder has completely reviewed this Bid and attachments. The bidder warrants that the bidder is fully able to enter into the Relinquishment Contract. The bidder expressly warrants and attests that all information included herein is accurate.

Signature	
Printed Name	
Date of Signature	

State of: _____ County/Borough of: _____

I certify that _____ is the person who appeared before me and said person acknowledged that he/she signed this Bid and on oath stated that he/she was authorized to execute such document and acknowledged it to be the free and voluntary act of him/her for the uses and purposes mentioned in such document.

Notary Public's Signature: _____ Dated: _____

My Commission Expires: _____

12. **SRA SIGNATURE.** By signing below, the SRA acknowledges acceptance of this Bid, including the bidder's bid amount.

Signature	
Printed Name	

Date of Signature	
-------------------	--

**Appendix B to § 600.1107—
Relinquishment Contract: Southeast
Alaska Salmon Purse Seine Permit
Holders**

This Relinquishment Contract ("Contract") and agreement is entered into between the Southeast Revitalization Association ("SRA") and the bidder named in Section 11(a) of the Bid. The contract is effective when the bidder signs the Bid and this contract and, thereby, agrees to relinquish his/her permit, issued by the Alaska Commercial Fisheries Entry Commission ("CFEC") for the Southeast Alaska salmon purse seine fishery ("fishery").

Whereas Alaska Statute 16.40.250 and Federal law authorize a fishing capacity reduction program for the fishery;

Whereas, upon accepting and signing the Bid, the SRA shall submit a Reduction Plan to NMFS;

Whereas, the Reduction Plan's express objective is to reduce fishing capacity by permanently revoking permits thereby promoting economic efficiency, improving flexibility in the conservation and management of the fishery and obtain the maximum reduction in permits at the least cost;

Whereas, this contract is subject to the terms and conditions set forth herein, including the CFEC forms marked as Appendices C and D to § 600.1107;

Now, therefore, for valuable consideration and the covenants hereinafter set forth, the parties hereto agree as follows:

1. The foregoing, including the Bid and specifically the definitions under section 1, are expressly incorporated herein by this reference.

2. Under AS 16.43.150(i), the Bidder agrees to permanently relinquish and have the CFEC revoke the permit.

3. The Bidder represents that, as of the date of submitting the contract, he or she is the holder of record of the permit according to the CFEC official permit records.

4. Upon notification by the SRA to the Bidder that the SRA accepted the bid; the SRA will submit to the CFEC the Permit Holder's executed notice form (Appendix C to § 600.1107) and executed relinquishment form (Appendix D to § 600.1107).

5. In the event an authorized third party holds a security interest in the permit, NMFS will not make payment until receiving notice of written consent by the third party to the SRA and the CFEC on a form provided by the CFEC.

6. NMFS' payment to the accepted bidder in the exact amount of the accepted bid amount is full and complete consideration for the CFEC revoking the permit.

7. The bidder shall, upon the SRA or the CFEC request, furnish such additional documents, information, or take such other actions as may be reasonably required to enable the CFEC to implement relinquishment of the permit.

8. The bidder consents to the public release of any information provided in connection with the contract or program requirements after completion of the plan.

9. The contract contains the final terms and conditions of this agreement between the parties and represents the entire and exclusive agreement between them.

10. The contract terms are severable, and, in the event that any portion of the contract is held to be unenforceable, the remaining portion shall remain fully enforceable against the parties.

11. Any and all disputes involving the contract shall be governed by laws of the

State of Alaska. The bidder expressly acknowledges that by submitting the Bid, he/she makes an irrevocable offer to relinquish the permit, and once having submitted the Bid, is not entitled to withdraw or in any way amend the Bid.

12. The failure of a bidder to perform his/her obligations under the Bid will result in irreparable damage to the SRA and its members upon submittal of the Plan to the Secretary for approval. Accordingly, the SRA

and the bidder expressly acknowledge that money damages are an inadequate means of redress and agree that upon failure of the bidder to fulfill his/her obligations under the Bid that specific performance of those obligations may be obtained by suit in equity brought by the SRA in any court of competent jurisdiction without obligation to arbitrate such action.

BIDDER'S SIGNATURE AND NOTARY'S ACKNOWLEDGEMENT AND CERTIFICATION

Bidder signature	Notary signature
<p>(1) Sign (2) Print the following: (a) signer's name (b) signing date (c) state and city/borough</p> <p>(1) (2)(a) (2)(b) (2)(c)</p>	<p>(1) Sign (2) Print the following: (a) name (b) signing date (3) date commission expires, and State and city/borough. Each notary signature attests to the following: "I certify that I know or have satisfactory evidence that the person who is signed in the 1st column of this same row is the person who appeared before me and: (1) Acknowledged his/her signature; (2) on oath, stated that he/she was authorized to sign; and (3) acknowledged that he/she did so freely and voluntarily."</p> <p>(1) (2)(a) (2)(b) (3)</p>

II. Southeast Revitalization Association signature Southeast Revitalization Association

Dated: _____
 By: _____

Appendix C to § 600.1107—Conditional Notice to CFEC and Request by Permit Holder

In support of my Bid to the Southeast Revitalization Association (SRA), I have executed this Conditional Notice and request and authorize the Southeast Revitalization Association (SRA) to submit this executed document to the Alaska Commercial Fisheries Entry Commission (CFEC) in the event that the SRA accepts my bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit under AS 16.43.150(i).

I hereby notify the CFEC that the SRA has accepted my Bid to permanently relinquish my Southeast Salmon Purse Seine Entry Permit # _____.

I request the CFEC: (1) not to renew my above-identified entry permit; and (2) not to authorize any transfer of my entry permit.

DATED this _____ day of _____, 2011.

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2011.

Notary Public, State of _____
 My commission expires: _____

Appendix D to § 600.1107—Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit

[AS 16.43.150(i)]

Upon satisfaction of the conditions that the Southeast Revitalization Association (SRA) accepts my bid and that NMFS agrees to pay my full bid amount to me, the SRA may submit this executed Conditional Relinquishment of Southeast Salmon Purse Seine Entry Permit to the Commercial Fisheries Entry Commission.

I fully understand this relinquishment of my permanent entry permit # _____ under AS 16.43.150(i) is permanent, and I will not be able to reinstate the permit.

DATED this _____ day of _____, 2011.

(Permit Holder/Bidder)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2011.

Notary Public, State of _____
 My commission expires: _____

[FR Doc. 2011-25750 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100923469-1543-05]

RIN 0648-BA27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Emergency Rule Extension, Georges Bank Yellowtail Flounder Catch Limit Revisions

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

ACTION: Temporary final rule; emergency action extension and request for comments.

SUMMARY: This action extends the Georges Bank (GB) yellowtail flounder specifications for fishing year (FY) 2011 that were implemented on May 1, 2011, through emergency authority concurrent with the Framework Adjustment (FW) 45 Final Rule under the Northeast (NE) Multispecies Fishery Management Plan (FMP), which is scheduled to expire on October 24, 2011. Specifically, this temporary rule maintains the current Acceptable Biological Catch (ABC) and Annual Catch Limit (ACL) for GB yellowtail flounder for an additional 186 days, *i.e.*, through the end of fishing

year (FY) 2010 (May 1, 2011 through April 30, 2012).

DATES: The effective date of the GB yellowtail flounder specifications in the final rule published April 25, 2011 (76 FR 23042) is extended through April 30, 2012. Comments are accepted through November 7, 2011.

ADDRESSES: You may submit comments, identified by FDMS Docket Number NOAA-NMFS-2011-0237, by any one of the following methods:

- **Electronic Submissions:** Submit all electronic public comments via the Federal e-rulemaking portal: <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the "submit a comment" icon, then enter [NOAA-NMFS-2011-0237] in the keyword search. Locate the document you wish to comment on from the resulting list and click on the "Submit a Comment" icon on the right of that line.

- **Mail:** Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930-2276. Mark the outside of the envelope: "Comments on NE Multispecies GB Yellowtail Flounder Specifications Emergency Rule Extension."

- **Fax:** (978) 281-9135.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

We will accept anonymous comments (enter "N/A" in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

Copies of the small entity compliance guide are available from the Regional Administrator, NMFS, Northeast Regional Office, at the address above. Copies of the Environmental Assessment (EA) prepared for this rule may be found at the following Internet address: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Thomas A. Warren, Fishery Policy Analyst, (978) 281-9347, fax (978) 281-9135.

SUPPLEMENTARY INFORMATION:

Background

This temporary final rule extends the revised GB yellowtail flounder catch limits implemented through emergency authority as published in the FW 45 final rule on April 25, 2011 (76 FR 23042) in order to maintain those measures through the end of FY 2010 (April 30, 2012). The April 25, 2011 final rule included detailed information on the background and reasons for the need to revise the GB yellowtail flounder catch limits from those originally proposed in the FW 45 proposed rule (76 FR 11858; March 3, 2011). The public had an opportunity to comment on the April 25, 2011 emergency measures, but no comments were submitted. We will again accept public comment on both the appropriateness of the emergency action to date, and its extension.

The emergency specifications extended through this final rule are the revised GB yellowtail flounder catch limits for FY 2011, as follows: A U.S. ABC of 1,458 mt; a total ACL of 1,416 mt; a groundfish sub-ACL of 1,142 mt; a scallop fishery sub-ACL of 200.8 mt; and an Other ACL sub-component of 73 mt. The initial emergency action modified GB yellowtail flounder catch limits from those originally proposed as a result of the passage of new legislation (International Fisheries Agreement Clarification Act).

Although the FW 45 final rule contained preliminary information regarding the more specific components of the groundfish sub-ACL (the division of the groundfish sub-ACL between sectors and the common pool and the Incidental Catch Total Allowable Catches for common pool vessels), it did not implement the final specification of these components (and this rule does not need to address those aspects of the FMP). The components of the GB yellowtail flounder groundfish sub-ACL are specified in the final rule that adjusted the FY 2011 groundfish sub-ACL components for all stocks (76 FR 34903; June 15, 2011).

No comments were received on the initial emergency rule.

Classification

We have determined that the emergency specifications extended by this temporary final rule are necessary and are consistent with the Magnuson-Stevens Fishery Conservation and

Management Act and other applicable law.

The interim rule that this rule extends was determined to be not significant for purposes of E.O. 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The supplemental Environmental Assessment (EA) prepared for the initial emergency action analyzed the impacts of the emergency specifications for the duration of a year (Supplemental EA, Revised Georges Bank Yellowtail Flounder Catch Limits for Fishing Year 2011; April 13, 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

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

Dated: October 3, 2011.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2011-25936 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648-XA421

Fishery Management Plan for the Scallop Fishery Off Alaska; Amendment 13

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

ACTION: Notice of agency decision.

SUMMARY: The National Marine Fisheries Service (NMFS) announces approval of Amendment 13 to the Fishery Management Plan for the Scallop fishery off Alaska (FMP). Amendment 13 implements an annual catch limit (ACL) and accountability measures (AMs) to prevent overfishing in the target fishery for weathervane scallops. Implementing these measures requires revising the maximum sustainable yield (MSY) and the optimum yield (OY) for weathervane scallops to account for total catch. Amendment 13 also clarifies that, in the absence of a statewide estimate of spawning biomass for weathervane scallops, the overfishing level (OFL) is

specified as the MSY. Under Amendment 13, scallop species not targeted in the fishery are classified as Ecosystem Component (EC) species. Amendment 13 is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMP, and other applicable laws. No changes in Federal regulations are implemented by this amendment.

DATES: The amendment was approved on September 30, 2011.

ADDRESSES: Electronic copies of Amendment 13 and the Environmental Assessment prepared for this action may be obtained from the NMFS Alaska Region Web site at <http://alaskafisheries.noaa.gov>.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy or Gretchen Harrington, 907-586-7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

NMFS published the notice of availability for Amendment 13 to the FMP on July 11, 2011 (76 FR 40674), with a comment period that ended on September 9, 2011. NMFS received no comments on Amendment 13.

NMFS determined that Amendment 13 to the FMP is consistent with the Magnuson-Stevens Act and other applicable laws and approved Amendment 13 on September 30, 2011. The July 11, 2011, notice of availability (76 FR 40674) contains additional information on this action. No changes to Federal regulations are necessary to implement this FMP amendment.

The Council developed the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), and it was approved by the Secretary on July 26, 1995. The scallop fisheries in the U.S. exclusive economic zone off Alaska are jointly managed according to the FMP and implementing regulations issued by NMFS or the State of Alaska (State). The FMP delegates many management measures for the scallop fisheries to the State with Federal

oversight. Under the FMP, the State sets a guideline harvest level (GHL) for each scallop registration area and manages each fishery inseason to the corresponding GHL. The GHL is an amount of harvest the managers determine acceptable for the upcoming fishing year. The GHL for each scallop fishery is set within the applicable guideline harvest range, which the State has established in regulations.

The FMP covers all scallop stocks off Alaska. Weathervane scallops are currently the only scallop species targeted in commercial fisheries. All other scallop species, including pink, spiny, and rock scallops, are not targeted but occasionally occur as bycatch in the weathervane scallop fisheries.

Amendment 13 was unanimously adopted by the Council in October 2010. Amendment 13 (1) Revises the MSY and OY to include all fishing mortality; (2) specifies that the OFL equals the MSY in the absence of a statewide estimate of spawning biomass for weathervane scallops; (3) specifies an acceptable biological catch (ABC) control rule to account for uncertainty in the OFL; (4) sets the ACL equal to the ABC; (5) specifies accountability measures to prevent catch from exceeding the ACL and to correct for an overage if the ACL is exceeded; and (6) creates an EC category for non-target scallop species. With adoption of Amendment 13, NMFS determines that the FMP complies with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2007.

The Magnuson-Stevens Act establishes, either expressly or by logical extension, four basic requirements that prompted the Council's recommendation to amend the FMP. The Guidelines for National Standard 1 of the Magnuson-Stevens Act (50 CFR 600.310; NS 1 Guidelines) provide guidance to regional fishery management councils about how to satisfy the obligations of the Magnuson-Stevens Act relative to preventing overfishing and establishing an ABC and ACL. The following is a summary of these four requirements.

1. For stocks in the fishery, the FMP must establish a mechanism for specifying an ACL that will prevent overfishing;

2. For each stock or stock complex in the fishery, the FMP must establish an ABC control rule that accounts for relevant sources of scientific uncertainty;

3. The Council's Scientific and Statistical Committee (SSC) must provide the Council with scientific

advice on the ABC control rule and periodic recommendations for specifying the ABC for each stock or stock complex in the fishery; and

4. The FMP must establish accountability measures that prevent exceeding the ACL and correct overages of the ACL if they do occur.

The Council designed Amendment 13 to address these requirements while maintaining the FMP's cooperative State and Federal management structure, to the extent possible. Maximum Sustainable Yield, Optimum Yield, and Overfishing Level.

Previously, the FMP specified an MSY and OY range that reflect only the retained catch in the weathervane scallop fishery. Amendment 13 revises the retained catch MSY and OY range to reflect total catch by encompassing all sources of scallop fishing mortality, including discards in the directed scallop fishery, bycatch in the groundfish fisheries, and mortality associated with research surveys. The statewide weathervane scallop MSY is revised from 1.24 million pounds (562 metric tons) to 1.284 million pounds (582 metric tons) of shucked meats. The OY is estimated statewide with an upper bound of the MSY. Amendment 13 revises the weathervane scallop OY range to be 0 to 1.284 million pounds (582 metric tons) of shucked meats.

Previously, the FMP specified an overfishing control rule for weathervane scallops stocks as a fishing rate in excess of the natural mortality rate. If an estimate of the statewide weathervane scallop spawning biomass becomes available, the overfishing control rule would be applied to that estimate to determine the OFL. An estimate of the statewide weathervane scallop spawning biomass is not currently available, however, which prevents application of the overfishing control rule to annually determine the OFL. Therefore, until such an estimate of spawning biomass is available, Amendment 13 specifies a default OFL equal to the MSY of 1.284 million pounds. The OFL will be set statewide because the best available information indicates that there is one statewide stock of weathervane scallops and the information necessary to set regional OFLs is not available. In practice, the statewide MSY has functioned as the OFL since 1996. The average annual weathervane scallop catch since 1996 has been less than half of the MSY.

Acceptable Biological Catch and Annual Catch Limit

Amendment 13 establishes an ABC control rule and sets the ACL equal to the ABC. Annually, the ABC control

rule will be used to set the maximum ABC for the statewide weathervane scallop stock at 90 percent of the OFL. This 10-percent buffer reduces the risk of overfishing occurring in the weathervane scallop fishery.

The ABC is set to account for the scientific uncertainty in the estimate of the OFL. Lacking a stock assessment model, the sources of scientific uncertainty in the scallop OFL estimate are not directly quantifiable at this time. Therefore, under Amendment 13, scientific uncertainty in the OFL estimate is incorporated in the size of the buffer between the OFL and the ABC.

Scientific and Statistical Committee

The Council's SSC annually establishes the ABC for weathervane scallops through the following process. The Scallop Plan Team meets shortly after the scallop fishing season concludes to compile the Stock Assessment and Fishery Evaluation (SAFE) report. The SAFE includes stock assessments, fishery information, and reference points. The Scallop Plan Team will evaluate whether the total catch exceeded the ACL in the previous fishing season. The Scallop Plan Team will then calculate the maximum ABC using the ABC control rule for the upcoming fishing season. The Scallop Plan Team may recommend that the SSC set an ABC lower than the maximum ABC, but it should provide an explanation for such a recommendation.

The SSC will then review the SAFE and recommendations from the Scallop Plan Team. The SSC will set a statewide ABC for the directed weathervane scallop fishery prior to the beginning of the fishing season. The SSC may set an ABC lower than the maximum ABC calculated using the ABC control rule, but it must provide an explanation for why a lower ABC was set.

Accountability Measures

Amendment 13 establishes AMs to prevent ACLs from being exceeded and to correct overages of the ACL if they do occur. First, under Amendment 13, the State establishes the annual GHL for each scallop management area at a level sufficiently below the ACL so that the sum of the directed scallop fishery removals and estimated discard mortality in directed scallop and groundfish fisheries does not exceed the ACL.

Second, NMFS expects that the inseason management measures that prevent catch from exceeding the GHL, and have been a part of management of the weathervane scallop fishery since the inception of this FMP, will also prevent catch from exceeding the ACL. State management requires 100-percent observer coverage of all vessels in the weathervane scallop fishery. Fishery observers provide inseason data on catch and bycatch. Managers monitor inseason fisheries landings and observer data, and have the authority to close a fishery inseason to prevent catch from exceeding the GHL.

Third, if total catch does exceed the ACL, State managers will account for the overage through a downward adjustment to the GHL in the following season by an amount sufficient to remedy the biological consequences of the overage.

Ecosystem Component

Under the NS 1 Guidelines, all stocks in an FMP are considered to be "in the fishery," unless they are identified as EC species through an FMP amendment process. Council review of the FMP determined that weathervane scallops are "in the fishery" as they are targeted and retained for sale. Amendment 13 establishes an EC category in the FMP that contains all non-targeted scallop species, including pink or reddish scallops, spiny scallops, and rock scallops.

Non-targeted scallops have been managed under the scallop FMP but are not generally retained in commercial scallop fisheries off Alaska. These non-target scallop species occupy habitats at different depths than the targeted weathervane scallops; therefore, NMFS does not anticipate that incidental catch in the weathervane scallop fishery would pose a serious risk to these stocks. The best available scientific information does not indicate that any of the non-target scallop species are overfished, subject to overfishing or approaching an overfished condition, or likely to become overfished if placed in the EC category.

According to the NS 1 Guidelines, no reference points are required for EC species; however, under Amendment 13, these species will be monitored to ensure they are not targeted and that incidental catch does not reach a point where there are concerns for the sustainability of these stocks. Harvest limits and related management measures would be developed and implemented prior to developing a fishery for any of these species.

An Environmental Assessment was prepared for Amendment 13 that provides detailed descriptions of the scallop fishery management background, the purpose and need for action, the management alternatives evaluated to address this action, and the environmental, social, and economic impacts of the alternatives (see **ADDRESSES**).

Response to Comments

NMFS did not receive any comments on Amendment 13.

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

Dated: September 30, 2011.

Eric C. Schwaab,

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

[FR Doc. 2011-25908 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register

Vol. 76, No. 194

Thursday, October 6, 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 ENERGY

10 CFR Part 430

[Docket Number EERE-2011-BT-TP-0007]

RIN 1904-AC44

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers (Standby Mode and Off Mode); Correction

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

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This notice corrects the ADDRESSES section of the notice of proposed rulemaking (NOPR) which published in the **Federal Register** on September 13, 2011, regarding the Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers. This correction provides the appropriate E-mail address whereby interested parties may submit comments.

FOR FURTHER INFORMATION CONTACT:

Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-7892. E-mail: Mohammed.Khan@ee.doe.gov.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC, 20585-0121. Telephone: (202) 586-5827. E-mail: Eric.Stas@hq.doe.gov.

Corrections

In FR Doc. 2011-23286, published in the **Federal Register** on September 13, 2011 (76 FR 56339) make the following correction in the ADDRESSES section, on page 56339, in the third column after "2. E-mail:" the e-mail address should read "*FurnaceBoiler-IEC-2011-TP@ee.doe.gov*"

Issued in Washington, DC, on September 29, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011-25819 Filed 10-5-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[PS-AIR-21.50-01]

Policy Statement: Inappropriate Design Approval Holder (DAH) Restrictions on the Use and Availability of Instructions for Continued Airworthiness (ICA)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed policy statement; notice of availability and request for public comments.

SUMMARY: This document announces the availability of and request for public comments on the proposed policy statement addressing the action taken by some Design Approval Holders (DAH) restricting the availability, distribution, and use of Instructions (ICA) through contractual agreements or restrictive language in the actual ICA.

DATES: Comments must be received on or before December 5, 2011.

ADDRESSES: Send all comments on the proposed Policy Statement: PS-AIR-21.50-01, Inappropriate DAH Restrictions on the Use and Availability of ICA to: Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 S. MacArthur Blvd., ARB—Room 308, Oklahoma City, OK 73169. ATTN: John Cerra, AIR-110. You may electronically submit comments to the following Internet address: john.cerra@faa.gov. Include in the subject line of your message the following: PS-AIR-21.50-01, Inappropriate DAH Restrictions on the Use and Availability of ICA.

FOR FURTHER INFORMATION CONTACT: John Cerra, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Airworthiness Procedures Branch, AIR-113, 6500 S.

MacArthur Blvd., ARB—Room 308, Oklahoma City, OK 73169. Telephone (405) 954-7075, FAX (405) 954-2209, or e-Mail at: john.cerra@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed policy addressing the actions of DAHs restricting the availability, distribution, and use of ICAs, by submitting such written data, views, or arguments to the address or FAX number listed above. Your comments should specify "Policy Statement: PS-AIR-21.50-01, Inappropriate DAH Restrictions on the Use and Availability of ICA," in the subject line. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final document.

Background

Title 14 of the Code of Federal Regulations (14 CFR) 21.50(b) requires the holder of a design approval to furnish at least one set of complete Instructions for Continued Airworthiness (ICA) to the owner of each type aircraft, aircraft engine, or propeller upon its delivery, or upon issuance of the first standard airworthiness certificate. Recent questions have emerged regarding requirements for a design approval holder (DAH) to make ICA available to a maintenance provider/repair station. It is not acceptable for a DAH to limit the distribution of ICA by imposing contractual requirements or adding restrictive language that would control the use of ICA by an owner/operator with respect to the maintenance of its product.

How To Obtain Copies

You may get an electronic copy of the policy statement PS-AIR-21.50-01, Inappropriate DAH Restrictions on the Use and Availability of ICA, via the Internet at: http://www.faa.gov/aircraft/draft_docs, and then select Policy, or by contacting the person named in **FOR FURTHER INFORMATION CONTACT**.

Susan J.M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 2011-25883 Filed 10-5-11; 8:45 am]

BILLING CODE 4910-13-P

POSTAL SERVICE

39 CFR Part 111

Express Mail Domestic Postage Refund Policy and Waiver of Signature

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service is proposing to revise Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®) throughout various sections to modify the policy for filing claims for domestic Express Mail® refunds from 90 days to 30 days after the date of mailing, and to change the Express Mail “waiver of signature” standard for domestic items by obtaining an addressee’s signature only when the mailer selects the “signature required” option on the Express Mail label.

DATES: We must receive your comments on or before November 7, 2011.

ADDRESSES: Mail or deliver written comments to the manager, Product Classification, U.S. Postal Service, 475 L’Enfant Plaza, SW., Room 4446, Washington DC 20260–5015. You may inspect and photocopy all written comments at USPS® Headquarters Library, 475 L’Enfant Plaza, SW., 11th Floor N, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments concerning the proposed rule, containing the name and address of the commenter, may be sent to: MailingStandards@usps.gov, with a subject line of “Express Mail Refund Policy and Waiver of Signature.” Faxed comments are not accepted.

FOR FURTHER INFORMATION CONTACT: Lisa Bobb-Semple at 202–268–3391 or Garry Rodriguez at 202–268–7281.

SUPPLEMENTARY INFORMATION:

The USPS proposes to align the refund policy for domestic Express Mail with the industry standard for overnight products by requiring all claims for postage refunds to be filed within 30 days of the date of mailing instead of the current filing timeline of 90 days.

Additionally, the USPS proposes to make the following change in conjunction with the implementation of the redesigned Express Mail Label 11–B and Label 11–F, Express Mail Post Office to Addressee.

The Postal Service proposes to modify Express Mail Label 11–B and Label 11–F, by eliminating the “waiver of signature” check box. A mailer sending an Express Mail item, and requiring an addressee’s signature, must select the new “signature required” box on the new Express Mail label dated January 2012. If the box is not selected, the

Postal Service will not obtain a signature from the addressee upon delivery of Express Mail Next Day Delivery and Express Mail Second Day Delivery items. Instead, the carrier will scan the barcode and leave the item in the customer’s mail receptacle or other secure location to indicate delivery.

Express Mail Hold For Pickup service always requires the signature of the addressee or addressee’s agent. Therefore, the Express Mail Label 11–HFPU, Express Mail Hold For Pickup, will not be revised.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), as follows:

* * * * *

100 Retail Letters, Cards, Flats, and Parcels

* * * * *

110 Express Mail

113 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

[Revise the text of 4.1 by combining the introductory text and text of item a and deleting item b in its entirety as follows:]

Customers may access delivery information at http://www.usps.com or by calling 1–800–222–1811 toll-free and providing the article number. A delivery record, including the addressee’s signature, will be faxed or mailed upon request. See 115.2.2 for more

information regarding the addressee’s signature.

* * * * *

115 Express Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the first sentence of 2.2 as follows:]

For editions of Express Mail Label 11–B or Label 11–F, Express Mail Post Office to Addressee, printed before January, 2012, a mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee’s agent by checking and signing the waiver of signature on Label 11–B or Label 11–F, or indicating waiver of signature is requested on single-ply commercial label. * * *

[ReNUMBER current item 2.3 as 2.4 and add new 2.3 as follows:]

2.3 Signature Required

For editions of Express Mail Label 11–B or Label 11–F, Express Mail Post Office to Addressee, printed on or after January, 2012, a mailer sending an Express Mail item, and requiring the addressee’s signature, must instruct USPS to obtain a signature from the addressee upon delivery of the item by checking the “signature required” box on Label 11–B or Label 11–F. If the signature required box is selected, an image of the signature will be provided to mailers when accessing delivery information. A mailer must select signature service for Express Mail Custom Designed Service, Express Mail COD, or Express Mail with additional insurance.

* * * * *

200 Commercial Letters and Cards

* * * * *

210 Express Mail

213 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

[Revise the text of current item 4.1 by combining the introductory text and the text of item a, and deleting item b in its entirety as follows:]

Customers may access delivery information at http://www.usps.com or by calling 1–800–222–1811 toll-free and

providing the article number. A delivery record, including the addressee's signature, will be faxed or mailed upon request. See 215.2.2 for more information regarding the addressee's signature.

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215 Mail Preparation

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2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the first sentence of 2.2 as follows:]

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed before January, 2012, a mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11-B or Label 11-F, or indicating waiver of signature is requested on single-ply commercial label. * * *

[Re number 2.3 as 2.4 and add new 2.3 as follows:]

2.3 Signature Required

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed on or after January, 2012, a mailer sending an Express Mail item, *and requiring the addressee's signature*, must instruct USPS to obtain a signature from the addressee upon delivery of the item by checking the "signature required" box on Label 11-B or Label 11-F. If the signature required box is selected, an image of the signature will be provided when accessing delivery information.

* * * * *

3.0 Express Mail Custom Designed

* * * * *

[Revise the title and text of 3.2 as follows:]

3.2 Signature Required

The addressee's (or agent's) signature is required for all Express Mail Custom Designed service.

* * * * *

300 Commercial Flats

* * * * *

310 Express Mail

313 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

[Revise the current text of 4.1 by combining the introductory text and the text of item a, and deleting item b in its entirety as follows:]

Customers may access delivery information at <http://www.usps.com> or by calling 1-800-222-1811 toll-free and providing the article number. A delivery record, including the addressee's signature, will be faxed or mailed upon request. See 315.2.2 for more information regarding the addressee's signature.

* * * * *

315 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the first sentence of 2.2 as follows:]

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed before January, 2012, a mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11-B or Label 11-F, or indicating waiver of signature is requested on single-ply commercial label. * * *

[Re number current item 2.3 as 2.4 and add new 2.3 as follows:]

2.3 Signature Required

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed on or after January, 2012, a mailer sending an Express Mail item, *and requiring the addressee's signature*, must instruct USPS to obtain a signature from the addressee upon delivery of the item by checking the "signature required" box on Label 11-B or Label 11-F. If the signature required box is selected, an image of the signature will be provided when accessing delivery information.

* * * * *

3.0 Express Mail Custom Designed

* * * * *

[Revise the title and text of 3.2 as follows:]

3.2 Signature Required

The addressee's (or agent's) signature is required for all Express Mail Custom Designed service.

* * * * *

400 Commercial Parcels

* * * * *

410 Express Mail

413 Prices and Eligibility

* * * * *

4.0 Service Features of Express Mail

4.1 General

[Revise the current text of 4.1 by combining the introductory text and text of item a, and deleting item b in its entirety as follows:]

Customers may access delivery information at <http://www.usps.com> or by calling 1-800-222-1811 toll-free and providing the article number. A delivery record, including the addressee's signature, will be faxed or mailed upon request. See 415.2.2 for more information regarding the addressee's signature.

* * * * *

415 Mail Preparation

* * * * *

2.0 Express Mail Next Day and Second Day

* * * * *

2.2 Waiver of Signature

[Revise the first sentence of 2.2 as follows:]

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed before January, 2012, a mailer sending an Express Mail item may instruct the USPS to deliver an Express Mail Next Day Delivery or Express Mail Second Day Delivery item without obtaining the signature of the addressee or the addressee's agent by checking and signing the waiver of signature on Label 11-B or Label 11-F, or indicating waiver of signature is requested on single-ply commercial label. * * *

[Re number 2.3 as 2.4 and add new 2.3 as follows:]

2.3 Signature Required

For editions of Express Mail Label 11-B or Label 11-F, *Express Mail Post Office to Addressee*, printed on or after January, 2012, a mailer sending an Express Mail item, *and requiring the addressee's signature*, must instruct USPS to obtain a signature from the addressee upon delivery of the item by checking the "signature required" box on Label 11-B or Label 11-F. If the

signature required box is selected, an image of the signature will be provided when accessing delivery information.
* * * * *

3.0 Express Mail Custom Designed

* * * * *

[Revise the title and text of 3.2 as follows:]

3.2 Signature Required

The addressee's (or agent's) signature is required for all Express Mail Custom Designed service.

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Extra Services for Express Mail

1.1 Available Services

* * * * *

1.1.6 COD

[Revise 1.1.6 by adding a new last sentence as follows:]

* * * A signature is required for COD service.

1.1.7 Insurance and Indemnity

Express Mail is insured against loss, damage, or missing contents, subject to these standards:

* * * * *

[Revise item 1.1.7b as follows:]

b. All Express Mail signed for by the addressee or the addressee's agent constitutes a valid delivery, and no indemnity for loss is paid. For Express Mail items not requiring a signature, a delivered scan event constitutes a valid delivery, and no indemnity for loss is paid.

* * * * *

1.1.8 Additional Insurance

[Revise the last sentence of 1.1.8 as follows:]

* * * When "signature required" service is not requested, or when "waiver of signature" is requested additional insurance is not available.

* * * * *

12.0 Collect on Delivery (COD)

* * * * *

12.2 Basic Information

* * * * *

12.2.5 Express Mail COD

[Revise the first sentence of 12.2.5 as follows:]

Any article sent COD also may be sent by Express Mail next day and second day service when a signature is requested. * * *

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

11.0 Cigarettes and Smokeless Tobacco

* * * * *

11.5 Exception for Business/Regulatory Purposes

* * * * *

11.5.2 Mailing

* * * All mailings under the business/regulatory purposes exception must:

[Revise item 11.5.2a as follows:]

a. Be entered in a face-to-face transaction with a postal employee as Express Mail with Hold For Pickup service (carrier pickup services not permitted);

* * * * *

11.6 Exception for Certain Individuals

* * * * *

11.6.2 Mailing

No customer may send or cause to be sent more than 10 mailings under this exception in any 30-day period. Each mailing under the certain individuals exception must:

[Revise item 11.6.2a as follows:]

a. Be entered as Express Mail with an Adult Signature extra service (see 503.8.0), or Express Mail with Hold For Pickup service (carrier pickup services not permitted); unless shipped to APO/FPO/DPO addresses under 11.6.4.

* * * * *

11.7 Consumer Testing Exception

* * * * *

11.7.2 Mailing

* * * Mailings must be tendered under the following conditions:

* * * * *

b. All mailings under the consumer testing exception:

[Revise 11.7.2b1 as follows:]

1. Must be entered in face-to-face transactions with postal employees as Express Mail with Hold For Pickup service requested (carrier pickup services not permitted);

* * * * *

604 Postage Payment Methods

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9.0 Refunds and Exchanges

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9.5 Express Mail Postage Refund

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9.5.2 Conditions for Refund

[Revise 9.5.2 to change the refund request days from 90 to 30 days, and consolidate the text in the introductory paragraph and items a and b as follows:]

A postage refund request must be made within 30 days after the date of mailing. Except as provided in 114.2.0, 214.3.0, 314.3.0, and 414.3.0 a mailer may file for a postage refund only if the item was not delivered, delivery was not attempted, or if the item was not made available for claim by the delivery date and time specified at the time of mailing.

9.5.3 Refunds Not Given

[Revise the DMM references in 9.5.3 to include 214.3.0 and 314.3.0 as follows:]

A postage refund will not be given if the guaranteed service was not provided due to any of the circumstances in 114.2.0, 214.3.0, 314.3.0, and 414.3.0.

* * * * *

700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

* * * * *

2.0 Overseas Military Mail

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2.6 Express Mail Military Service (EMMS)

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[Revise the title and text of 2.6.10 as follows:]

2.6.10 Signature Required

A signature is required for Express Mail Military Service.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if our proposal is adopted.

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

[FR Doc. 2011-25803 Filed 10-5-11; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0761; FRL-9475-9]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from Motor Vehicle and Mobile Equipment Coating Operations and Adhesives and Sealants. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 7, 2011.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0356, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an “anonymous access” system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either

location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrienne Borgia, EPA Region IX, (415) 972-3576, borgia.adrienne@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, we, us and our refer to EPA.

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- I. The State’s Submittal
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 - How is EPA evaluating the rules?
 - A. Do the rules meet the evaluation criteria?
 - B. EPA Recommendations to Further Improve the Rules
 - C. Public Comment and Final Action
- III. Statutory and Executive Order Reviews

I. The State’s Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local	Rule	Rule title	Amended	Submitted
SJVUAPCD	4612	Motor Vehicle and Mobile Equipment Coating Operations	10/21/10	4/5/11
SJVUAPCD	4653	Adhesives and Sealants	9/16/10	4/5/11

On 5/6/2011, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved a version of SJVUAPCD Rule 4612 into the SIP on 1/19/2010. We approved a version of SJVUAPCD Rule 4653 into the SIP on 10/15/2009.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. In general, these rules control the VOC emissions by limiting the VOCs of commercial coatings and solvents.

SJVUAPCD Rule 4612 is revised to implement RACT requirements as

recommended in the California Air Resources Board’s (CARB) Suggested Control Measure (SCM) titled, “Suggested Control Measure for Automotive Coatings.”

SJVUAPCD Rule 4653 is revised to implement RACT requirements as recommended in the CTG, “Control Techniques Guidelines for Miscellaneous Industrial Adhesives”, EPA-453/R-08-005 and CARB’s RACT/BARCT guidance titled, “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants.”

SJVUAPCD’s 2009 RACT SIP Demonstration (April 16, 2009) was used to help evaluate the RACT requirements for both rules.

EPA’s technical support documents (TSDs) have more information about these rules.

II. EPA’s Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see section 182(a)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 4602 and 4603 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, EPA, May 25, 1988 (the Bluebook).

3. Guidance Document for Correcting Common VOC & Other Rule Deficiencies, EPA Region 9, August 21, 2001 (the Little Bluebook).

4. CARB's Suggested Control Measure (SCM) titled, "Suggested Control Measure for Automotive Coatings." October 20, 2005.

5. Control Techniques Guideline (CTG) for "Miscellaneous Industrial Adhesives", EPA-453/R-08-005, September 2008.

6. CARB's RACT/Best Available Retrofit Control Technology (BARCT) guidance titled, "Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants," December 1998.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

The TSDs describe additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rules.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: September 28, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2011-25879 Filed 10-5-11; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2011-0800; FRL-9476-1]

Revisions to the California State Implementation Plan, California Air Resources Board—Consumer Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California Air Resources Board portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from consumer products. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by November 7, 2011.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2011-0800, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
2. *E-mail:* steckel.andrew@epa.gov.
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: Generally, documents in the docket for this action are available

electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at <http://www.regulations.gov>, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business

hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, EPA Region IX, (415) 947-4122, tong.stanley@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the State and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Regulation	Regulation title	Amended	Submitted
California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5—Consumer Products.	Article 2—Consumer Products	08/06/10	01/28/11

On July 28, 2011, the submittal for California Code of Regulations, Title 17, Division 3, chapter 1, subchapter 8.5—Consumer Products was deemed by operation of law to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Article 2 of CARB’s Consumer Products regulation into the SIP on May 12, 2011 (76 FR 27613). CARB adopted revisions to the SIP-approved version on August 6, 2010 and submitted them to us on January 28, 2011.

C. What is the purpose of the submitted rule revision?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions.

The California Health and Safety Code (Section 41712(b)) requires CARB to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds emitted by consumer products if the state board determines that adequate data exist to establish both of the following:

(1) The regulations are necessary to attain state and federal ambient air quality standards.

(2) The regulations are commercially and technologically feasible and necessary.

CARB’s current amendments to their consumer products regulations establishes lower VOC limits for Double Phase Aerosol Air Fresheners and establishes new limits for Multi-purpose

Solvents and Paint Thinners. Multi-purpose Solvents and Paint Thinners are subject to a two tier limit. The first tier establishes a 30 weight percent limit effective December 31, 2010. The second tier is not included in the submitted SIP revision.¹

The amendments also: (1) Add new definitions for: Aromatic compound, artists solvent/thinner, high temperature coating, industrial maintenance coating, and zinc-rich primer; (2) modify the definitions for ASTM, Multi-purpose Solvent, Paint Thinner, and Automotive windshield washer fluid—diluted and premixed; (3) prohibit the use of the toxic air contaminants methylene chloride, perchloroethylene, or trichloroethylene in Multi-purpose Solvents and Paint Thinners; (4) prohibit the use of compounds with a global warming potential (GWP) of 150 or greater in Multi-purpose Solvents and Paint Thinners; (5) temporarily prohibits flammable or extremely flammable products from using generic product names such as “Multi-purpose Solvent”, “Paint Thinner”, or “Paint Clean-up”; (6) prohibit the sale or manufacture for use in California Multi-purpose Solvents and Paint Thinners containing greater than one percent by weight of “aromatic compounds”; and (7) require responsible parties to report to CARB specific progress towards meeting the second tier limits for Multi-purpose Solvents and Paint Thinners by June 30, 2012.

Generally, CARB received support for their amendments from both industry and environmental organizations,

¹ Robert D. Fletcher (CARB), letter to Jared Blumenfeld (EPA Region IX), January 28, 2011, submitting the August 6, 2010 amendments to California’s Consumer Products Regulation.

although there were comments from industry about the technological challenges posed by limits on the aromatic compound content of Multi-purpose Solvents and Paint Thinners. In response to these comments, CARB noted in its Final Statement of Reasons for Rulemaking that there is a potential for adverse ozone impact if significant amounts of aromatic compounds are used in reformulated products.

CARB estimates these amendments will achieve 8.4 tons per day (tpd) of VOC reductions Statewide in 2010 and 10.4 tpd in 2012. These values do not include emissions or reductions from the Multi-purpose Solvents and Paint Thinners categories in the South Coast Air Basin because South Coast adopted its own rule for Multi-purpose Solvents and Paint Thinners prior to CARB’s action. EPA’s technical support document (TSD) has more information about this rule.

II. EPA’s Evaluation and Action

A. How is EPA evaluating the rule?

CAA section 110(a)(2)(A) requires that regulations submitted to EPA for approval into a SIP must be clear and legally enforceable. CAA section 110(l) prohibits EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) or any other applicable requirement of the CAA. California’s consumer products regulation covers VOC area sources and not stationary sources. In 1998 EPA promulgated a national rule to regulate VOC emissions from consumer products (63 FR 48831, September 11, 1998). EPA’s national rule largely parallels CARB’s earlier SIP-approved consumer products rule. The

amendment from CARB that we are proposing to approve today contains a more stringent limit for Double Phase Aerosol Air Fresheners than EPA's 1998 national rule and also covers two new consumer product categories, Multi-purpose Solvents and Paint Thinners. CARB points out that although emissions from individual consumer products may not seem large, collectively, they represent a significant source of emissions when taking into account 38 million California residents use these products and that given the severity of air pollution in California, "dramatic emission reductions from all sources contributing to ground-level ozone are necessary".² CARB estimates that ozone pollution damage to crops is estimated to cost agriculture over \$500 million dollars annually.³

Rules, guidance and policy documents that we use to evaluate enforceability and SIP revisions include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988, revised January 11, 2000 (the Bluebook).
2. State Implementation Plans, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498; April 16, 1992).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. 40 CFR 59 subpart C, National Volatile Organic Compound Emission Standards for Consumer Products.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant requirements and guidance regarding enforceability and SIP revisions. CARB's Consumer Products regulation contains more stringent limits and covers more than twice the number of categories covered by EPA's national Consumer Products rule. As requested by CARB, our proposed action does not cover the second tier VOC emission limits for Multi-purpose Solvents and Paint Thinners. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it under section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days.

² Proposed Amendments to the California Consumer Products Regulations Initial Statement of Reasons. Release Date: August 7, 2009. IV-30. <http://www.arb.ca.gov/regact/2009/cpmthd310/cpmthdisor.pdf>.

³ Ibid. IV-21.

Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely 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 Clean Air Act; and
 - Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, this proposed action does not have tribal implications as specified

by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: September 28, 2011.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 2011-25886 Filed 10-5-11; 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; Internal Agency Docket No. FEMA-B-1222]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before January 4, 2012.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at

the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1222, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) *Luis.Rodriguez3@fema.dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-4064, or (e-mail) *Luis.Rodriguez3@fema.dhs.gov*.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean

that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

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

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

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Clay County, Florida, and Incorporated Areas				
Black Creek Tributary 1	Approximately 0.6 mile downstream of Russell Road	None	+9	Unincorporated Areas of Clay County.
Black Creek Tributary 2	Approximately 0.5 mile upstream of Russell Road	None	+24	Unincorporated Areas of Clay County.
	Approximately 740 feet downstream of Russell Road	None	+10	
Bradley Creek Tributary 1	Approximately 0.7 mile upstream of Callie Lane	None	+33	Unincorporated Areas of Clay County.
	Approximately 270 feet upstream of the Bradley Creek confluence.	None	+20	
Buckeys Creek	Approximately 0.5 mile upstream of the Bradley Creek confluence.	None	+47	City of Green Cove Springs, Unincorporated Areas of Clay County.
	Approximately 1,500 feet upstream of the Governors Creek confluence.	None	+5	
Bush Creek	Approximately 1.1 miles upstream of the Governors Creek confluence.	None	+18	Unincorporated Areas of Clay County.
	Approximately 0.4 mile downstream of South County Road 209.	None	+4	
Bush Creek Tributary 1	Approximately 1,550 feet upstream of South County Road 209.	None	+16	Unincorporated Areas of Clay County.
	Approximately 735 feet downstream of South County Road 209.	None	+4	
Clay Branch	Approximately 1.0 mile upstream of South County Road 209.	None	+18	Unincorporated Areas of Clay County.
	Approximately 0.4 mile downstream of Rivers Road ...	None	+4	
	Approximately 0.4 mile upstream of Rivers Road	None	+28	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Doctors Lake Tributary 2	Approximately 630 feet upstream of the Doctors Lake confluence.	None	+4	Unincorporated Areas of Clay County.
Doctors Lake Tributary 5	Approximately 1,150 feet upstream of Moody Avenue	None	+56	Unincorporated Areas of Clay County.
	At the upstream side of Salt Marsh Lane	None	+4	
Greens Creek	Approximately 1,810 feet upstream of Sandy Springs Drive.	None	+16	Unincorporated Areas of Clay County.
	At the South Fork Black Creek confluence	None	+40	
Grog Creek	Approximately 1.7 miles upstream of the South Fork Black Creek confluence.	None	+43	Unincorporated Areas of Clay County.
	Approximately 0.5 mile upstream of Blanding Boulevard.	None	+22	
Grog Creek Tributary 1	Approximately 0.6 mile upstream of Blanding Boulevard.	None	+23	Unincorporated Areas of Clay County.
	Approximately 1,160 feet downstream of Blanding Boulevard.	None	+14	
Little Black Creek	At the downstream side of Blanding Boulevard	None	+15	Unincorporated Areas of Clay County.
	Approximately 0.4 mile downstream of Cheswick Oak Avenue.	None	+33	
Little Black Creek Tributary 1	Approximately 430 feet upstream of Cheswick Oak Avenue.	None	+51	Unincorporated Areas of Clay County.
	Approximately 875 feet downstream of Trail Ridge Road.	None	+40	
Little Black Creek Tributary 1A.	Approximately 0.6 mile upstream of Tynes Boulevard	None	+79	Unincorporated Areas of Clay County.
	Approximately 650 feet downstream of Tynes Boulevard.	None	+36	
Little Black Creek Tributary 2	Approximately 0.4 mile upstream of Pine Ridge Parkway.	None	+78	Unincorporated Areas of Clay County.
	Approximately 1.0 mile upstream of the Little Black Creek confluence.	None	+17	
Little Black Creek Tributary 3	Approximately 2.4 miles upstream of the Little Black Creek confluence.	None	+57	Unincorporated Areas of Clay County.
	Approximately 0.9 mile downstream of Branan Field Road.	None	+13	
Little Black Creek Tributary 4	Approximately 0.5 mile upstream of Browns Road	None	+73	Unincorporated Areas of Clay County.
	Approximately 1,485 feet downstream of Fern Avenue	None	+13	
Lucy Branch	Approximately 150 feet upstream of Jefferson Avenue	None	+67	Unincorporated Areas of Clay County.
	Approximately 85 feet upstream of Doctors Lake Drive.	None	+4	
Mill Log Creek	Approximately 1,875 feet upstream of Blanding Boulevard.	None	+24	Unincorporated Areas of Clay County.
	Approximately 1.3 miles downstream of Russell Road	None	+6	
Mill Log Creek Tributary 1	Approximately 1.3 miles upstream of Sandridge Road	None	+71	Unincorporated Areas of Clay County.
	At the Mill Log Creek confluence	None	+6	
Multiple Ponding Areas	Approximately 0.9 mile upstream of Russell Road	None	+27	Unincorporated Areas of Clay County.
	Area bound by Piedmont Manor Drive to the north, Cheswick Oak Avenue to the east, Canopy Oaks Drive to the south, and Oakleaf Village Parkway to the west.	None	+61	
Multiple Ponding Areas	Area bound by Wandering Oaks Drive to the north, Country Club Boulevard to the east, Blanding Boulevard to the south, and Oakleaf Village Parkway to the west.	None	+44	Unincorporated Areas of Clay County.
	Area bound by the Duval County boundary to the north, Willow Green Drive to the east, Oakside Drive to the south, and Oakleaf Village Parkway to the west.	None	+66	
Multiple Ponding Areas	Area bound by Canopy Oaks Drive to the north, Cherry Grove Road to the east, Blanding Boulevard to the south, and Waterford Oaks Drive to the west.	None	+40	Unincorporated Areas of Clay County.

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Multiple Ponding Areas	Area bound by Canopy Oaks Drive to the north, Country Club Boulevard to the east, Blanding Boulevard to the south, and Oakleaf Village Parkway to the west.	None	+47	Unincorporated Areas of Clay County.
Multiple Ponding Areas	Area bound by the Duval County boundary to the north, Wakemont Drive to the east, and Oakleaf Village Parkway to the south and west.	None	+69	Unincorporated Areas of Clay County.
Multiple Ponding Areas	Area bound by Piedmont Manor Drive to the north, Wakemont Drive to the east, and Laurelwood Drive to the south and west.	None	+67	Unincorporated Areas of Clay County.
Multiple Ponding Areas	Area bound by Thorncrest Drive to the north, Brier Rose Lane to the east, Stonebrier Ridge Drive to the south, and Wakemont Drive to the west.	None	+64	Unincorporated Areas of Clay County.
Multiple Ponding Areas	Area bound by Oakside Drive to the north, Wandering Oaks Drive to the east, Crane Hill Court to the south, and Oakleaf Village Parkway to the west.	None	+57	Unincorporated Areas of Clay County.
Multiple Ponding Areas	Area bound by the Duval County boundary to the north, Wakemont Drive to the east, Oakside Drive to the south, and Oakleaf Village Parkway to the west.	None	+68	Unincorporated Areas of Clay County.
North Fork Black Creek Tributary 1.	At the downstream side of Long Bay Road	None	+21	Unincorporated Areas of Clay County.
	Approximately 0.7 mile upstream of Long Bay Road ..	None	+58	
North Fork Black Creek Tributary 1A.	At the downstream side of Long Bay Road	None	+57	Unincorporated Areas of Clay County.
	Approximately 0.5 mile upstream of Long Bay Road ..	None	+76	
North Fork Black Creek Tributary 2.	Approximately 550 feet upstream of the North Fork Black Creek confluence.	None	+22	Unincorporated Areas of Clay County.
	Approximately 1.0 mile upstream of the North Fork Black Creek confluence.	None	+36	
North Prong Double Branch Tributary 1.	Approximately 920 feet downstream of Branan Field Road.	None	+56	Unincorporated Areas of Clay County.
	Approximately 1,860 feet upstream of Branan Field Road.	None	+66	
Ortega River Tributary	Approximately 320 feet downstream of Wells Road	None	+6	Unincorporated Areas of Clay County.
	Approximately 0.5 mile upstream of Crossing Boulevard.	None	+12	
Peters Branch	At the downstream side of U.S. Route 17	None	+13	Unincorporated Areas of Clay County.
	Approximately 1,290 feet upstream of Eagle Harbor Parkway.	None	+18	
Peters Creek	Approximately 1.9 miles downstream of West State Road 16.	None	+15	Unincorporated Areas of Clay County.
	Approximately 1.3 miles downstream of West State Road 16.	None	+19	
Peters Creek Tributary 1	Approximately 200 feet upstream of the Peters Creek confluence.	None	+8	Unincorporated Areas of Clay County.
	Approximately 120 feet downstream of Feed Mill Road.	None	+84	
Peters Creek Tributary 2	Approximately 225 feet upstream of the Peters Creek confluence.	None	+11	Unincorporated Areas of Clay County.
	Approximately 0.9 mile upstream of the Peters Creek confluence.	None	+70	
Polander Branch Tributary 1	Approximately 235 feet upstream of the Polander Branch confluence.	None	+26	Unincorporated Areas of Clay County.
	Approximately 1,560 feet upstream of the Polander Branch confluence.	None	+69	
Ponding Area	Area bound by Oakside Drive to the north, Bellshire Drive to the east, and Oakleaf Village Parkway to the south and west.	None	+67	Unincorporated Areas of Clay County.
Ponding Area	Area bound by Whispering Willow Way to the north, Country Club Boulevard to the east, Blanding Boulevard to the south, and Oakleaf Village Parkway to the west.	None	+41	Unincorporated Areas of Clay County.

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Ponding Area	Area bound by Canopy Oaks Drive to the north, Country Club Boulevard to the east, Waterford Oaks Drive to the south, and Akron Oaks Drive to the west.	None	+55	Unincorporated Areas of Clay County.
Ponding Area	Area bound by Wakemont Drive to the north, Hanging Moss Drive to the east, Blanding Boulevard to the south, and Oakleaf Village Parkway to the west.	None	+49	Unincorporated Areas of Clay County.
South Fork Black Creek	Approximately 500 feet upstream of West State Road 16.	None	+39	Unincorporated Areas of Clay County.
	Approximately 1.0 mile upstream of West State Road 16.	None	+40	
South Fork Black Creek Tributary 1.	Approximately 0.4 mile downstream of County Road 218.	None	+55	Town of Penney Farms, Unincorporated Areas of Clay County.
	Approximately 1,500 feet upstream of West State Road 16.	None	+86	
South Fork Black Creek Tributary 2.	Approximately 390 feet downstream of Black Creek Drive.	None	+17	Unincorporated Areas of Clay County.
	Approximately 1.2 miles upstream of Black Creek Drive.	None	+68	
South Fork Black Creek Tributary 3.	Approximately 440 feet downstream of Black Creek Drive.	None	+18	Unincorporated Areas of Clay County.
South Fork Black Creek Tributary 4.	Approximately 0.8 mile upstream of Thunder Road	None	+84	Unincorporated Areas of Clay County.
	Approximately 0.8 mile upstream of Thunder Road	None	+69	
South Fork Black Creek Tributary 7.	Approximately 1.5 miles upstream of Thunder Road ..	None	+81	Unincorporated Areas of Clay County.
	At the South Fork Black Creek confluence	None	+39	
South Prong Double Branch	Approximately 900 feet upstream of Reinhold Tree Farm Road.	None	+65	Unincorporated Areas of Clay County.
	Approximately 0.6 mile downstream of Oakleaf Plantation Parkway.	None	+59	
St. Johns River Tributary 1 ...	Approximately 0.6 mile upstream of Oakleaf Plantation Parkway.	None	+77	Unincorporated Areas of Clay County.
	Approximately 0.5 mile upstream of U.S. Route 17	None	+11	
St. Johns River Tributary 3 ...	Approximately 1.0 mile upstream of U.S. Route 17	None	+28	Unincorporated Areas of Clay County.
	At the downstream side of South County Road 209 ...	None	+4	
St. Johns River Tributary 3A	Approximately 1,030 feet upstream of South County Road 209.	None	+7	Unincorporated Areas of Clay County.
	Approximately 430 feet downstream of South County Road 209.	None	+4	
St. Johns River Tributary 4A East.	Approximately 0.6 mile upstream of South County Road 209.	None	+17	Unincorporated Areas of Clay County.
	Approximately 1,240 feet downstream of South County Road 209.	None	+4	
St. Johns River Tributary 5 (downstream).	Approximately 1,470 feet upstream of South County Road 209.	None	+17	Unincorporated Areas of Clay County.
	Approximately 0.7 mile downstream of Bayard Road ..	None	+4	
St. Johns River Tributary 5 (upstream).	Approximately 645 feet upstream of Bayard Road	None	+11	City of Green Cove Springs, Unincorporated Areas of Clay County.
	Approximately 855 feet downstream of South U.S. Route 17.	None	+15	
St. Johns River Tributary 6 ...	Approximately 670 feet upstream of South U.S. Route 17.	None	+24	Unincorporated Areas of Clay County.
	Approximately 215 feet downstream of South County Road 209.	None	+4	
St. Johns River Tributary 7 ...	Approximately 1.2 miles upstream of South County Road 209.	None	+21	Unincorporated Areas of Clay County.
	Approximately 430 feet downstream of South County Road 209.	None	+4	
	Approximately 0.4 mile upstream of South County Road 209.	None	+15	

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+ North American Vertical Datum.

Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Green Cove Springs

Maps are available for inspection at City Hall, 321 Walnut Street, Green Cove Springs, FL 32043.

Town of Penney Farms

Maps are available for inspection at the Town Hall, 4100 Clark Avenue, Penney Farms, FL 32079.

Unincorporated Areas of Clay County

Maps are available for inspection at the Clay County Public Works Department, 5 Esplanade Avenue, Green Cove Springs, FL 32043.

Muskegon County, Michigan (All Jurisdictions)

Lake Michigan	Entire shoreline within community	None	+584	Township of Fruitland, Township of Laketon.
North Channel Muskegon River (flooding effects from Muskegon Lake).	At the Chesapeake and Ohio Railway	None	+584	City of Muskegon, Township of Muskegon.
	Approximately 1.3 miles upstream of the Chesapeake and Ohio Railway.	None	+584	
White Lake	Entire shoreline within community	None	+584	Township of Fruitland, Township of Whitehall.

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ADDRESSES

City of Muskegon

Maps are available for inspection at City Hall, 933 Terrace Street, Muskegon, MI 49440.

Township of Fruitland

Maps are available for inspection at the Fruitland Township Hall, 4545 Nestrom Road, Whitehall, MI 49461.

Township of Laketon

Maps are available for inspection at the Laketon Township Hall, 2735 West Giles Road, Muskegon, MI 49445.

Township of Muskegon

Maps are available for inspection at the Muskegon Township Hall, 1990 Apple Avenue, Muskegon, MI 49442.

Township of Whitehall

Maps are available for inspection at the Township Hall, 7644 Durham Road, Whitehall, MI 49461.

Nicollet County, Minnesota, and Incorporated Areas

Minnesota River	At the Sibley County boundary	+748	+747	City of Mankato, City of North Mankato, City of St. Peter, Unincorporated Areas of Nicollet County.
	At the Renville County boundary	+818	+820	

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		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Mankato

Maps are available for inspection at 10 Civic Center Plaza, Mankato, MN 56002.

City of North Mankato

Maps are available for inspection at 1001 Belgrade Avenue, North Mankato, MN 56003.

City of St. Peter

Maps are available for inspection at the Municipal Building, 227 South Front Street, St. Peter, MN 56082.

Unincorporated Areas of Nicollet County

Maps are available for inspection at 501 South Minnesota Avenue, St. Peter, MN 56082.

Lancaster County, Nebraska, and Incorporated Areas

Little Salt Creek	Approximately 1,293 feet upstream of the Salt Creek confluence.	None	+1139	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 1,289 feet downstream of West Rock Creek Road.	None	+1253	
Little Salt Creek Tributary 05	Approximately 0.5 mile downstream of Arbor Road	None	+1139	City of Lincoln.
	Approximately 121 feet downstream of North 40th Street.	None	+1165	
Little Salt Creek Tributary 10	Approximately 115 feet downstream of North 27th Street.	None	+1143	City of Lincoln.
	Approximately 1,601 feet downstream of Waverly Road.	None	+1217	
Little Salt Creek Tributary 110.	Approximately 1,231 feet downstream of North 40th Street.	None	+1160	City of Lincoln.
	Approximately 1,110 feet upstream of North 40th Street.	None	+1181	
Little Salt Creek Tributary 115.	Approximately 0.77 mile downstream of North 14th Street.	None	+1146	City of Lincoln.
	Approximately 1.43 miles upstream of North 14th Street.	None	+1220	
Little Salt Creek Tributary 120.	Approximately 405 feet upstream of the Little Salt Creek Tributary 20 confluence.	None	+1152	City of Lincoln.
	Approximately 246 feet downstream of Waverly Road	None	+1168	
Little Salt Creek Tributary 1260.	Approximately 390 feet upstream of the Little Salt Creek Tributary 260 confluence.	None	+1209	City of Lincoln.
	Approximately 0.82 mile upstream of West Davey Road.	None	+1288	
Little Salt Creek Tributary 130.	Approximately 192 feet upstream of the Little Salt Creek Tributary 30 confluence.	None	+1197	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 311 feet upstream of North 1st Street	None	+1222	
Little Salt Creek Tributary 1415.	Approximately 425 feet upstream of the Little Salt Creek Tributary 415 confluence.	None	+1219	City of Lincoln.
	Approximately 1,072 feet upstream of the Little Salt Creek Tributary 415 confluence.	None	+1228	
Little Salt Creek Tributary 145.	Approximately 615 feet upstream of the Little Salt Creek Tributary 45 confluence.	None	+1170	Unincorporated Areas of Lancaster County.
	Approximately 241 feet downstream of North 14th Street.	None	+1214	
Little Salt Creek Tributary 15	Approximately 1,952 feet upstream of the Little Salt Creek confluence.	None	+1145	City of Lincoln.
	Approximately 1,976 feet downstream of Waverly Road.	None	+1290	
Little Salt Creek Tributary 150.	Approximately 241 feet upstream of the Little Salt Creek Tributary 50 confluence.	None	+1197	Unincorporated Areas of Lancaster County.
	Approximately 276 feet downstream of North 14th Street.	None	+1224	
Little Salt Creek Tributary 160.	Approximately 421 feet downstream of North 1st Street.	None	+1183	Unincorporated Areas of Lancaster County.
	Approximately 283 feet downstream of Branched Oak Road.	None	+1224	
Little Salt Creek Tributary 170.	Approximately 547 feet upstream of the Little Salt Creek Tributary 70 confluence.	None	+1207	Unincorporated Areas of Lancaster County.

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Little Salt Creek Tributary 20	Approximately 160 feet downstream of West Raymond Road.	None	+1245	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 643 feet upstream of the Little Salt Creek confluence.	None	+1152	
Little Salt Creek Tributary 210.	Approximately 200 feet downstream of North 40th Street.	None	+1256	City of Lincoln.
	Approximately 206 feet upstream of the Little Salt Creek Tributary 10 confluence.	None	+1195	
Little Salt Creek Tributary 215.	Approximately 1,025 feet upstream of the Little Salt Creek Tributary 10 confluence.	None	+1202	City of Lincoln.
	Approximately 904 feet downstream of North 14th Street.	None	+1165	
Little Salt Creek Tributary 220.	Approximately 142 feet downstream of McKelvie Road.	None	+1194	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 829 feet downstream of Waverly Road	None	+1172	
Little Salt Creek Tributary 2220.	Approximately 171 feet downstream of Mill Road	None	+1237	Unincorporated Areas of Lancaster County.
	Approximately 434 feet downstream of Mill Road	None	+1221	
Little Salt Creek Tributary 230.	Approximately 1,534 feet upstream of Mill Road	None	+1248	Unincorporated Areas of Lancaster County.
	Approximately 448 feet upstream of the Little Salt Creek Tributary 30 confluence.	None	+1217	
Little Salt Creek Tributary 25	Approximately 1,719 feet upstream of the Little Salt Creek Tributary 30 confluence.	None	+1231	City of Lincoln.
	Approximately 1,365 feet upstream of the Little Salt Creek confluence.	None	+1152	
Little Salt Creek Tributary 250.	Approximately 95 feet upstream of North 14th Street	None	+1184	Unincorporated Areas of Lancaster County.
	Approximately 406 feet upstream of the Little Salt Creek Tributary 50 confluence.	None	+1214	
Little Salt Creek Tributary 260.	Approximately 247 feet downstream of North 14th Street.	None	+1247	Unincorporated Areas of Lancaster County.
	Approximately 363 feet upstream of the Little Salt Creek Tributary 60 confluence.	None	+1200	
Little Salt Creek Tributary 270.	Approximately 1,559 feet upstream of Davey Road	None	+1281	Unincorporated Areas of Lancaster County.
	Approximately 279 feet upstream of the Little Salt Creek Tributary 70 confluence.	None	+1230	
Little Salt Creek Tributary 30	Approximately 1,270 feet upstream of the Little Salt Creek Tributary 70 confluence.	None	+1240	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 0.87 mile downstream of North 14th Street.	None	+1157	
Little Salt Creek Tributary 315.	Approximately 0.95 mile upstream of North 1st Street	None	+1260	City of Lincoln.
	Approximately 247 feet downstream of North 7th Street.	None	+1185	
Little Salt Creek Tributary 320.	Approximately 62 feet downstream of Alvo Road	None	+1205	Unincorporated Areas of Lancaster County.
	Approximately 393 feet upstream of the Little Salt Creek Tributary 20 confluence.	None	+1211	
Little Salt Creek Tributary 35	Approximately 188 feet downstream of Raymond Road.	None	+1251	City of Lincoln, Unincorporated Areas of Lancaster County.
	Approximately 60 feet upstream of Waverly Road	None	+1157	
Little Salt Creek Tributary 360.	Approximately 0.80 mile upstream of the Little Salt Creek confluence.	None	+1194	Unincorporated Areas of Lancaster County.
	Approximately 261 feet upstream of the Little Salt Creek Tributary 60 confluence.	None	+1256	
Little Salt Creek Tributary 40	Approximately 1,010 feet downstream of West Rock Creek Road.	None	+1263	Unincorporated Areas of Lancaster County.
	Approximately 1,536 feet upstream of the Little Salt Creek confluence.	None	+1165	
Little Salt Creek Tributary 415.	Approximately 93 feet downstream of Mill Road	None	+1198	City of Lincoln.
	Approximately 600 feet upstream of the Little Salt Creek Tributary 15 confluence.	None	+1206	
Little Salt Creek Tributary 420.	Approximately 1,829 feet upstream of North 1st Street	None	+1228	Unincorporated Areas of Lancaster County.
	Approximately 55 feet upstream of the Little Salt Creek Tributary 20 confluence.	None	+1218	

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Little Salt Creek Tributary 45	Approximately 178 feet downstream of Raymond Road.	None	+1247	Unincorporated Areas of Lancaster County, Village of Davey.
	Approximately 77 feet downstream of Mill Road	None	+1169	
Little Salt Creek Tributary 50	Approximately 1,734 feet upstream of Branched Oak Road.	None	+1172	Unincorporated Areas of Lancaster County.
	Approximately 0.77 mile downstream of Raymond Road.	None	+1172	
Little Salt Creek Tributary 520.	Approximately 0.52 mile upstream of Branched Oak Road.	None	+1269	Unincorporated Areas of Lancaster County.
	Approximately 194 feet downstream of Raymond Road.	None	+1251	
Little Salt Creek Tributary 55	Approximately 94 feet downstream of Raymond Road	None	+1253	Unincorporated Areas of Lancaster County.
	Approximately 264 feet upstream of North 1st Street	None	+1175	
Little Salt Creek Tributary 60	Approximately 0.45 mile upstream of North 1st Street	None	+1187	Unincorporated Areas of Lancaster County.
	Approximately 0.98 mile downstream of West Branched Oak Road.	None	+1180	
Little Salt Creek Tributary 65	Approximately 1,183 feet downstream of West Rock Creek Road.	None	+1262	Unincorporated Areas of Lancaster County.
	Approximately 0.82 mile downstream of West Raymond Road.	None	+1180	
Little Salt Creek Tributary 70	Approximately 0.94 mile upstream of West Raymond Road.	None	+1246	Unincorporated Areas of Lancaster County.
	Approximately 1 mile downstream of Northwest 27th Street.	None	+1192	
Little Salt Creek Tributary 75	Approximately 1,754 feet upstream of Northwest 27th Street.	None	+1256	Unincorporated Areas of Lancaster County.
	At the Little Salt Creek confluence	None	+1203	
Little Salt Creek Tributary 80	Approximately 0.95 mile upstream of the Little Salt Creek confluence.	None	+1250	Unincorporated Areas of Lancaster County.
	At the Little Salt Creek confluence	None	+1210	
Little Salt Creek Tributary 85	Approximately 1,283 feet downstream of West Rock Creek Road.	None	+1273	Unincorporated Areas of Lancaster County.
	Approximately 142 feet upstream of the Little Salt Creek confluence.	None	+1216	
	Approximately 1,884 feet downstream of West Davey Road.	None	+1246	

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ADDRESSES

City of Lincoln

Maps are available for inspection at the Building and Safety Department, 555 South 10th Street, Lincoln, NE 68508.

Unincorporated Areas of Lancaster County

Maps are available for inspection at the Building and Safety Department, 555 South 10th Street, Lincoln, NE 68508.

Village of Davey

Maps are available for inspection at the Village Hall, 3530 Elm Street, Davey, NE 68336.

Iron County, Utah, and Incorporated Areas

Coal Creek	Approximately 0.8 mile downstream of West 6600 North.	None	+5542	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 680 feet upstream of the Squaw Creek confluence.	None	+5889	

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Coal Creek Overflow	Approximately 1,750 feet downstream of West 3200 North.	None	+5502	Unincorporated Areas of Iron County.
Coal Creek to Fiddlers Split ..	Approximately 480 feet downstream of Bulldog Road	None	+5656	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 370 feet upstream of Midvalley Road ..	None	+5500	
Cross Hollow	Approximately 925 feet upstream of West 3000 North	None	+5554	City of Cedar City.
	Approximately 190 feet downstream of South Cross Hollow Road West.	None	+5751	
Greens Lake	Approximately 1,990 feet downstream I-15	None	+5925	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 750 feet upstream of I-15	None	+6002	
North Airport Canal	Approximately 0.6 mile upstream of South Fir Street West.	None	+6045	City of Cedar City.
	Approximately 175 feet upstream of North Baver Road West.	None	+5593	
Old Quichapa Creek Lower ..	Approximately 125 feet downstream of Airport Road ..	None	+5611	Unincorporated Areas of Iron County.
	Approximately 0.6 mile downstream of South 6100 West.	None	+5462	
Old Quichapa Creek Upper ..	At the Old Quichapa Creek Upper confluence	None	+5494	Unincorporated Areas of Iron County.
	At the Old Quichapa Creek Lower confluence	None	+5494	
Quichapa Channel	Approximately 750 feet upstream of 400 South	None	+5521	City of Cedar City, Unincorporated Areas of Iron County.
	Approximately 0.53 mile downstream of South 6400 West.	None	+5458	
Quichapa West	Approximately 210 feet downstream of I-15	None	+5680	Unincorporated Areas of Iron County.
	Approximately 0.4 mile downstream of South 6400 West.	None	+5466	
Shurtz Creek	Approximately 740 feet downstream of 5300 West	None	+5493	City of Cedar City, Unincorporated Areas of Iron County.
	At the Old Quichapa Creek Lower confluence	None	+5472	
Shurtz Creek Shallow	Approximately 485 feet downstream of Triple Road	None	+5772	Unincorporated Areas of Iron County.
	Approximately 1,800 feet downstream of 6100 West ..	None	+5462	
Squaw Creek	Approximately 75 feet downstream of I-15	None	+5693	City of Cedar City.
	Approximately 230 feet upstream of the Coal Creek confluence.	None	+5885	
	Approximately 0.66 mile upstream of East 200 South	None	+6070	

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ADDRESSES

City of Cedar City

Maps are available for inspection at the Engineering Department, 10 North Main Street, Cedar City, UT 84720.

Unincorporated Areas of Iron County

Maps are available for inspection at the Iron County Engineering Department, 82 North 100 East, Suite 104, Cedar City, UT 84720.

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

Dated: September 23, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011-25863 Filed 10-5-11; 8:45 am]

BILLING CODE 9110-12-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R9-ES-2011-0082; MO 92210-0-0010 B6]

Endangered and Threatened Wildlife and Plants; Red-Crowned Parrot

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the red-crowned parrot (*Amazona viridigenalis*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing the red-crowned parrot as endangered or threatened is warranted. Currently, however, listing the red-crowned parrot is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the red-crowned parrot to our candidate species list. We will develop a proposed rule to list the red-crowned parrot as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on October 6, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R9-ES-2011-0082. 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, Branch of Foreign Species, Endangered Species Program, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203. Please submit any

new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171. If you use a telecommunications device for the deaf (TDD), 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 List of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine 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 endangered or threatened, 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 January 31, 2008, the Service received a petition dated January 29, 2008, from Friends of Animals, as represented by the Environmental Law Clinic, University of Denver, Sturm College of Law, requesting we list 14 parrot species under the Act. The petition clearly identified itself as a petition and included the requisite information required by the Service's implementing regulations for the Endangered Species Act (50 CFR 424.14(a)). On July 14, 2009 (74 FR 33957), we published a 90-day finding in which we determined that the petition presented substantial scientific and commercial information to indicate that listing may be warranted for 12 of the 14 parrot species. In our 90-day finding on this petition, we announced the initiation of a status review to list as

endangered or threatened under the Act the following 12 parrot species: Blue-headed macaw (*Primolius couloni*), crimson shining parrot (*Prosopeia splendens*), great green macaw (*Ara ambiguus*), grey-cheeked parakeet (*Brotogeris pyrrhoptera*), hyacinth macaw (*Anodorhynchus hyacinthinus*), military macaw (*Ara militaris*), Philippine cockatoo (*Cacatua haematuropygia*), red-crowned parrot (*Amazona viridigenalis*), scarlet macaw (*Ara macao*), white cockatoo (*Cacatua alba*), yellow-billed parrot (*Amazona collaria*), and yellow-crested cockatoo (*Cacatua sulphurea*). We initiated a status review to determine if listing each of the 12 species is warranted, and initiated a 60-day public comment period to allow all interested parties an opportunity to provide information on the status of these 12 species of parrots. The comment period closed on September 14, 2009.

On October 24, 2009, and December 2, 2009, the Service received a 60-day notice of intent to sue from Friends of Animals and WildEarth Guardians, for failure to issue 12-month findings on the petition. On March 2, 2010, Friends of Animals and WildEarth Guardians filed suit against the Service for failure to make timely 12-month findings within the statutory deadline of the Act on the petition to list the 14 species (*Friends of Animals, et al. v. Salazar*, Case No. 10 CV 00357 D.D.C.). On July 21, 2010, a settlement agreement was approved by the Court (CV-10-357, D. D.C.), in which the Service agreed to (in part) submit to the **Federal Register** by September 30, 2011, a determination whether the petitioned action is warranted, not warranted, or warranted but precluded by other listing actions for no less than four of the petitioned species. This **Federal Register** document complies with the second deadline in that court-ordered settlement agreement. We will announce the 12-month findings for the remaining parrot species for which a 90-day finding was made on July 14, 2009 (74 FR 33957) in subsequent **Federal Register** notices.

Biological Information

Species Description

The red-crowned parrot belongs to the *Amazona* genus within the parrot family Psittacidae. It is a mid-sized *Amazona* species, measuring approximately 33 centimeters (cm) (13 inches (in)) in length and weighing approximately 316 grams (g) (0.70 pounds) (Enkerlin and Hogan 1997, unpaginated). Average male and female wing length measures approximately

207.5 millimeters (mm) (8.2 in) and 200.4 mm (7.9 in), respectively. Average tail lengths for males and females measure 108.6 mm (4.3 in) and 102.4 mm (4.0 in), respectively (Forshaw 1989, p. 603). Adults have a bright green overall plumage distinguished by bright yellow-green cheek areas, bright red on the crown (top of head) and lores (area between eye and bill), and a violet-blue band extending from behind each eye down each side of the crown and neck. The back of the head and neck is scaled with black-tipped feathers. The flight feathers are bluish-black overall, with the outer secondary flight feathers also bearing a red patch. The tail feathers are tipped with yellowish green. The bill is cream-yellow colored, the iris is yellow, and the orbital ring and feet are pale gray. Juveniles are similar to adults except that the bright red feathers on the head are limited to the forehead and lores, and the violet-blue band on the sides of the crown tends to form a broad band over and behind the eye (Enkerlin and Hogan 1997, unpaginated; Foreshaw 1989, p. 603).

Range and Distribution

The red-crowned parrot is endemic to northeastern Mexico. In addition, several introduced populations occur in urban area of the United States, Puerto Rico, and Mexico. Evidence suggests populations in the Lower Rio Grande Valley consist, at least partly, of naturally occurring populations (Walker and Chapman 1992, pp. 38–39; Neck 1986, entire; Brush 2005, pp. 97–99; Arvin 1982, p. 872). Thus, in our status review we treat the Lower Rio Grande Valley populations as native populations. In Mexico, the species' distribution is confined to the lowland plains (Atlantic coastal plain) and the low eastern slopes of the Sierra Madre Oriental (Macias and Enkerlin 2003, p. 4; Collar *et al.* 1992, p. 423). Historically, the species is known from central and southern Tamaulipas, central Nuevo Leon, eastern San Luis Potosi, and northern and central Veracruz (Collar *et al.* 1992, p. 423; Enkerlin and Hogan 1997, unpaginated; Forshaw 1989, p. 603; Ridgely 1981, p. 351). Howell and Webb (1995, p. 342) also include small portions of eastern Queretaro, Hidalgo, and north-northeast Puebla as part of the natural range of the species.

A study to determine the current status of populations throughout the species' range in Mexico was conducted during 2002 and 2003. The study found that red-crowned parrots occur at only 19.2 percent of surveyed locations at which they were recorded historically (Macias and Enkerlin 2003, p. 17). The

species was present in Tamaulipas, eastern San Luis Potosi, and northern Veracruz, and absent in Nuevo Leon and central Veracruz (Macias and Enkerlin 2003, p. 3). The authors estimate the current range of the species in Mexico to be 32,500 square kilometers (km²) (12,548 square miles (mi²)), representing a 77 percent decrease from the species' estimated original range of 140,000 km² (54,054 mi²) (p. 14). Most of the species' current distribution occurs in Tamaulipas followed, in order of importance, by Veracruz and San Luis Potosi (p. 12), and habitat within this range is fragmented. As a result, the species occurs in only small, isolated populations across its range (Macias and Enkerlin 2003, p. 3). In addition to the results of Macias and Enkerlin's research, recent reports confirm the species' native occurrence in northeast Queretaro (p. 12). Within the LRGV, the red-crowned parrot occurs in Hidalgo and Cameron Counties, from Hidalgo, Mission, McAllen, and Edinburg east to Brownsville, Los Fresnos, and Harlingen (Hagne 2011, pers. comm.; Brush 2011, pers. comm.; McKinney 2011, pers. comm.). The species also occurs in some towns on the Mexican side of the Rio Grande (Hagne 2011, pers. comm.), although specific locations have not been reported.

Habitat

The red-crowned parrot generally occurs in tropical lowlands and foothills, inhabiting tropical deciduous forest, gallery forest, evergreen floodplain forest, Tamaulipan thornscrub, and semi-open areas. It generally occurs between sea level and 500 meters (m) (1,640 feet (ft)) elevation, with most birds found within 200–500 m (656–1,640 ft) (Macias and Enkerlin 2003, p. 10; Enkerlin and Hogan 1997, unpaginated). In winter, it sometimes visits dry pine and pine-oak forests up to 1,200 m (3,937 ft) elevation to forage (Macias and Enkerlin 2003, p. 10; Clinton-Eitniear 1986, p. 22; Clinton-Eitniear 1988, p. 28; Martin *et al.* 1954, p. 46). Enkerlin and Hogan (1997, unpaginated) describe typical habitat as being diverse deciduous tropical forest with a relatively open, 15–20 m (50–65 ft) high canopy layer, and dominant canopy vegetation that includes *Ficus cotinifolia* (strangler fig), *Bumelia laetevirens* (coma), *Pithecellobium flexicaule* (ebony), *Bursera simaruba* (gumbo-limbo), *Phyllostylon brasiliensis* (cerón), *Brosimum alicatrum* (ojite), and *Helietta parvifolia* (barreta). Gelbach *et al.* (1976, pp. 54–55) described a floodplain forest habitat as evergreen forest dominated by *Pithecellobium flexicaule* with *Ehretia*, *Bumelia*, and

Condalia subdominant. Altered habitats are also used. The species is known to occur in partially cleared and cultivated landscapes with woodlots and woodland patches (Collar *et al.* 1992, p. 425), and, in reduced numbers, in agricultural areas where a few large trees remain standing for nesting and roosting (Ridgely 1981, p. 351). In the LRGV, red-crowned parrots occur primarily in urban (town) areas (Hagne 2011, pers. comm.). Although little information on urban habitat use specific to the LRGV is available, in cities where the species is introduced it is reported to prefer areas with large trees that provide both food and nesting sites (Froke 1981, Hall 1988, in Enkerlin and Hogan 1997, unpaginated).

Movements

Red-crowned parrots are nonmigratory (Enkerlin and Hogan, unpaginated), but are apparently nomadic during the winter (non-breeding) season when large flocks range widely to forage (Collar *et al.* 1992, p. 426; Clinton-Eitniear 1986, pp. 22–23). Regional movements spanning up to “tens of kilometers” have been reported for Tamaulipas, Mexico (Aragon-Tapia 1986, in Enkerlin and Hogan, unpaginated).

Diet and Foraging

The red-crowned parrot usually forages in the crowns of trees, but will occasionally feed on low-lying bushes. Foraging appears to be opportunistic. Its diet includes a variety of primarily seeds and fruits, but also buds and flowers (Enkerlin and Hogan 1997, unpaginated; Sutton and Pettingill 1942, p. 14). In a study conducted in northeast Mexico, red-crowned parrots were observed feeding on 9 plant species (Enkerlin 1995, p. 113). They fed most frequently on the seeds of the most abundant trees in the study site: *Pithecellobium flexicaule* (Texas ebony), *Ficus cotinifolia* (strangler fig), and *Bumelia laetevirens* (woolly buckthorn). They also frequently fed on *Myrcianthes fragans* (Guyabillo) fruit. In Mexico, they have also been reported feeding on *Pinus* (pine) seeds (Martin *et al.* 1954, p. 46), *Ehretia anaqua* (anacua) berries (Gelbach 1976, p. 55), *Melia azederach* (chinaberry) berries, and acorns (Clinton-Eitniear 1988, p. 28), and have been reported to be pests in corn fields (Martin 1954, p. 46). Insects have also been found in crop (a structure in the digestive tract where food is stored) samples taken from chicks (Enkerlin and Hogan 1997, unpaginated). In Texas, as in Mexico, *Pithecellobium flexicaule* is a common food item, as is *Ehretia anaqua* (Brush 2005, p. 99).

Red-crowned parrots in Texas have also been observed eating the seeds and fruits, and leaves or flower buds, of a variety of other species (Brush 2005, p. 99).

Reproduction

As with other *Amazona* species, red-crowned parrots nest in pre-existing tree cavities, including those created by other birds and those resulting from tree decay. They will also use artificial cavities (Enkerlin and Hogan 1997, unpaginated). They've been reported nesting in a variety of tree species, including *Taxodium mucronatum* (Montezuma cypress), *Bumelia laetivirens*, and *Brosimum alicastrum* (breadnut) (Gelhbach 1987, Perez and Equiarte 1989, in Collar *et al.* 1992, p. 426), as well as *Pithecellobium flexicaule*, *Ficus cotinifolia*, *Bumelia laetevirens*, *Helietta parvifolia*, *Bursera simaruba*, and others (Enkerlin 1995, p. 35). In a study in Tamaulipas within a habitat mosaic of forest, windbreaks, wooded pastures, and open pastures, the availability of suitable cavities for nesting did not appear to be limited, as parrots used only a small fraction of available cavities classified as suitable for nest sites (Enkerlin 1995, pp. 43–44, 54). Trees in which red-crowned parrot nests occurred ranged from 39–229 cm (15–90 in) diameter at breast height, and nest cavities were located 380–1,350 cm (150–531 in) above the ground (Enkerlin 1995, p. 36). Results of the same study show that red-crowned parrots appeared to preferentially select nests in open and wooded pastures rather than in heavily forested areas, but the effect of possible sample bias due to lower detectability of nests in forests could not be ruled out (Enkerlin 1995, pp. 43–44).

Nests of red-crowned parrots appear to be clumped because the nearest neighbor (the nest closest to the nest in question) tends to be a nest of the same species (Enkerlin 1995, p. 42). Fidelity to specific nest sites is lower than in other *Amazona* (Enkerlin 1995, p. 75), although individuals show attachment to a general area when selecting nests (Enkerlin 1995, p. 66). Nests in which greater than one young fledge have a greater likelihood of being reused (Enkerlin 1995, p. 69).

Nesting by red-crowned parrots occurs from March to August (Enkerlin and Hogan 1997, unpaginated). Second clutches are not known to occur, although evidence (i.e., late season clutches) suggests it may occur irregularly (Enkerlin 1995, p. 104). Clutch size ranges from 2 to 5 (average = 3.4) eggs, and eggs hatch after an average of 27 days, with young fledging an average of 53 days after hatching

(Enkerlin 1995, pp. 65, 86). Parents feed young for at least 10 weeks after the young fledge. In northeast Mexico, progression of the young to independence is assumed to occur within 3–4 months, as young are no longer with adults in November (Enkerlin and Hogan 1997, unpaginated).

Enkerlin (1995, p. 96) shows that, on average, a pair of red-crowned parrots within the species' native range in Mexico produced 3.4 eggs but fledged only 1.43 young, indicating that only 43 percent of eggs resulted in fledged young. As with most other parrots, there is a low proportion of breeding adults in red-crowned parrot populations and reproductive success is low, indicating that populations do not have the capacity to recover quickly from pressures to which they are subjected (Macias and Enkerlin 2003, p. 16).

In a study conducted by Enkerlin (1995, pp. 89–93) the main causes of egg and chick mortality were nest abandonment due to unknown causes, brood reduction, and predation. Most nest failure occurred during the early nestling period, and snakes, especially indigo snakes (*Drymarchon corais*), were a major source of predation. Other predators included hawks (*Buteo sp.*), which were observed preying on juveniles, and coati (*Nasua nasua*) and skunk (*Spilogale putorius*), which were documented preying on incubating females (Enkerlin and Hogan 1997, unpaginated).

Abundance

Historical numbers of red-crowned parrots are believed to have exceeded 100,000 (Enkerlin 1998, p. 8). Records up through the 1950s indicate the species was clearly relatively common in appropriate habitat from central Tamaulipas south to eastern San Luis Potosi and northern Veracruz, even being described in some areas as a "pest" species (Collar *et al.* 1992, p. 424). By the 1970s, Ridgely (1981, p. 351) noted that, although locally common, the consensus among long-term observers was that there had been a large overall decline in the species' numbers over the previous several decades, and that much of its range had been, or was being, modified for agricultural use. Ridgely (1981, p. 351) also reported that, where formerly hundreds could be seen, it was now only seen in scattered pairs or, at most, small flocks. The Mexico population in 1994 was estimated to be 3,000–6,500 birds (UNEP–WCMC 2002, in Macias and Enkerlin 2003, p. 15).

Density estimates of red-crowned parrots in Tamaulipas during the 1970s

to 1990s differ by an order of magnitude and have been cited as evidence for population declines (Birdlife International (BLI) 2011, unpaginated). Castro (1976, in Enkerlin 1995, p. 117) estimated a density of 25.2 birds per 100 hectares (ha) (247 acres (ac)) during the 1970s; Perez and Eguiarte (1989, in Enkerlin 1995, p. 117) 11.5 birds per 100 ha (247 ac) during 1985; Aragon-Tapia (1986, in Enkerlin 1995, p. 117) 4.72 birds per 100 ha (247 ac) in 1986; and Enkerlin (1995, p. 117) 5.7 birds per 100 ha (247 ac) during the period 1992–1994. These estimates, however, were made using different methodologies (Enkerlin 1995, p. 117) and therefore may reflect differences in methods used by different researchers rather than differences in abundance. Enkerlin (1995, p. 124) also suggests some of the variation in density estimates may be due to differences in the abilities of different researchers to distinguish red-crowned from red-lored parrots (*Amazona autumnalis*) in the field.

Partners in Flight (PIF), an international coalition of Federal and State agencies and non-government groups, uses a peer-reviewed process to assess the status of bird species (Rich *et al.* 2004, entire; Panjabi *et al.* 2005, entire). They base these assessments on "wild" populations of the species, which do not include populations known to be introduced (Panjabi 2011, pers. comm.). Their assessment of the status of red-crowned parrot includes populations within the species' historical range in Mexico and in the LRGV. PIF assessed the status of the global red-crowned parrot population, as well as the portion of the global population occurring within a defined "Bird Conservation Region." Bird Conservation Regions (BCRs) are "ecologically distinct regions in North America with similar bird communities, habitats, and resource management issues" (North American Bird Conservation Initiative (NABCI) undated, unpaginated). The BCR in which red-crowned parrots were assessed is the Tamaulipan Brushlands BCR. This BCR comprises the plain that extends from southern Texas into northeastern Mexico (NABCI 2000, p. 22). It includes the LRGV and northern portions of the Mexican states of Tamaulipas, Nuevo Leon, and Coahuila. PIF estimates the global population of red-crowned parrots to be fewer than 5,000 individuals and the recent population trend as having decreased greater than or equal to 50 percent over 30 years (Berlanga *et al.* 2010, pp. 38–39; PIF 2007, unpaginated; PIF 2005a, unpaginated). They estimate that

individuals within the Tamaulipan Brushlands BCR comprise 43 percent of the global population, and categorize the population trend as being highly variable or having an unknown change over 30 years, which they qualitatively define as an uncertain population trend (PIF 2005b, unpaginated). Numbers and trend of the species within the Texas portion of this BCR are largely unknown, and speculative (Hagne 2011, pers. comm.; Brush 2011, pers. comm.; McKinney 2011, pers. comm.), although an earlier PIF assessment (Rich *et al.* 2004, p. 70) estimated that approximately 50 percent of the rangewide population (not including introduced populations (Panjabi 2011, pers. comm.)) occurred in the United States.

Conservation Status

Red-crowned parrots are listed as endangered in Mexico (GOM 2002, p. 22), and are listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; see *Factor D*). The species is classified by the IUCN as endangered (BLI 2008, unpaginated), and by the Service (2008, pp. 52, 66) as a Species of Concern. PIF has placed the species on its Watch List for Land Birds, and has classified it as a species of High Tri-national Concern (Rich *et al.* 2004, p. 17; Berlanga *et al.* 2010, pp. 38–39).

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth procedures for adding species to 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 the red-crowned parrot in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the

factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Habitat destruction and modification is one of the main threats to the red-crowned parrot (Macias and Enkerlin 2003, p. 4). As a result of extensive deforestation, red-crowned parrot habitat has changed substantially since the early 1970s (Macias and Enkerlin 2003, p. 14). Over 80 percent of the species' lowland habitat in Tamaulipas, Mexico, has been lost (CITES 1997, p. 2; Macias and Enkerlin 2003, p. 14), and Rios (2002, in Macias & Enkerlin 2003, p. 14) estimates the species has lost 31 percent of its rangewide habitat. The habitat that remains is fragmented, occurring only in isolated patches in different parts of the species' range (Macias & Enkerlin 2003, p. 3). Further, according to PIF, extreme deterioration in the future suitability of conditions in the species' breeding and nonbreeding ranges is expected (Berlanga *et al.* 2010, pp. 38–39).

Mexico

Mexico has suffered extensive deforestation (conversion of forest to other land uses) and forest degradation (reduction in forest biomass through selective cutting, etc.) over the past several decades. In more recent decades, Mexico's deforestation has been rapid (Blaser *et al.* 2011, pp. 343–344). For example, between 1990 and 2000, Mexico lost forest at a net rate (which factors in natural regeneration of degraded forest and planting of forest in areas that previously did not have forest) of 344,000 ha (850,043 ac) per year (Food and Agriculture Organization (FAO) 2010, p. 21). During 1990–2010, Mexico lost approximately 6 million ha (approximately 15 million ac) of forest, and had one of the largest decreases in primary forests worldwide (FAO 2010, pp. 56, 233). Although Mexico's rate of forest loss has slowed in the past decade, it still continues. The current

rate of net forest loss in Mexico is 155,000 ha (383,013 ac) per year, with an estimated 250,000–300,000 ha (617,763–741,316 ac) per year degraded (Government of Mexico (GOM) 2010b, in Blaser *et al.* 2011, p. 344; FAO 2010, p. 233). Tamaulipas, the state with which the largest number of locations with recent records of the red-crowned parrot (Macias and Enkerlin 2003, p. 12), experienced a net loss of 0.1 to 0.3 percent of its forest area per year between 2003 and 2007. The other states in which the species primarily currently occurs, Veracruz and San Luis Potosi, experienced a net loss of greater than 0.6 percent, and a net gain of 0.1 to 0.3 percent of its forest area, respectively, during this period (Masek *et al.* 2011, pp. 9–10). Currently, Mexico has 64.8 million ha (160.1 million ac) of forest (FAO 2010, p. 228) and 50 percent of these forests are considered degraded (Masek *et al.* 2011, p. 9). By 2030, forest area in Mexico is projected to decrease, with anywhere from just under 10 percent to nearly 60 percent of mature forests lost, and approximately 0 to 54 percent of regrowth forests lost (Commission for Environmental Cooperation (CEC) 2010, pp. 45, 75).

Deforestation and forest degradation occur in all forest types in Mexico (GOM 2010, p. 22). Their main drivers are conversion of forest to pasture, slash and burn agriculture, and uncontrolled logging (overexploitation and illegal logging) (GOM 2010, pp. 22–24). Factors that put lands at greatest risk are favorable topographic conditions, road access, and proximity to human settlements (Munoz *et al.* 2003, in GOM 2010, p. 23).

Agriculture (Livestock and Crop Production)

Within Mexico, red-crowned parrot habitat is threatened primarily by conversion of forests to cultivated land and expansion of livestock grazing areas without attempting to preserve patches of native trees and vegetation (Berlanga *et al.* 2010, pp. 38–39; Enkerlin and Hogan 1997, unpaginated; Enkerlin 2000, in Macias and Enkerlin 2003, p. 18). The lowland area in which the large majority of the red-crowned parrot's range occurs is within the Gulf of Mexico coastal plain, one of the most productive regions of intensive agricultural use in Mexico, especially for cattle grazing (Vázquez & Aragón-Tapia 1993, in Enkerlin 1998, p. 79; GOM 2010, p. 22). In contrast to agriculture in many other parts of the country, many of the crop-producing farms in northern Mexico are large and mechanized. Consequently, large areas are cleared of forest and converted to

agricultural lands for production of cash crops such as sorghum (Rochin 1985, entire). Pastures differ in the amount of vegetation cleared, ranging from being completely cleared to being selectively cleared of only understory vegetation (Enkerlin 1995, p. 20). Consequently, the density of large trees that still remain in pastures varies between farms and between pastures within a ranch. However, few ranchers manage the land for maintenance of tree density or regeneration, resulting in a continuing decline of tree density within treed pastures (Enkerlin 1995, pp. 20–21; Enkerlin and Hogan 1997, unpaginated).

As with most parrots, the red-crowned parrot requires trees for nesting, feeding, and roosting. Deforestation via conversion of land to agricultural use is a threat to red-crowned parrots because it directly eliminates forest habitat, removing the trees that support the species' nesting, roosting, and dietary requirements. It also results in fragmented habitat that isolates red-crowned parrot populations (U.S. Agency for International Development (USAID) 2009, p. 48; Macias and Enkerlin 2003, pp. 3–4), potentially compromising the genetics of these populations through inbreeding depression and genetic drift. Forest degradation as a result of incomplete clearing, such as for grazing land, is also a threat to red-crowned parrots because in the absence of management for maintenance of tree density or regeneration, it eventually leads to full deforestation (GOM 2010, p. 32). With respect to the few ranches and farms that maintain large trees, although red-crowned parrots are known to use partially cleared and cultivated landscapes (Collar *et al.* 1992, p. 425), they are only able to do so if the landscape maintains enough large trees to support the species' nesting, feeding, and roosting requirements. A reduced number of trees will reduce the availability of adequate nest sites and food resources across the landscape, resulting in a reduction in the number of red-crowned parrots the landscape can support and, thus, a reduction in the red-crowned parrot population.

The indirect effects of deforestation and forest degradation due to conversion of land to agricultural use also pose a threat to red-crowned parrots. Clearing of land for agriculture use provides easier access by humans to the forests and trees the species uses, and thus increases the vulnerability of the species to illegal poaching, one of the leading threats to the species (Enkerlin and Hogan 1997, unpaginated) (see *Factor B* discussion) along with habitat destruction and modification.

Deforestation via forest conversion to agriculture uses remains a major driver of land transformation in Mexico (CEC 2008, p. 24). Agricultural production is projected to double within the country by 2030, with little variation in projections under different future scenarios (CEC 2010, pp. 34, 70). Although some of this increase in production is expected to be due to an increase in productivity on previously converted land, total agricultural land area in Mexico is projected to increase by 6,300 to 41,400 ha (15,568 to 102,302 ac) by 2030 (CEC 2010, p. 75).

Logging

Only 5 percent of Mexico's forested area is designated as production forest (FOA 2010, p. 244), although casual unsustainable tree removal by communities in the vicinity of forests also occurs, for example for firewood or charcoal production, or for timber for local use, rather than for large-scale trade (GOM 2010, p. 32). Almost all domestic timber production is currently supplied by low-management natural forests (Comisión Nacional Forestal 2008, in USAID 2009, p. 50). Commercial harvesting is mainly conducted via shelterwood (temporary maintenance of some canopy trees, to protect understory growing trees, until an even-aged stand is produced) or partial cutting of up to 40 percent of standing volume (Masek *et al.* 2011, p. 4). These, and other, logging practices reduce the number of large trees in harvested areas (Putz *et al.* 2000, p. 40), and alter forest structure and composition by the selective extraction of certain tree species (CEC 2008, p. 24). A reduced number of large trees may reduce the availability of suitable nest sites for the red-crowned parrot, and smaller trees may not possess cavities large enough for the species to nest in. Altering the composition of tree species, or reducing the size or number of trees (or both), may reduce the availability of food for the species. Thus, forests degraded by logging may result in a reduction in the number of individuals of the species the forest can support and therefore a further reduction in the population. Logging can also cause widespread collateral damage in the remaining forest (Putz *et al.* 2000, pp. 7–8). In addition to the direct removal of trees that could potentially support nesting or dietary requirements of parrots, an additional 5 to 50 percent of both soil and remaining trees are damaged by logging in tropical forests (Putz *et al.* 2000, p. 8), contributing to the total amount of forest degraded by human activities. The additional degradation could potentially further

contribute to shortages of red-crowned parrot food resources due to the death of damaged trees or lower tree recruitment due to damaged soils.

Indirectly, logging affects red-crowned parrot populations because logging roads increase access of forested areas to humans. An increase in access to forested areas also increases access to the species within those forests. As a result, logging operations multiply the harvest of animals from tropical forests (Putz *et al.* 2000, pp. 16, 23). Thus, logging is an indirect threat to red-crowned parrots because it increases the vulnerability of the species to illegal poaching, one of the leading threats to the species (see *Factor B* discussion). Logging also threatens the species because increased access to forests is also often followed by full deforestation as lands are cleared for agricultural use (Kaimowitz and Angelsen 1998, in Putz *et al.* 2000, p. 16) (see Agriculture (Livestock and Crop Production) above).

While logging, if conducted according to a well-designed forest management plan, can potentially protect ecosystem services and biodiversity, the compatibility of logging with biodiversity conservation is complicated (Putz *et al.* 2000, pp. 11, 7). Logging in tropical forests is carried out over a wide range of intensities, using a variety of techniques which may be applied carefully or in ways that result in extensive collateral damage (Putz *et al.* 2000, p. 7). In Mexico, most (53 percent to 80 percent (Perron 2010, p. 5)) natural forests are owned and managed by approximately 8,500 different communities (Blaser *et al.* 2011, p. 345). Use and management on community-owned property varies (Bray *et al.* 2005, in Masek pp. 14–15), and although some good examples of successful community forest management exist, most communities lack forest management plans (Sarukhan and Merino 2007, p. 1) and the organization and funding to implement sustainable forest management practices (Blaser *et al.* 2011, p. 351; GOM 2010, p. 24). Further, illegal logging, which is conducted without consideration for minimizing impacts on ecosystems or species, is widespread in Mexico, accounting for approximately 8 percent of the country's deforestation (USAID Center for International Forestry Research (CIFOR) 2010, p. 12; USAID 2009, pp. 56–57).

According to future scenarios evaluated by CEC (2010, p. 36), Mexico is projected to see a 5–10 percent decline in production of selected wood products by 2030, reflecting a greater emphasis on agricultural production. Although commercial wood production may decrease, we are not aware of any

information indicating that illegal logging or casual unsustainable removal of trees by communities, or the indirect effects of these activities, will decrease.

Texas

Within the past few decades, the LRGV has experienced rapid human population growth and subsequent rapid urbanization. In the two Texas counties in which the red-crowned parrot occurs, the human population increased by 36.1 percent (Hidalgo County) and 21.2 percent (Cameron County) between 2000 and 2010 (US Census Bureau 2011, unpaginated), and each county's population is projected to increase by about 50 percent between 2010 and 2040 (Texas State Data Center 2008, unpaginated). In a study investigating land cover and land use change in the region using analysis of satellite imagery, Huang *et al.* (2011, unpaginated) found that between 1993 and 2003, urbanization increased by 59.7 percent in Hidalgo County and 58.2 percent in Cameron County. Red-crowned parrots are known to colonize urban areas, as evidenced by their establishment as introduced populations in several urban areas of the United States and Mexico. Although red-crowned parrots occur in urban habitats within the LRGV, suggesting their population in the LRGV may increase with future increases in urbanization, it is also possible that continued population growth could result in current urban areas becoming more densely developed with more infrastructure and fewer trees, reducing the availability of red-crowned parrot nest sites and food resources. Although red-crowned parrot populations may be influenced by future growth in the LRGV, we found no information indicating whether future growth may positively or negatively affect the red-crowned parrot population in the region. Further, we found no information specifically regarding any other threats to red-crowned parrot habitat in the region.

Conservation Measures

Payment for Ecosystem Services (PES)

Mexico has initiated several PES programs that provide financial incentives to rural communities and private landowners for the design and implementation of carbon sequestration, biodiversity conservation, agroforestry, and watershed protection projects. These programs were designed to pay participating forest owners for the benefits of these environmental services where commercial forestry cannot compete, economically, with agriculture

and ranching, the primary causes of deforestation in Mexico (Munoz *et al.* 2008, pp. 725–726; Corbera *et al.* 2011, p. 54). Research on Mexico's PES programs has shown mixed results in relation to their impact on deforestation; while early analyses showed inconclusive results, recent work indicates a positive but not substantive reduction in net deforestation rates (Corbera *et al.* 2011, p. 17).

Reduced Emissions From Deforestation and Forest Degradation (REDD)

A related, new mechanism is emerging that may raise funds to protect forests from deforestation as well as mitigate climate change. This mechanism is known as "reduced emissions from deforestation and forest degradation" (REDD). As forests are destroyed for agriculture, logging, and other uses, the carbon stored in the trees is released as carbon dioxide, which adds to the concentration of greenhouse gases; 20 percent of global greenhouse gas emissions are thought to be from deforestation (Chatterjee 2009, p. 557). Lawmakers and businesspeople around the world are beginning to consider investing in REDD programs as a way to mitigate climate change. Under this type of program, developing countries would be paid to protect their forests and reduce emissions associated with deforestation. Funds would come from foundations, governments, or financial agencies such as World Bank; industries in developed countries would receive credits for saving trees in developing countries (Chatterjee 2009, p. 557). If REDD projects are able to generate revenue comparable to those of activities such as logging and agriculture, and revenues are distributed equally among stakeholders, this would give standing forests value and an incentive for forest conservation (Hajek *et al.* 2011, in press). Mexico has been very active in REDD discussions under the United Nations Framework Convention on Climate Change, is developing a national REDD strategy, and is working on the design and implementation of regional and local pilot projects (USAID CIFOR 2010, p. 34; Corbera *et al.* 2011, p. 316). However, we do not yet know how successful Mexico's REDD strategy or projects will be.

Forest Certification

Another program being implemented is certification of forests. The basis for certification is for consumers to be assured by a neutral third-party that forest companies are employing sound practices that will ensure sustainable forest management. By being certified, a

company can differentiate their products and potentially acquire a larger share of the market (Duery and Vlosky 2005, p. 12). To be certified companies must follow standards set by the Forest Stewardship Council (FSC). Certification companies not only certify forests, but also forest products that come from well-managed forests, and may also provide a means to track logs and remove illegally logged trees from the market (Duery and Vlosky 2005, pp. 13–14; Kometter *et al.* 2004, p. 9). As of February 2011, approximately 614,000 ha (1,517,227 ac) (9 percent) of Mexico's forest were certified, mostly outside the tropics (Blaser *et al.* 2011, p. 348). Only about 32,600 ha (79,074 ac) of tropical forest were certified, most of which was planted forest (Blaser *et al.* 2011, p. 348).

Protected Areas

Conservation strategies in Mexico rely heavily on natural protected areas, and Biosphere Reserves comprise most of the designated protected area in the country (Figueroa and Sanchez 2008, pp. 3324, 3234). The red-crowned parrot is protected in or near two biosphere reserves: the Reserva de la Biosfera El Cielo, in Tamaulipas; and the Reserva de la Biosfera Sierra Gorda, in Querétaro (Macias and Enkerlin 2003, p. 22). However, the best conserved portions of habitat in these two reserves are at elevations greater than 500 m (1,640 ft), while the red-crowned parrot occurs primarily below 500 m (1,640 ft) (see Habitat). Further, in a study of the effectiveness of Mexico's protected areas for preventing land use and land cover change, Figueroa and Sanchez (2008, entire) found that Sierra Gorda Biosphere Reserve was ineffective (as opposed to effective or weakly-effective). They did not evaluate El Cielo Biosphere Reserve, but they found that, overall, approximately 54 percent of protected areas, including 65 percent of Biosphere Reserves, were effective.

Summary of Factor A

Forest loss and degradation due to the conversion of forest to grazing and farm land have caused extensive red-crowned parrot habitat loss in the past. These activities are still occurring within the range of the species and the fact that (1) these activities are projected to increase in Mexico, and (2) the Gulf of Mexico coastal plain, in which a large portion of the red-crowned parrot's historical range occurs, is one of the most productive regions of agricultural use in Mexico, indicates these activities will continue within the species' range into the foreseeable future. It is unlikely that the direct effects of logging are threat to

the species, as red-crowned parrots are known to use degraded habitats. However, the indirect effects of logging, including increased human access to forests, which increases the vulnerability of the species to poaching, and often leads to conversion of newly accessible forest to agriculture, appear to be a threat to the species. Although commercial logging is projected to decrease within Mexico, it is projected to continue albeit at a lower level. Also, illegal logging is widespread in Mexico, and we are not aware of any information indicating that the extent of illegal logging will be reduced in the future. Further, because many people within Mexico rely on forests for their livelihoods, and because sustainable practices are not used, it is likely that casual, unsustainable removal of trees by communities for purposes such as firewood and local timber use will also continue to degrade and ultimately deforest red-crowned parrot habitat in the future.

Habitat conservation measures within Mexico do not appear to be sufficient to stem future red-crowned parrot habitat losses. Programs for the payment of ecosystem services have yet to show substantive reductions in deforestation rates; only 9 percent of forests are certified as employing sustainable practices, most outside the tropics. The best habitat within the two Biosphere Reserves occupied by red-crowned parrots is above the elevation at which the species usually occurs. Further, at least one of these two Biosphere Reserves is ineffective with respect to prevention of land-use change within its boundaries.

Currently the population of red-crowned parrots is extremely small (less than 5,000 individuals) and fragmented, and a large portion (approximately half) of the population occurs within the species' historical range in Mexico. Activities causing or leading to deforestation in Mexico are likely to continue to result in red-crowned parrot habitat loss within the country. Therefore, based on the best available scientific and commercial data available, we find that the present and threatened destruction, modification, or curtailment of the red-crowned parrot's habitat is a threat to the species.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Parrots have been traded commercially in Mexico for centuries and capture of adults and nestlings for the pet trade represents one of the main threats to the red-crowned parrot (Macias and Enkerlin 2003, p. 18). In

terms of populations, capturing individuals for trade essentially mimics mortality in that it removes individuals from the wild population. Parrots, in general, have long lifespans and low reproductive rates. Consequently, they are particularly sensitive to increased mortality because their populations are slow to recover from it (Lee 2010, p. 3; Thiollay 2005, p. 1121; Wright *et al.* 2001, p. 711); removal of individuals year after year can stop population growth and cause local extirpations (Cantu *et al.* 2007, p. 14).

Mexico's proximity to the United States, the largest pet market in the world, resulted in extensive legal and illegal export of several *Amazona* species to the United States during the 1960s to 1990s. Between 1970 and 1982, 16,490 red-crowned parrots, mostly nestlings, were legally exported from Mexico to the United States. A similar number is estimated to have been illegally exported during this period, with pre-export mortality estimated at greater than 50 percent. Combining legal and illegal trade, and their associated mortality, the approximate minimum level of harvest during this time was estimated to be 5,000 individuals per year (Inigo and Ramos 1991, in Enkerlin and Hogan 1997, unpaginated; Enkerlin and Packard 1993, in Macias and Enkerlin 2003, p. 20). Population declines were first noted for the species during this period (see Abundance).

Legal Trade

Imports of red-crowned parrots into the United States were restricted by passage of the Wild Bird Conservation Act (WBCA; 16 U.S.C. 4901 *et seq.*) in 1992, and international trade in general was restricted by the listing of the species in Appendix II of CITES in 1981 and, in 1997, its transfer to the more restrictive Appendix I. The WBCA banned the import into the United States of specimens of most CITES-listed bird species, including restricting U.S. imports of red-crowned parrots (see *Factor D* discussion). CITES, an international agreement between governments, ensures that the international trade of CITES-listed plant and animal species does not threaten those species' survival in the wild. There are currently 175 CITES Parties (member countries or signatories to the Convention). Under this treaty, CITES Parties regulate the import, export, and re-export of specimens, parts, and products of CITES-listed plants and animal species (see *Factor D* discussion). Trade must be authorized through a system of permits and certificates that are provided by the designated CITES Scientific and

Management Authorities of each CITES Party (CITES 2010, unpaginated). In 1981, the red-crowned parrot was listed in Appendix II of CITES, which includes species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival (CITES 2010, unpaginated; CITES 2011, unpaginated). In June of 1997, the species was proposed for transfer from Appendix II to Appendix I based on extensive illegal trade in the species and habitat loss. It was placed in Appendix I in September of 1997. An Appendix-I listing includes species threatened with extinction whose trade is permitted only under exceptional circumstances, which generally precludes commercial trade. The import of an Appendix-I species requires the issuance of both an import and export permit. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species in the wild and would not be for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired and trade is not detrimental to the survival of the species in the wild, and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

Based on CITES trade data obtained from United Nations Environment Programme—World Conservation Monitoring Center (UNEP-WCMC) CITES Trade Database, from the time the red-crowned parrot was placed in CITES Appendix I in 1997 through 2009, 1,297 specimens of this species were reported in international trade. These included 297 live birds, 5 bodies, 6 eggs, 7 feathers, 1 skin, and 981 generically labeled "specimens," with the latter category typically referring to parts or pieces of an animal—for example, blood samples collected for laboratory analysis—rather than whole birds. In analyzing these reported data, several records appear to be overcounts due to slight differences in the manner in which the importing and exporting countries reported their trade, and it is likely that the actual numbers of specimens of red-crowned parrots reported to UNEP-WCMC in international trade from the time the species was placed in CITES Appendix I in 1997 through 2009 was 1,218, including 261 live birds, 5 bodies, 6 eggs, 7 feathers, 1 skin, and 938 "specimens."

Because the red-crowned parrot is listed as an Appendix-I species under

CITES, commercial legal international trade is very limited. Of the 1,218 specimens that were likely in trade between 1997 (when the species was placed in CITES Appendix I) and 2009, 1,014 were wild specimens and an additional 53 specimens were from sources unspecified in the data. Of these specimens, 94 percent (953) were specimens traded for scientific purposes (937 of the generically labeled "specimens", 6 eggs, 7 feathers, and 3 bodies). The remaining were 113 live birds (59 of wild origin and 54 from sources unspecified in the data) and 1 "specimen" from a source unspecified in the data. Of these 113 live birds, 12 were reported as imported into Mexico for re-introduction into the wild, 11 as being for personal use, 5 as being for commercial purposes, 31 as being previously seized specimens traded for law enforcement purposes, 8 as being specimens born or obtained prior to the listing of the species under CITES (pre-Convention), and 46 that were seized or refused entry into the United States.

Although 1,218 specimens of red-crowned parrot were reported in trade, most (953, or 78 percent) were scientific specimens traded for scientific purposes, and the large majority of these (98 percent) were generically labeled "specimens," rather than whole birds. Of the 265 non-scientific specimens traded, 154 (58 percent) were live birds that were captive-bred, captive-born, or pre-Convention.

Because the majority of the specimens of this species reported in international trade are generically labeled scientific "specimens," or are captive-bred, captive-born, or pre-Convention birds, we have determined that legal international trade controlled via valid CITES permits is not a threat to the species. However, the number of live wild birds reported as seized or refused entry into the United States due to lack of CITES certification or WBCA authorization suggests reason for concern with respect to the illegal trade of the species.

Illegal Trade

Illegal trade in wildlife and wildlife products is extensive in Mexico because of their high demand and lucrative profits (Valdez *et al.* 2006, p. 276). According to Valdez *et al.* (2006, p. 276), the greatest percentage of this trade is sold to the United States. The number of red-crowned parrots illegally exported from Mexico since the species was listed in Appendix I of CITES is unknown. The Service inspects approximately 25 percent of declared wildlife shipments at the U.S. border. It generally does not inspect undeclared

shipments except during planned investigations, during seasonal periods when certain illegally obtained wildlife have a higher probability of being imported into the United States, or if they have reason to suspect that the shipment could be contraband (Congressional Research Service 2008, p. 24). As a result, it is likely that the 46 wild red-crowned parrots that were reported as seized or refused entry into the United States since the species was listed in CITES Appendix I represent only a portion of those smuggled out of Mexico. Also, as pre-export mortality of captured red-crowned parrots is estimated to be greater than or equal to 50 percent (Enkerlin and Packard 1993, in Macias and Enkerlin 2003, p. 20), it is also likely that smuggled birds represent only half (or less) of the number removed from the wild for illegal export. Further, Cantu *et al.* (2007, pp. 58–59) report that, although the overall illegal export of parrots from Mexico into the United States appears to have decreased since 2000, with only an estimated 4–14 percent of parrots now exported out of the country, illegal exports of some species, including the red-crowned parrot, appear to be on the rise.

With respect to domestic trade, commercial trade of red-crowned parrots has been illegal in Mexico since 1982 (CITES 1997, pers. comm.). Other species of parrots were legally traded in Mexico until 2008, but due to a lack of enforcement of laws and regulations controlling this trade, the illegal parrot trade in Mexico has been extensive (Cantu *et al.* 2007, entire). The office of the Procuraduría Federal de Protección al Ambiente (PROFEPA; Federal Prosecutor for Environmental Protection) is responsible for enforcing environmental laws, regulations, and legal standards in Mexico, including those pertaining to the parrot trade. PROFEPA employs a little over 500 inspectors for the entire country, and they are responsible for enforcement of wildlife, forestry, industrial pollution, marine environment, and other environmental laws, regulations, and standards (Cantu *et al.* 2007, p. 45). Although capacities for law enforcement have been increasing in Mexico since the late 1990s, PROFEPA still lacks the funding and human resources to effectively enforce wildlife and other environmental laws (USAID CIFOR 2010, p. 46; GOM 2010, p. 24; Valdez *et al.* 2006, p. 276).

As a result of the lack of enforcement capacity, the laws and regulations for controlling the parrot trade in Mexico, including illegal trade in red-crowned parrots, have not been effective (Cantu

et al. 2007, entire). For instance, prior to 2008, when Article 602 of Mexico's General Wildlife Law (see below, and *Factor D* discussion) went into effect, only parrot species authorized by the government for trade in any given year could be legally trapped and traded that year (Cantu *et al.* 2007, pp. 9, 24–25). No parrot trapping had been authorized by wildlife officials between 2003 and late 2006, yet unsustainable capture of wild parrots, including red-crowned parrots and other at-risk species, continued unabated (Cantu *et al.* 2007, p. 7). Based on interviews with parrot trappers and trapper unions in Mexico during 2005 and 2006, Cantu *et al.* (2007, pp. 35, 57) estimated that 65,000–75,000 parrots were illegally captured each year in Mexico, mostly (86–96 percent) for Mexico's domestic market. Red-crowned parrots were among the species illegally captured and traded as evidenced by the studies of Macias and Enkerlin (2003, pp. 18–19, 22) and Cantu *et al.* (2007, pp. 35, 45–59). Macias and Enkerlin (2003, p. 19), during a study conducted from 2002–2003, found that 28 percent of local people interviewed within the historical range of the red-crowned parrot reported that "looting" of red-crowned parrot chicks from nests for the pet trade occurred in their community at a rate of 1–10 chicks per year. The greatest proportion of reports was from Veracruz, where 48 percent of those interviewed reported that taking of chicks occurred in their community. With respect to adult birds, 15 percent of community members interviewed reported adult red-crowned parrots were captured for trade in their community and that capture rates ranged from 25–50 adults per year to 50–100 adults per year. Cantu *et al.* (2007, p. 35) estimate fewer than 600 red-crowned parrots are captured per year based on interviews with trappers, trapper unions, and others, although they indicate that their estimates for some species are very conservative and may be underestimates.

In October 2008, Mexico passed Article 602 of its General Law Wildlife Law. The article bans the capture, export, import, and re-export of any species of the Psittacidae (parrot) family whose natural distribution is within Mexico (see *Factor D* discussion). The law could potentially reduce the number of red-crowned parrots illegally traded domestically. It could also potentially reduce the number illegally traded internationally by making it more difficult for smugglers to capture the species within Mexico and transport them to the U.S. border. Based on an

increased number of citizen complaints to authorities about illegal parrot sales and a decreased number of seizures of parrots by authorities during 2008–2010, Cantu and Sanchez (2011, entire) conclude that illegal trade in parrots in Mexico has decreased since the law took effect. However, this conclusion assumes that law enforcement effort increased with the increased number of complaints filed, and it is unknown if, or to what extent, this was the case. Although the parrot trade in Mexico may have decreased since Article 60 2 was implemented, without data on the relationship between filed complaints and enforcement, we are unable to determine whether a decrease occurred or, if it did, the extent of such a decrease. We also do not know whether or not such a decrease would necessarily pertain to the red-crowned parrot. Cantu *et al.* (2007, p. 59) report that illegal exports of the red-crowned parrot appear to be increasing.

Also, according to USAID CIFOR (2010, p. 46), there are areas in Mexico where government officials have limited access due to the presence of organized groups of illegal loggers, guerrilla groups challenging local and federal authorities, and drug traffickers (USAID CIFOR 2010, p. 46). The latter is particularly relevant to red-crowned parrots. Mexico's northeast states have experienced dramatic increases in narcotics-related violence in the past 2 years (U.S. Department of State 2011, unpaginated; Rios and Shirk 2011, p. 1). The levels of violence have been such that the U.S. Department of State has issued several travel warnings for the area including recommendations for U.S. citizens to defer nonessential travel to the entire state of Tamaulipas and parts of San Luis Potosi, and exercise caution in parts of Nuevo Leon. Considering much of the red-crowned parrot's historical range, and many of the locations with recent records of the species, are within the state of Tamaulipas, and that smaller portions of the species' historical range occur in San Luis Potosi and Nuevo Leon, it is reasonable to conclude that levels of violence in these areas are likely hindering wildlife law enforcement efforts, at least to some degree.

For all of these reasons, we consider the study by Cantu and Sanchez (2011, entire) to be inconclusive regarding the effects of Mexico's new parrot law on the levels of trade of red-crowned parrots. Further, we are unaware of any other evidence that may indicate the level of trade in the species has decreased in recent years, or will decrease in the foreseeable future, in Mexico.

We are unaware of any information indicating that trade is a threat to red-crowned parrots within the LRGV of Texas.

Recreational, Scientific, or Educational Use

We are unaware of any information indicating that recreational, scientific, or educational use of the red-crowned parrot is a threat to the species.

Summary of Factor B

Red-crowned parrots currently are estimated to number fewer than 5,000 individuals within their native range, and these individuals occur in fragmented and isolated populations. Further, red-crowned parrot populations do not have the capacity to respond quickly to increased levels of mortality. For these reasons, increased mortality can out-pace the species' reproductive rate, causing reductions in the species' population. Evidence indicates that, relative to the size of the species' current population and low reproductive rate, large numbers (hundreds) of red-crowned parrots are removed from the wild for the illegal pet trade and that these include potentially 100 or more breeding birds (adults) per year. Evidence also indicates that illegal export of the species to the United States appears to have increased in recent years. Further, we are not aware of any reliable evidence indicating that the level of illegal capture and trade of the red-crowned parrot has declined since Mexico's ban on native parrot species was implemented in 2008. Although we are unaware of information indicating that capture of wild individuals for trade is a threat to the red-crowned parrot in the LRGV of Texas, populations of the species in Mexico represent half or more of the species' small global population. Further, it is possible that the viability of the LRGV population may rely on occasional supplementation from populations in Mexico (see Biological Information). For these reasons, we conclude that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the red-crowned parrot.

Factor C: Disease or Predation

Infectious diseases can pose many direct threats to individual birds as well as entire flocks (Abramson *et al.* 1995, p. 287). Most of the available research on disease in parrots addresses captive-held birds; information on the health of parrots in the wild is scarce (Karesh *et al.* 1997, p. 368). Further, few studies on diseases affecting the red-crowned parrot, specifically, exist. In one study,

Stone *et al.* (2005, entire) sampled 10 red-crowned parrot nestlings from 4 nests of free-ranging red-crowned parrots in Tamaulipas, Mexico, as part of a study to provide baseline data for species at high risk of exposure to disease. The population sampled was in a densely human-populated region of Mexico, where poultry and captive parrots (both potential disease risks) are numerous. Each bird sampled was visually examined for external parasites; had blood samples taken and tested for antibodies to psittacid herpesvirus-1, polyomavirus, and avian influenza; and had fecal samples collected and examined for the eggs and oocysts (egg cells) of internal parasites. All blood and fecal samples tested were negative. Stone *et al.* (2005, pp. 246–247) indicate that negative results of tests on the blood and fecal samples could indicate absence of disease or parasites, but could also potentially be a result of the methods used or the stage during the nestling cycle in which samples were taken. External parasites found on nestlings were adult lice (*Paragoniocolletes mexicanus*) and adult hematophagous nest mites (*Ornithonyssus sylviarum*), but the effect of these parasites on nestling health is uncertain (Stone *et al.* 2005, p. 247).

A second study sampled 16 red-crowned parrots and 21 yellow-headed parrots (*Amazona oratrix*) maintained in captivity from 1 to 7 years. In that study, birds were tested for several diseases including avian influenza, avian polyomavirus, psittacine circovirus, Newcastle disease virus, psittacid herpesvirus-1, and psittacosis (*Chlamydophila psittaci*). All results were negative. Examination and tests for protozoa or helminthes also showed no evidence of these in sampled birds (Paras and Lamberski 1997, in Stone *et al.* 2005, pp. 245–246).

Although many diseases, such as those mentioned above, and others, could negatively affect parrots in captivity and in the wild, the studies conducted specifically on red-crowned parrots did not indicate disease may be limiting the population. We are unaware of any information indicating that any diseases are impacting the red-crowned parrot at a level which may affect the status of the species as a whole and to the extent that it is considered a threat to the species.

Snakes, red-tailed hawks (*Buteo jamaicensis*), roadside hawks (*B. magnirostris*), gray hawks (*B. nitidus*), coatis, and skunks have been reported to prey on red-crowned parrots. Of these, only snakes, particularly the indigo snake, appear to be a major source of

predation (Enkerlin and Hogan 1997, unpaginated). In a study of three *Amazona* species in southern Tamaulipas, which included the red-crowned parrot, Enkerlin (1995, p. 89–98) found that approximately 10 percent of the chicks lost were lost via predation by indigo snakes. Although red-crowned parrots are subject to predation, and indigo snakes may be a major source of that predation, we found no evidence that predation is occurring at a level which poses a threat to the species.

Summary of Factor C

We are not aware of any scientific or commercial information that indicates disease or predation poses a threat to red-crowned parrots, either now or in the foreseeable future. Therefore, based on our review of the best available scientific and commercial information, we find that neither disease nor predation is a threat to the species.

Factor D: Inadequacy of Existing Regulatory Mechanisms

Trade

As discussed above under Factor B, the red-crowned parrot is listed in Appendix I of CITES. CITES is an international treaty among 175 nations, including Mexico and the United States, which entered into force in 1975. In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) The Secretary of the Interior has delegated the Department's responsibility for CITES to the Director of the Service and established the CITES Scientific and Management Authorities to implement the treaty. Under this treaty, member countries work together to ensure that international trade in animal and plant species is not detrimental to the survival of wild populations by regulating the import, export, and re-export of CITES-listed animal and plant species.

The import of red-crowned parrots into the United States is also regulated by the Wild Bird Conservation Act (WBCA) (16 U.S.C. 4901 *et seq.*), which was enacted on October 23, 1992. The purpose of the WBCA is to promote the conservation of exotic birds by ensuring that all imports to the United States of exotic birds are biologically sustainable and are not detrimental to the species. The WBCA generally restricts the importation of most CITES-listed live or dead exotic birds, except for certain limited purposes such as zoological display or cooperative breeding programs. Import of dead specimens is allowed for scientific specimens and museum specimens. The Service may

approve cooperative breeding programs and subsequently issue import permits under such programs. In addition to other approved purposes, wild-caught birds may be imported into the United States if they are subject to Service-approved management plans for sustainable use. At this time, the red-crowned parrot is not part of a Service-approved cooperative breeding program and does not have an approved management plan for wild-caught birds.

Within Mexico, the red-crowned parrot is considered an endangered species as per *Norma Oficial Mexicana* (NOM; Official Mexican Standard) *NOM-059-ECOL-2001*. Endangered and threatened species are regulated under the general terms of the *Ley General del Equilibrio Ecológico y Protección al Ambiente* (LGEEPA; General Law of Ecological Balance and Environmental Protection), the *Ley General de Vida Silvestre* (LGVS; General Wildlife Law), and also under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to which Mexico is a Party (CEC 2003, unpaginated). *NOM-059-ECOL-2001* establishes a list of wildlife species classified as either in danger of extinction (endangered), threatened, under special protection, and probably extinct in the wild (GOM 2002, p. 6). All use and development of endangered and threatened species requires a special permit from the Secretaría del Medio Ambiente y Recursos Naturales (SEMARNAT; Secretariat of the Environment and Natural Resources). Under the General Wildlife Law, the use of at-risk species, including the red-crowned parrot, may be authorized only when priority is given to the collection and capture for restoration, repopulation, and reintroduction activities (CEC 2003, unpaginated; Comisión Nacional Para El Conocimiento Y Uso De La Biodiversidad 2009, unpaginated). Further, in October 2008, Mexico passed Article 60 2 of the General Wildlife Law. The article bans the capture, export, import, and re-export of any species of the Psittacidae (parrot) family whose natural distribution is within Mexico. It allows for authorizations for removal of individuals from the wild to be issued only for conservation purposes, or to accredited academic institutions for scientific research (Animal Legal & Historical Center 2008, unpaginated).

As discussed above under Factor B, we consider illegal trade to be a threat impacting the red-crowned parrot. As a result, we consider the inadequacy of the laws and regulations discussed above to be a threat to the red-crowned parrot. We are not aware of any

information indicating that the regulatory mechanisms controlling illegal trade, or extent of enforcement of these mechanisms, will change in the future. Therefore, we consider the inadequacy of these regulatory mechanisms to be a threat to the red-crowned parrot now and in the foreseeable future.

Habitat Destruction and Modification

The *Ley General de Desarrollo Forestal Sustentable* (LGDFS; *General Law on Sustainable Forest Management*), passed in 2003, governs forest ecosystems in Mexico, including red-crowned parrot habitat. This law formalizes the incorporation of the forest sector in a broader environmental framework. Under this law, harvesting of forests requires authorization from SEMARNAT. It also requires that authorizations to forest owners for harvesting forests be based on a technical study and a forest management plan (GOM 2010, p. 24). A number of additional laws complement the 2003 law in regulating forest use. The LGEEPA regulates activities for protecting biodiversity and reducing the impact on forests and tropical areas of certain forest activities; the LGVS governs the use of plants and wildlife found in the forests; *Ley General de Desarrollo Rural Sustentable* (the General Law on Sustainable Rural Development) provides guidance for activities aimed at protecting and restoring forests within the framework of rural development programs; and *Ley Agraria* (the Agrarian Law) governs farmers' ability to use forest resources on their land (Anta 2004, in USAID 2011, unpaginated).

Another law regulating portions of the red-crowned parrot's habitat is the *Sistema Nacional de Áreas Naturales Protegidas* (SINANP; *National System of Protected Natural Areas*). These Protected Natural Areas are created by Presidential decree and the activities on them are regulated under the LGEEPA, which requires that the Protected Natural Areas receive special protection for conservation, restoration, and development activities (Comisión Nacional de Áreas Naturales Protegidas (CONANP) 2011, unpaginated). These natural areas are categorized as: Biosphere Reserves, National Parks, Natural Monuments, Areas of Natural Resource Protection, Areas of Protection of Flora and Fauna, and Sanctuaries (CONANP 2011, unpaginated). The red-crowned parrot is known to occur in two biosphere reserves: Reserva de la Biosfera El Cielo, in Tamaulipas; and Reserva de la Biosfera Sierra Gorda, in

Querétaro (Macias & Enkerlin 2003, p. 22) (see *Factor A* discussion).

As discussed above under Factor A, we consider the destruction and modification of red-crowned parrot habitat to be a threat impacting the red-crowned parrot. Therefore, we consider the laws and regulations discussed above that address this threat to be inadequate regulatory mechanisms for protection of red-crowned parrot habitat and, consequently, a threat to the species. We are not aware of any information indicating that the regulatory mechanisms controlling habitat destruction or modification, or the extent of enforcement of these mechanisms, will change in the future. Therefore, we consider the inadequacy of these regulatory mechanisms to be a threat to the red-crowned parrot now and in the foreseeable future.

Summary of Factor D

As discussed above under Factors A and B, we consider destruction and modification of habitat and illegal trade to be threats to the red-crowned parrot in Mexico. As a result, based on a review of the best available scientific and commercial information, we consider the inadequacy of existing mechanisms that regulate these threats to also be a threat to the red-crowned parrot.

Factor E: Other Natural or Manmade Factors Affecting the Species' Continued Existence

We are not aware of any scientific or commercial information that indicates other natural or manmade factors pose a threat to this species. As a result, we find that other natural or manmade factors are not threats to the red-crowned parrot now or in the foreseeable future.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the red-crowned parrot is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the red-crowned parrot. We reviewed the petition, information available in our files, and other available published and unpublished information.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the

species responds to those potential threats in a way that causes an actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affect the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

This status review identified threats to the red-crowned parrot attributable to Factors A, B, and D. The primary threats to the red-crowned parrot are habitat loss, illegal capture for the pet trade, and the inadequacy of regulatory mechanisms that address these threats. Habitat destruction and modification (Factor A) in the form of conversion of native forest to crop and grazing land and deforestation due to the indirect effects of logging are likely occurring throughout the species' range in Mexico. Illegal capture for the pet trade (Factor B) is also likely occurring throughout the species' range in Mexico, and is exacerbated by deforestation because deforestation increases access to the species. Regulatory mechanisms (Factor D) are inadequate to prevent further loss of forest habitat and continued capture and trade of the species throughout the red-crowned parrot's range.

The global population of red-crowned parrots has experienced a large (greater than 50 percent) decline in recent decades (Berlangua *et al.* 2010, pp. 38–39), primarily due to habitat destruction and modification and capture for the pet trade within Mexico (Macias and Enkerlin 2003, p. 3). As a result, the current global population is estimated to be fewer than 5,000 individuals. Half or more of the global population, most of the current range, and all of the historical range of the red-crowned parrot occurs in Mexico. As a result, threats that impact the species within Mexico have had and will continue to have impacts on the rangewide status of the species. Although population numbers and trends are uncertain outside of Mexico (i.e., within the LRGV of Texas), historical records indicate that the species occurred periodically in the LRGV prior to occurring year-round in the region (see Biological Information), indicating periodic occurrence in the region of birds from Mexico. Therefore, it is possible that birds from Mexico still periodically occur in the LRGV. It is also, therefore, possible that the viability of the LRGV

population is dependent on periodic influxes of birds from Mexico.

Given (1) the large extent of the decline in the global population of the species in recent decades due to habitat destruction and modification and capture for the illegal pet trade, (2) that these threats likely continue within the range of the red-crowned parrot, (3) that existing regulatory mechanisms addressing these threats are inadequate, and (4) we found no information indicating that these threats will be ameliorated in the foreseeable future, we find that these threats are likely to continue to cause declines in the red-crowned parrot population into the future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the red-crowned parrot as endangered or threatened is warranted. We will make a determination on the status of the red-crowned parrot as endangered or threatened when we complete a proposed listing determination. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We have reviewed the available information to determine if the existing and foreseeable threats render the species at risk of extinction now such that issuing an emergency regulation temporarily listing the species in accordance with section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the red-crowned parrot is not warranted for this species at this time because there are no impending actions that might result in extinction of the species that would be addressed and alleviated by emergency listing. However, if at any time we determine that issuing an emergency regulation temporarily listing the red-crowned parrot is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines," address the immediacy

and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments (DPSES) of vertebrates). We assign the red-crowned parrot a listing priority number (LPN) of 2, based on our determination that the primary threats are high in magnitude and imminent. These threats include habitat destruction and modification, capture for the illegal pet trade, and inadequate regulatory mechanisms. Our rationale for assigning the red-crowned parrot an LPN of 2 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. The primary threats to the red-crowned parrot (habitat loss and modification, capture for the illegal pet trade, and inadequate regulatory mechanisms) are affecting a large portion of the species' population throughout the historical range of the species in Mexico, and we have no information on threats or population trends in the species' remaining range in the LRGV. For Factors A, B, and D, we consider the magnitude high because the current population is small, a large portion of the population is affected, and these factors may lead to extirpation in Mexico. Further, we have no information indicating the LRGV populations can persist in the absence of the Mexico populations. Because we find that threats under these three factors (A, B, and D) are high, we find the overall threats that the red-crowned parrot is facing to be high in magnitude.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species that face actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. Factors A, B, and D are considered imminent because they are occurring now and are expected to continue to occur in the future. These actual, identifiable threats are covered in detail under the discussion of Factors A, B, and D of this finding. Because we find that threats under the three factors (A, B, and D) are imminent, we find the overall threats that the red-crowned parrot is facing to be imminent.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The red-crowned parrot is a valid taxon at the species level, and therefore receives a higher priority than subspecies or DPSES, but a lower priority than species in a monotypic genus. The red-crowned parrot faces high magnitude, imminent threats, and is a valid taxon at the species level. Thus, in accordance with our LPN guidance, we have assigned the red-crowned parrot an LPN of 2.

We will continue to monitor the threats to the red-crowned parrot, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the red-crowned parrot is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under expeditious progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating

budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is \$39,276; for a 12-month finding, \$100,690; for a proposed rule with critical habitat, \$345,000; and for a final listing rule with critical habitat, \$305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107-103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some

of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Pub. L. 97-304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112-10), which provides funding through September 30, 2011. The Service has \$20,902,000 for the listing

program. Of that, \$9,472,000 is being used for determinations of critical habitat for already-listed species. Also \$500,000 is appropriated for foreign species listings under the Act. The Service thus has \$10,930,000 available to fund work in the following categories: compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service is only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using \$1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only \$500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for the red-crowned parrot is precluded by court-ordered and court-approved settlement agreements, and listing actions with absolute statutory deadlines.

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of

threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species ("Top 40"). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and

resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our “precluded” finding, the evaluation of

whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is

funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed delisting rules for three species.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR Pages
10/6/2010	Endangered Status for the Altamaha Spiny mussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-Month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting)	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered.	Proposed Listing Endangered	75 FR 67551–67583
11/4/2010	12-Month Finding on a Petition to List <i>Cirsium wrightii</i> (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard.	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-Month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List <i>Astragalus microcymbus</i> and <i>Astragalus schmolliae</i> as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies <i>Calidris canutus roselaari</i> as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition to List <i>Solanum conocarpum</i> (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003
2/23/2011	12-Month Finding on a Petition to List <i>Astragalus hamiltonii</i> , <i>Penstemon flowersii</i> , <i>Eriogonum soredium</i> , <i>Lepidium ostleri</i> , and <i>Trifolium friscanum</i> as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–13122
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 18701–18706
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 20613–20622
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 20911–20918
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 23256–23265
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799
5/24/2011	90-Day Finding on a Petition To List the Spotted-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 30082–30087
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (<i>Capra falconeri jerdoni</i>) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 31903–31906
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 31920–31926
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929
6/9/2011	12-Month Finding on a Petition to List <i>Abronia ammophila</i> , <i>Agrostis rossiae</i> , <i>Astragalus proimanthus</i> , <i>Boechera (Arabis) pusilla</i> , and <i>Penstemon gibbensii</i> as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
6/21/2011	Revised 90-Day Finding on a Petition To Re-classify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068
6/28/2011	12-Month Finding on a Petition to List <i>Castanea pumila</i> var. <i>ozarkensis</i> as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 38095–38106
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 40868–40871
7/19/2011	12-Month Finding on a Petition to List <i>Pinus albicaulis</i> as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion.	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658
7/26/2011	12-Month Finding on a Petition to List the Giant Palouse Earthworm (<i>Drilolerius americanus</i>) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44547–44564
7/26/2011	12-Month Finding on a Petition to List the Frigid Ambersnail as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44566–44569
7/27/2011	Determination of Endangered Status for <i>Ipomopsis polyantha</i> (Pagosa Skyrocket) and Threatened Status for <i>Penstemon debilis</i> (Parachute Beardtongue) and <i>Phacelia submutica</i> (DeBeque Phacelia).	Final Listing Endangered, Threatened	76 FR 45054–45075
7/27/2011	12-Month Finding on a Petition to List the Gopher Tortoise as Threatened in the Eastern Portion of its Range.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 45130–45162
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (<i>Pyrgulopsis chupaderae</i>) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234
8/2/2011	90-Day Finding on a Petition to List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 46238–46251
8/2/2011	12-Month Finding on a Petition to List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 46251–46266
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594
8/4/2011	90-Day Finding on a Petition To List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial and substantial.	76 FR 47123–47133
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741
8/9/2011	12-Month Finding on a Petition to List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 48777–48788
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-month petition finding, Not warranted.	76 FR 49202–49236
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered, Similarity of Appearance.	76 FR 49408–49412
8/10/2011	90-Day Finding on a Petition To List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-day Petition Finding, Substantial ..	76 FR 49412–49417

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered, Similarity of Appearance.	76 FR 49542–49567
8/11/2011	Listing Six Foreign Birds as Endangered Throughout Their Range.	Final Listing Endangered	76 FR 50052–50080
8/17/2011	90-Day Finding on a Petition to List the Leona’s Little Blue Butterfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial ..	76 FR 50971–50979
9/01/2011	90-Day Finding on a Petition to List All Chimpanzees (<i>Pan troglodytes</i>) as Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 54423–54425
9/6/2011	12-Month Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 55170–55230
9/8/2011	12-Month Petition Finding and Proposed Listing of <i>Arctostaphylos franciscana</i> as Endangered.	Notice of 12-month petition finding, Warranted; Proposed Listing Endangered.	76 FR 55623–55638
9/8/2011	90-Day Finding on a Petition To List the Snowy Plover and Reclassify the Wintering Population of Piping Plover.	Notice of 90-day Petition Finding, Not substantial.	76 FR 55638–55641
9/13/2011	90-Day Finding on a Petition To List the Franklin’s Bumble Bee as Endangered.	Notice of 90-day Petition Finding, Substantial ..	76 FR 56381–56391
9/13/2011	90-Day Finding on a Petition to List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR 56608–56630

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet

statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with

a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) ⁵	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) ⁵	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions with Statutory Deadlines	
Casey’s June beetle	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Ozark hellbender ⁴	Final listing determination.
Altamaha spiny mussel ³	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) ⁵	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) ⁵	Final listing determination.
CA golden trout ⁴	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard ¹	12-month petition finding.
Kokanee-Lake Sammamish population ¹	12-month petition finding.
Cactus ferruginous pygmy-owl ¹	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Leatherside chub (from 206 species petition)	12-month petition finding.
Platte River caddisfly (from 206 species petition) ⁵	12-month petition finding.
3 Texas moths (<i>Ursia furtiva</i> , <i>Sphingicampa blanchardi</i> , <i>Agapema galbina</i>) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (<i>Erigeron piscaticus</i> , <i>Astragalus hypoxylus</i> , <i>Amoreuxia gonzalezii</i>) (from 475 species petition)	12-month petition finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Mohave Ground Squirrel ¹	12-month petition finding.
Western gull-billed tern	12-month petition finding.
OK grass pink (<i>Calopogon oklahomensis</i>) ¹	12-month petition finding.
Ashy storm-petrel ⁵	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout ¹	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) ¹	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
404 Southeast species	90-day petition finding.
American eel ⁴	90-day petition finding.
Aztec gilia ⁵	90-day petition finding.
White-tailed ptarmigan ⁵	90-day petition finding.
San Bernardino flying squirrel ⁵	90-day petition finding.
Bicknell's thrush ⁵	90-day petition finding.
Sonoran talussnail ⁵	90-day petition finding.
2 AZ Sky Island plants (<i>Graptopetalum bartrami</i> & <i>Pectis imberbis</i>) ⁵	90-day petition finding.
I'iwi ⁵	90-day petition finding.
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (<i>Zapada glacier</i>)	90-day petition finding.
Thermophilic ostracod (<i>Potamocypris hunteri</i>)	90-day petition finding.
Sierra Nevada red fox ⁵	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population) ⁵	90-day petition finding.

High-Priority Listing Actions

20 Maui-Nui candidate species ² (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) ⁴ .	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) ⁴	Proposed listing.
Grotto sculpin (LPN = 2) ⁴	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) ⁴	Proposed listing.
Diamond darter (LPN = 2) ⁴	Proposed listing.
Gunnison sage-grouse (LPN = 2) ⁴	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) ⁵	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) ³ .	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) ³ .	Proposed listing.
2 Texas plants (Texas golden gladecress (<i>Leavenworthia texana</i>) (LPN = 2), Neches River rose-mallow (<i>Hibiscus dasycalyx</i>) (LPN = 2)) ³ .	Proposed listing.
4 AZ plants (<i>Acuna cactus</i> (<i>Echinomastus erectocentrus</i> var. <i>acunensis</i>) (LPN = 3), Fickeisen plains cactus (<i>Pediocactus peeblesianus fickeiseniae</i>) (LPN = 3), Lemmon fleabane (<i>Erigeron lemmonii</i>) (LPN = 8), Gierisch mallow (<i>Sphaeralcea gierischii</i>) (LPN = 2)) ⁵ .	Proposed listing.
FL bonneted bat (LPN = 2) ³	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (<i>Consolea corallicola</i>) (LPN = 2), shellmound applecactus (<i>Harrisia</i> (= <i>Cereus</i>) <i>aboriginum</i> (= <i>gracilis</i>)) (LPN = 2), Cape Sable thoroughwort (<i>Chromolaena frustrata</i>) (LPN = 2)) ⁵ .	Proposed listing.
21 Big Island (HI) species ⁵ (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (<i>Thomomys mazama</i> ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) ³ .	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)) ⁵	Proposed listing.
Jemez Mountain salamander (LPN = 2) ⁵	Proposed listing.

¹ Funds for listing actions for these species were provided in previous FYs.

² Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.

³ Partially funded with FY 2010 funds and FY 2011 funds.

⁴ Funded with FY 2010 funds.

⁵ Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The red-crowned parrot will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will

determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the red-crowned parrot will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A list of all references cited in this document is available at <http://www.regulations.gov>, at Docket No. FWS-R9-ES-2011-0082, or upon request from the U.S. Fish and Wildlife

Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are staff members of the Branch of Foreign Species, Endangered Species Program, 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 27, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011-25808 Filed 10-5-11; 8:45 am]

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Notices

Federal Register

Vol. 76, No. 194

Thursday, October 6, 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

Privacy Act of 1974: Notice of Proposed Privacy Act System of Records Revision

AGENCY: Office of Homeland Security and Emergency Coordination, Departmental Management, U.S. Department of Agriculture.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the U.S. Department of Agriculture (USDA), Departmental Management (DM), Office of Homeland Security and Emergency Coordination (OHSEC), is giving notice of a system of records that is maintained for the purpose of the Radiation Safety Management System (RSMS). The RSMS was developed by the Radiation Safety Division, a component of USDA's DM, as a tool for the management of the USDA's radiation safety information and records. The RSMS is an online, Web-based database management system that is used only by USDA employees and the Radiation Safety Division (RSD) of USDA to manage information required by the Nuclear Regulatory Commission (NRC).

DATES: *Effective Date:* This notice will be effective without further notice on December 5, 2011 unless modified by a subsequent notice to incorporate comments received from the public. Written or electronic comments must be received by the contact person listed below on or before November 7, 2011 to be ensured consideration.

ADDRESSES: You may submit written or electronic comments on this notice by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Information Hotline:* (202) 720-2791.
- *Fax:* (301) 504-2450.

- *Mail:* Radiation Safety Division (RSD) 5601 Sunnyside Avenue, MS 5510, Beltsville, MD 20705.

- *Hand Delivery or Courier:* Radiation Safety Division (RSD) 14th & Independence Avenue, SW., Mail Stop: 5010, Washington, DC 20250-9338.

- *E-mail:* Maureen Davis, Project Manager of Radiation Management Division, RSMS, at maureen.davis@usda.gov.

Instructions: All comments will become a matter of public record and should be identified as "RSMS System of Records Comments," making reference to the date and page number of this issue of the **Federal Register**. Comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the Radiation Management Division at (301) 504-2440 to make an appointment to read comments.

FOR FURTHER INFORMATION CONTACT: Maureen Davis, Project Manager of the Radiation Management Division, at (301) 504-2440.

SUPPLEMENTARY INFORMATION: The RSMS is an application for managing data on radioactive materials across the United States (and possibly outside the U.S.) that are used by and in support of USDA employees. The RSMS is a comprehensive radiation safety program that ensures the protection of USDA's employees and the general public from harmful effects of radiation and ensures compliance with applicable regulations. USDA utilizes radiation materials in support of a number of mission areas to include:

- Control of invasive pests and prevent pest infestations;
- Domestic animal disease control programs;
- Food safety programs; and
- Research into animal and plant health.

The control and monitoring of radiation materials is a public health and safety concern as identified by the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.* The RSMS supports the Department's public health concerns by tracking radiation materials within USDA possession and maintaining records of radiation exposure by USDA employees.

NRC regulates the possession and use of radioactive materials in the United States by issuing licenses directly to individuals or organizations or by

authorizing and reviewing State programs that issue State licenses. USDA has an NRC license that permits USDA to process and use radioactive materials at all of its locations within the U.S. In addition to radioactive materials licensed by the NRC, the USDA Radiation Safety Program tracks the uses of naturally occurring and accelerator produced radioactive materials and x ray producing material.

The USDA Radiation Safety Program consists of the Radiation Safety Committee (RSC) and the Radiation Safety Division (RSD). The RSC is a policymaking committee that meets quarterly and is required by the NRC license. The RSD is the operational safety headquarters for all USDA agencies and locations, and it implements a comprehensive program that protects USDA employees and the public from the harmful effects of radiation. The RSD also ensures compliance with applicable regulations. For USDA program activities involving the use of radioactive materials or x ray producing equipment, RSD issues and maintains permits, conducts field inspections, and provides assistance resolving employee concerns or questions regarding radiation safety. It also provides advice and assistance in USDA's role in the Federal response to radiological emergencies.

In certain USDA programs, unsealed isotopes are used as radio-chemical laboratory research tools. Portable nuclear gauges are used to make water measurements in soil and for road and dam construction. Irradiators, which emit intense gamma radiation, are used to irradiate in insect sterilization and control programs and for other purposes. Electron capture detectors are used as a component of gas chromatographs in research labs. X ray fluorescence analyzers are used in the field to verify the presence or absence of the hazardous materials such as lead paint. X ray producing equipment is also used for various programs.

The RSD issues permits directly to USDA employees (Radiation Safety permit holders), which authorize the employee to possess and use radioactive materials or x ray producing equipment at USDA locations. The permits enable the RSD to maintain control of unsealed radioactive materials inventories, radioactive sealed sources, and x ray producing equipment by tracking

isotope possession limits, acquisitions, transfers, and disposals. The permits are maintained in a computer database.

NRC requires that USDA track radioactive materials from acquisition to disposal. Only Radiation Safety permit holders who have the requisite training are allowed to acquire, store, use, and manage these materials. The information within the RSMS is requested by USDA's Radiation Safety Committee to evaluate an individual's qualifications to obtain and use radioactive materials or x ray producing equipment.

The information requested is maintained in accordance with 42 U.S.C. 2111, 2201. It is used to track the materials for the life of the material pursuant to NRC regulations.

The users of the RSMS consist only of qualified USDA employees, including: the Radiation Safety Division, Location Radiation Protection Officers, Permit Holders, Associate Users, and Radiation Safety Committee. The internal users use the system to manage the data needed to comply with NRC regulations. The RSMS assists USDA employees by collecting data that is used to create reports for Area Managers in USDA agencies: Natural Resources Conservation Service, Agricultural Research Service, Agricultural Marketing Service, Animal and Plant Health Inspection Service, and Food Safety and Inspection Service. Reports are also provided to the NRC.

Signed at Washington, DC, on September 30, 2011.

Thomas J. Vilsack,
Secretary.

USDA/OHSEC-1

SYSTEM NAME:

Radiation Safety Management System (RSMS).

SECURITY CLASSIFICATION:

Sensitive But Unclassified (SBU).

SYSTEM LOCATION:

The RSMS servers are located on the Departmental Administration (DA) General Support System (GSS) located in Washington, DC and in Beltsville, MD. Paper records are located _____?

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers RSMS users, all of whom are USDA employees, including the Radiation Safety Division (RSD), Location Radiation Protection Officers, Permit Holders, Associate Users, and Radiation Safety Committee (RSC).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records covered by this system of records include: USDA employee's user name, e-mail address, level of education, work address, work phone number, gender, and user ID.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

USDA collects this information pursuant to 42 U.S.C. 2111, 2201 and 7 CFR 2.24(a)(8)(ii).

AGENCY OFFICIAL RESPONSIBLE FOR THE SYSTEM OF RECORDS:

Director of Radiation Security Division, Office of Homeland Security and Emergency Coordination, Departmental Management, U.S. Department of Agriculture, 5601 Sunnyside Avenue, MS 5510, Beltsville, MD 20705.

PURPOSE:

These records are used by USDA personnel to track the use of radioactive material and x-ray producing equipment in order to comply with NRC requirements and to ensure the safety of USDA personnel and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The agency will disclose information from this system:

(1) To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity or where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(2) To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation, and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

(3) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or Tribal, or other public authority responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutive responsibility of the receiving entity.

(4) To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

(5) To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(6) To agency contractors, grantees, experts, consultants, or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

(7) To appropriate agencies, entities, and persons when: (a) USDA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) USDA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by USDA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(8) To the NRC, per regulation, by USDA's Radiation Safety Committee for the secure control, maintenance, and tracking of all radiation materials and

all employees holding Radiation Permits.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM STORAGE:

Electronic records are maintained on a file server. Paper files and electronic media are maintained in physically secured rooms at the USDA data center located in Washington, DC.

RETRIEVABILITY:

Information is retrieved by USDA employee's user name, e-mail address, work address, work phone number, and user ID.

SAFEGUARDS:

The electronic data files for the RSMS are maintained in Washington, DC. A backup of the RSMS is maintained in Beltsville, MD. Control measures implemented to prevent misuse of accessible data include unique user identification, a password protection protocol, and limitation of user roles through compartmentalization of allowed access. Agency-implemented cyber security measures and firewalls are built into the application user interface to monitor the use of the RSMS. The hard copy components of the system and computer files, tapes, and disks are kept in a safeguarded environment with access only by authorized personnel.

RETENTION AND DISPOSAL:

Some data from the RSMS containing employee information are periodically purged from the system in accordance with approved records retention schedules; however, data and employee information related to radioactive material is maintained in accordance with NRC regulations, due to the sensitivity of radioactive material. The retention periods vary depending on the data type:

- Survey Records: 3 years.
- Lab Surveys: 3 years.
- Leak Tests: 5 years.

SYSTEM MANAGER(S) AND ADDRESS:

The mailing address for the System Manager is 5601 Sunnyside Avenue, MS 5510, Beltsville, MD 20705.

NOTIFICATION PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Headquarters or

component's Freedom of Information Act (FOIA) Official, whose contact information can be found at <http://www.dm.usda.gov/foia.htm> under "Where to Send Requests." If an individual believes that more than one component maintains Privacy Act records concerning him or her, he or she may submit the request to the Chief Privacy Act Officer, Department of Agriculture, 1400 Independence Avenue, SW., Room 408-W, Washington, DC 20250. When seeking records about yourself from this system of records or any other Departmental system of records, your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief FOIA Officer, Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250. In addition, you should do the following:

- Provide an explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created; and
- Provide any other information that will help the FOIA staff determine which USDA component agency may have responsive records.

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedures" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedures" above.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PRIVACY ACT SYSTEM USDA-OHSEC-1

SYSTEM NAME:

Radiation Safety Management System (RSMS).

NARRATIVE STATEMENT:

The Radiation Safety Management System (RSMS) is an online, Web-based database management system that is used only by USDA employees to manage information required by the Nuclear Regulatory Commission (NRC). The application allows USDA's Radiation Safety Division to manage data on radioactive materials that are used by and in support of USDA employees. The RSMS is part of a comprehensive radiation safety program that ensures the protection of USDA's employees and the general public from harmful effects of radiation and ensures compliance with applicable regulations. USDA employees utilize radiation materials in support of a number of mission areas including:

- Control of invasive pests and prevent pest infestations;
- Domestic animal disease control programs;
- Food safety programs; and
- Research into animal and plant health.

The control and monitoring of radiation materials is a public health and safety concern as identified by the Atomic Energy Act of 1954, 43 U.S.C. 2011 *et seq.* The RSMS supports the Department's public health concerns by tracking radiation materials within USDA possession and maintaining records of radiation exposure by USDA employees. NRC regulates the possession and use of radioactive materials by issuing licenses directly to individuals or organizations. USDA has an NRC license that permits it to process and use radioactive materials at all of its locations within the U.S. In addition, USDA's Radiation Safety Program tracks the use of naturally occurring and accelerator-produced radioactive materials and x ray producing material. USDA's Radiation Safety Division (which is part of the agency's Radiation Safety Program) issues permits directly to USDA employees, authorizing them to possess and use radioactive materials or x ray producing equipment. The RSMS assists in tracking and evaluating qualifications of employees with permits, as well as the movement of radioactive materials.

Due to the sensitive nature of data maintained in the RSMS, the system adheres to the National Institute of Standards and Technology Special Publication 800-53 security controls and Federal Information Processing

Systems 199 and 200. Moreover, specific USDA security requirements are adhered to through the USDA Cyber Security Manuals, including, but not limited to, DM3545-000 Personnel Security.

The RSMS contains personal information about USDA employees, including name, work telephone number, e-mail, work address, user ID, level of education, and gender. The information collected by the RSMS is necessary to determine the location of radiation material.

To address privacy issues and ensure protection of information provided by customers and employees, the RSD has completed a privacy impact assessment (PIA). It has been posted on the USDA Privacy Policy Web site. The PIA provides detailed information about steps taken by the agency to minimize the risk of unauthorized access to the system. These steps include role-based access controls; data encryption in transmission; physical and environmental protection; auditing; configuration management; and contingency planning. User identification and authentication are also provided in the form of unique user IDs and passwords that are issued to USDA personnel. The RSMS computing equipment is stored in a secure computer room, and physical access is restricted to approved USDA personnel.

The electronic data files for the RSMS are maintained in Washington, DC.

A backup of the RSMS is maintained in Beltsville, MD. Control measures implemented to prevent misuse of accessible data include unique user identification, a password protection protocol, and limitation of user roles through compartmentalization of allowed access. Agency-implemented cyber security measures and firewalls are built into the application user interface to monitor the use of the RSMS. The hard copy components of the system and computer files, tapes, and disks are kept in a safeguarded environment with access only by authorized personnel.

Information will be disclosed: To the Department of Justice or a court or adjudicative body in a proceeding when the agency determines that the information is relevant and necessary to litigation involving the United States or its employees; to the appropriate agency responsible for enforcing violations when a record on its face indicates a violation of law; to a Member of Congress at the written request of his or her constituent about whom the record is maintained; to the National Archives and Records Administration or the General Services Administration for

records management inspections; to agency contractors or others engaged by the agency to assist in performing agency services; to the appropriate agencies or entities if USDA suspects the confidentiality or security of the information was compromised; and to the NRC.

SUPPORTING DOCUMENTATION:

Systems Notice: The Department of Agriculture has attached advance copies of the **Federal Register** notice of the new system of records.

[FR Doc. 2011-25814 Filed 10-5-11; 8:45 am]

BILLING CODE 3412-BA-P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Establishment for North Fork Crooked National Wild and Scenic River, Ochoco National Forest, Crook County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with Section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary of the North Fork Crooked National Wild and Scenic River to Congress.

FOR FURTHER INFORMATION CONTACT:

Information may be obtained by contacting the following offices: Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754, (541) 416-6500; or Bureau of Land Management, Prineville District, 3050 NE Third Street, Prineville, Oregon 97754, (541) 447-4115.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The North Fork Crooked Wild and Scenic River boundary is available for review at the following offices: USDA Forest Service, Recreation, Yates Building, 14th and Independence Avenues, SW., Washington, DC 20024; USDA Forest Service, Pacific Northwest Region, 333 SW First Avenue, Portland, Oregon 97208-3623; Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754, (541) 416-6500; or DOI Bureau of Land Management, National Landscape Conservation System, 20 M Street, SE., Washington, DC 20036, (202) 912-7179; DOI Bureau of Land Management, Oregon State Office, 333 SW First

Avenue, Portland, Oregon 97208; and Bureau of Land Management, Prineville District, 3050 NE Third Street, Prineville, Oregon 97754, (541) 447-4115.

The Omnibus Oregon Wild and Scenic Rivers Act of 1988 (Pub. L. 100-557) of October 28, 1988, designated the North Fork Crooked River, Oregon, as a National Wild and Scenic River, to be administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety (90) days after Congress receives the transmittal.

Dated: September 27, 2011.

Claire Lavendel,

Regional Director of Lands.

[FR Doc. 2011-25763 Filed 10-5-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee (LTFAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting cancellation.

SUMMARY: The Lake Tahoe Federal Advisory Committee meeting that was to be held on October 21 or 24, 2011 at the Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150 is cancelled. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543-2773 or check for the next meeting date at <http://www.fs.fed.us/r5/ltbmu/local/ltfac>.

SUPPLEMENTARY INFORMATION: All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: September 30, 2011.

Jeff Marsolais,

Deputy Forest Supervisor.

[FR Doc. 2011-25852 Filed 10-5-11; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-820]

Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of 2009-2010 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from petitioners,¹ the Department of Commerce ("the Department") has conducted an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India ("hot-rolled steel") manufactured by Ispat Industries Limited ("Ispat"), JSW Steel Limited ("JSW"), and Tata Steel Limited ("Tata"). The period of review ("POR") is December 1, 2009, through November 30, 2010. We determine that Ispat, JSW, and Tata had no entries of subject merchandise during the POR.

DATES: *Effective Date:* October 6, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher Hargett or James Terpstra, AD/CVD Operations Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4161 and (202) 482-3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 2, 2011, the Department published in the **Federal Register**, the *Preliminary Results*² of this review.

The Department received no comments on the *Preliminary Results*.

Period of Review

The period covered by this review is December 1, 2009, through November 30, 2010.

¹ The petitioners are the United States Steel Corporation Steel and Nucor Corporation (collectively "petitioners").

² See *Certain Hot-Rolled Carbon Steel Flat Products From India: Notice of Preliminary Results of 2009-2010 Antidumping Duty Administrative Review*, 76 FR 31938 (June 2, 2011) ("Preliminary Results").

Scope of the Order

The merchandise subject to the order is certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order.

Specifically included in the scope of the order are vacuum-degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high-strength low-alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low-carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided

above are within the scope of the order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of the order:

- Alloy hot-rolled carbon steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials ("ASTM") specifications A543, A387, A514, A517, A506).

- Society of Automotive Engineers ("SAE")/American Iron & Steel Institute ("AISI") grades of series 2300 and higher.

- Ball bearings steels, as defined in the HTSUS.

- Tool steels, as defined in the HTSUS.

- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

- ASTM specifications A710 and A736.

- United States Steel ("USS") Abrasion-resistant steels (USS AR 400, USS AR 500).

- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the order is currently classifiable in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot-rolled carbon steel covered by the order, including: Vacuum-degassed fully stabilized; high-strength low-alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers:

7225.11.00.00, 7225.19.00.00,
7225.30.30.50, 7225.30.70.00,
7225.40.70.00, 7225.99.00.90,
7226.11.10.00, 7226.11.90.30,
7226.11.90.60, 7226.19.10.00,
7226.19.90.00, 7226.91.50.00,

7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

The Department received no comments regarding the *Preliminary Results* of this review.

Final Results of Review

We continue to determine that Ispat, JSW, and Tata had no reviewable entries of subject merchandise during the POR.

Assessment Rate

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection ("CBP") 15 days after the publication of the final results of this review.

Since the implementation of the 1997 regulations, our practice concerning no-shipment respondents has been to rescind the administrative review if the respondent certifies that it had no shipments and we have confirmed through our examination of CBP data that there were no shipments of subject merchandise during the POR.³ As a result, in such circumstances, we normally instruct CBP to liquidate any entries from the no-shipment company at the deposit rate in effect on the date of entry. In our May 6, 2003, "automatic assessment" clarification, we explained that, where respondents in an administrative review demonstrate that they had no knowledge of sales through resellers to the United States, we would instruct CBP to liquidate such entries at the all-others rate applicable to the proceeding.⁴

Based on Ispat, JSW, and Tata's assertions of no shipments and confirmation of those claims by examination of CBP data, we continue to determine that Ispat, JSW, and Tata had no sales to the United States during the POR.⁵

Because "as entered" liquidation instructions do not alleviate the concerns which the May 2003 clarification was intended to address,

we continue to find it appropriate in this case to instruct CBP to liquidate any existing entries of merchandise produced by Ispat, JSW, or Tata and exported by other parties at the all-others rate.⁶ In addition, the Department affirms its previous position in the *Preliminary Results* that it is more consistent with the May 2003 clarification not to rescind the review in part under these circumstances but, rather, to complete the review of Ispat, JSW, and Tata and issue appropriate instructions to CBP consistent with these final results.⁷

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of hot-rolled carbon steel flat products from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended ("the Act"): (1) For Ispat, JSW, Tata, and for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (2) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value ("LTFV") investigation, but the Department examined the manufacturer in one of those proceedings, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the LTFV investigation conducted by the Department, the cash deposit rate will be 23.87 percent, the all-others rate established in the LTFV investigation.⁸ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of

antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred and the subsequent assessment of double antidumping and countervailing duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 30, 2011.

Ronald K. Lorentzen,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-25937 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-832]

Pure Magnesium From the People's Republic of China: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 1, 2011, the Department of Commerce ("the Department") initiated the third five-year ("sunset") review of the antidumping duty order on pure magnesium from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of the domestic interested party, and no adequate response from a respondent interested party, the Department conducted an expedited (120-day) sunset review of the antidumping duty order. As a result of this review, the Department finds that

³ See *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27393 (May 19, 1997).

⁴ See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954, 23954 (May 6, 2003) (*Assessment Policy Notice*).

⁵ See *Preliminary Results*, 76 FR at 31939.

⁶ See, e.g., *Magnesium Metal From the Russian Federation: Final Results of Antidumping Duty Administrative Review*, 75 FR 56989, 56989-90 (September 17, 2010).

⁷ See *Preliminary Results*, 76 FR at 31939-40.

⁸ *Certain Hot-Rolled Carbon Steel Flat Products From India: Final Results of Antidumping Duty Administrative Review*, 69 FR 36060, 36062 n.2 (June 28, 2004).

revocation of the antidumping duty order on pure magnesium from the PRC would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Results of Review" section of this notice.

DATES: *Effective Date:* October 6, 2011.

FOR FURTHER INFORMATION CONTACT:

Brooke Kennedy, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482-3818.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2011, the Department initiated the third sunset review of the antidumping duty order on pure magnesium from the PRC, pursuant to section 751(c) of the Act. *See Initiation of Five-Year "Sunset" Review*, 76 FR 31588 (June 1, 2011); *see also Notice of Antidumping Duty Orders: Pure Magnesium From the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium From the Russian Federation*, 60 FR 25691 (May 12, 1995) ("Order"). On June 13, 2011, the Department received notice of intent to participate on behalf of US Magnesium LLC ("US Magnesium"), within the applicable deadline specified in 19 CFR 351.218(d)(1)(i). *See Letter from US Magnesium, Third Five-Year ("Sunset") Review of Antidumping Duty Order On Pure Magnesium (Ingot) From the People's Republic of China: The Domestic Industry's Notice of Intent To Participate*, dated June 13, 2011. The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as a manufacturer of pure magnesium in the United States. On July 1, 2011, the Department received a complete substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from a respondent interested party in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department conducted an expedited, 120-day, sunset review of this *Order*.

Scope of the Order

Merchandise covered by the order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of the order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by

decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

- (1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as "ultra pure" magnesium);
 - (2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as "pure" magnesium); and
 - (3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as "off-specification pure" magnesium).
- "Off-specification pure" magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: Aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of the order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (*i.e.*, length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by the order are currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.¹

¹ The Department has made two scope rulings regarding the subject merchandise. On November 9, 2006, the Department issued a scope ruling, finding that alloy magnesium extrusion billets produced in

Analysis of Comments Received

All issues raised by parties to this sunset review are addressed in the Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration ("Decision Memorandum"), dated concurrently with 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 were the order revoked. Parties may find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum may be accessed directly on the Web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the *Order* would likely lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/ Producers	Weighted- average margin
PRC-wide	108.26%

Notification Regarding Administrative Protective Order

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 order is hereby requested. Failure to comply with the regulations and terms of an

Canada by Timminco, Ltd. from pure magnesium of Chinese origin are not within the scope of *Order*. *See Memorandum regarding Final Ruling in the Scope Inquiry on Russian and Chinese Magnesium Processed in Canada*, dated November 9, 2006. On December 4, 2006, the Department issued a scope ruling, finding that pure magnesium produced in France using pure magnesium from the PRC is within the scope of the *Order*. *See Memorandum regarding Final Ruling in the Scope Inquiry on Chinese Magnesium Processed in France*, dated December 4, 2006.

APO is a violation which is subject to sanction.

This sunset review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011-25890 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA748

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Coral Advisory Panel (AP) in North Charleston, SC.

DATES: The meeting will take place October 25-26, 2011. See

SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meeting will be held at the Hilton Garden Inn, 5265 International Blvd., North Charleston, SC 29418; telephone: (800) 445-8667; fax: (843) 308-9331.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; e-mail: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Coral AP will meet from 8:30 a.m. until 5 p.m. on October 25, 2011 and from 8:30 a.m. until 12 noon on October 26, 2011.

Issues to be addressed at the meeting include: An overview of coral research and activity in the South Atlantic region; a discussion of measures to be included in the Comprehensive Ecosystem-Based Amendment 3; an overview of Spiny Lobster Amendment 11, including proposed closures in the spiny lobster fishery with the intent of protecting elkhorn and staghorn corals; an overview of Marine and Estuarine Goal Setting Criteria for South Florida (MARES) Program; and a review of

Oculina research activities. Updates will be given on the following: The NOAA Fisheries Habitat Conservation Division; the Council's Invasive Species Policy and the Coral Reef Conservation Program Grant Projects; and the U.S. Coral Reef Task Force Meeting.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 3, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011-25841 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA749

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Information and Education Advisory Panel (AP) and a Social Media Workshop in conjunction with the South Carolina Sea Grant Consortium in North Charleston, SC.

DATES: The meeting and workshop will take place October 25-27, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting and workshop will be held at the Hilton Garden Inn, 5265 International Blvd., North Charleston, SC 29418; telephone: (800) 445-8667; fax: (843) 308-9331.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; telephone: (843) 571-4366 or toll free (866) SAFMC-10; fax: (843) 769-4520; e-mail: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: Members of the Information and Education AP will meet from 1:30 p.m. until 5 p.m. on

October 25, 2011 and from 8:30 a.m. until 12 noon on October 26, 2011. The Social Media Workshop will be conducted from 1:30 p.m. until 5 p.m. on October 26, 2011 and from 8:30 a.m. until 3 p.m. on October 27, 2011.

Issues to be addressed at the Information and Education AP meeting include: An overview of current outreach activities by the Council, new outreach efforts proposed for Special Management Zones in the South Atlantic Exclusive Economic Zone, and strategic planning for outreach efforts by the Council. The AP members will be asked to provide recommendations for consideration.

Following the AP meeting, the Council and SC Sea Grant will co-host a Social Media Workshop for members of the AP and other invited presenters and participants. The workshop will focus on current social media tools currently being used by various agencies and include presentations on Facebook, Twitter, YouTube, and other media outlets along with a panel discussion.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: October 3, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011-25846 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XA751

Gulf of Mexico Fishery Management Council (Council); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting.

DATES: The meeting will be held October 24-28, 2011.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 300 Canal Street, New Orleans, LA 70130; telephone: (504) 581-1300.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

Council

Thursday, October 27, 2011

The Council meeting will begin at 11 a.m. with a Call to Order and Introductions. From 11:05 a.m.–11:15 a.m., the Council will review the agenda and approve the minutes. From 11:15 a.m.–11:25 a.m., the Council will approve the 2012 Committee Appointments. From 11:25 a.m.–11:40 a.m., the Council will receive a presentation titled “Fisheries 101”. From 11:40 a.m.–12 noon, the Council will review the Action Schedule. From 1:30 p.m.–3:30 p.m., the Council will receive public testimony on agenda items, Draft Reef Fish Amendment 34, Draft Reef Fish Amendment 36, and exempted fishing permits (EFPs), if any; the Council will also hold an open public comment period regarding any other fishery issues of concern. People wishing to speak before the Council should complete a public comment card prior to the comment period. From 3:30 p.m.–5:30 p.m., the Council will review and discuss the Reef Fish Committee Report.

Friday, October 28, 2011

From 8:30 a.m.–12 noon, the Council will review and discuss reports from the committee meetings as follows: Reef Fish, Law Enforcement, Administrative Policy, Data Collection, Spiny Lobster/Stone Crab, Sustainable Fisheries/Ecosystem, Red Drum, Advisory Panel Selection, Scientific & Statistical Committee Selection, Mackerel and Shrimp. Other Business items will follow from 12 p.m.–12:30 p.m. The Council will conclude its meeting at approximately 12:30 p.m.

Committees

Monday, October 24, 2011

1 p.m.–5 p.m.—Joint Law Enforcement Committee, Gulf Council’s Law Enforcement Advisory Panel & Gulf States Law Enforcement Committee will meet and discuss Texas Oyster Regulations, Inter-jurisdictional Fisheries Program Activities, Gulf States Marine Fisheries Commission’s Enforcement Publications, review the Gulf Council Action Schedule, receive Individual State Enforcement Report Highlights and discuss State Violation

Search Methods, review Status of FMPs and Amendments, discuss Potential Weak Hook Regulations, discuss Crew Size Limits on Dual-Permitted Vessels, and review Joint Enforcement Agreement and other Future Funding.
5 p.m.–5:30 p.m.—The Administrative Policy Committee will discuss the Enforcement Violations Policy.

—Recess—

Tuesday, October 25, 2011

8:30 a.m.–12 noon and 1:30 p.m.–5 p.m.—Reef Fish Management Committee will meet to discuss the Summary of the October 2011 Scientific & Statistical Committee Meeting, review the Vermilion Snapper and Gray Triggerfish Update Assessments, discuss Amendment 28—Grouper Allocation, receive a presentation on NOAA’s Catch Shares Policy, discuss Draft Amendment 34—Crew Size and Income Requirements, review and discuss Public Hearing Draft Amendment 35—Greater Amberjack Rebuilding, review Options Paper on Red Snapper Fall Season Regulatory Amendment, discuss an Amendment for Red Snapper Payback Provisions for Overages and Amendment 36—Restrict Red Snapper IFQ Transfer, receive a report of the Ad Hoc Headboat Advisory Panel meeting, discuss Amendment 37—Red Snapper IFQ 5-year Review, and review the Reef Fish Limited Access Privilege Program Advisory Panel Meeting Report.

—Recess—

Wednesday, October 26, 2011

8:30 a.m.–10:30 a.m.—The Data Collection Committee will receive a presentation on the Marine Recreational Information Program (MRIP), review the Charge for Ad Hoc Private Recreational Data Collection Advisory Panel, receive a presentation on the Mechanisms for Implementing Headboat Electronic Reporting, and discuss the status of Restoration Funding.

10:30 a.m.–11:30 a.m.—The Spiny Lobster/Stone Crab Management Committee will receive a summary of the meeting held with NOAA, Industry, and Sanctuary Staff, review of Public Hearing Draft of Joint Spiny Lobster Amendment 11, and select Public Hearing Locations.

11:30 a.m.–11:45 a.m.—The Red Drum Management Committee will discuss the Status of Red Drum.

1 p.m.–5:30 p.m.—Sustainable Fisheries/Ecosystem Committee will review and discuss the Ecosystem Scientific and Statistical committee report, discuss a Paper on Sector Separation, discuss a proposed Joint SAFMC/GMFMC Goliath Grouper

Panel, and discuss an Ad Hoc Joint SAFMC/GMFMC Committee to consider a South Florida Fishery Management Plan.

—Recess—

Immediately following the Committee Recess will be the Informal Question & Answer Session on Gulf of Mexico Fishery Management Issues.

Thursday, October 27, 2011

8:30 a.m.–9 a.m.—Advisory Panel Selection Committee—Closed Session—The Advisory Panel Selection Committee/Full Council will meet and appoint an Ad Hoc Private Recreational Data Collection Advisory Panel.

9 a.m.–9:30 a.m.—The Scientific & Statistical Committee (SSC) Selection Committee will review the SSC Roles, Responsibilities and revised SOPPs Language.

9:30 a.m.–10 a.m.—The Mackerel Management Committee will discuss Mackerel Amendment 19—No Sale of Recreationally Caught Fish and Permit Revisions and discuss possible issues for inclusion in future amendments, e.g., Bag Limit Sales, Trip Limits, Transit, and Latent Gill Net Permits.

10 a.m.–11 a.m.—The Shrimp Management Committee will review and discuss the Shrimp Scientific & Statistical Committee Report, receive a presentation and discuss the Status of Shrimp Stocks and Alternative Stock Assessment Methods, and receive a preliminary report of the 2011 Shrimping Effort.

—Recess—

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council’s intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 3, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011-25840 Filed 10-5-11; 8:45 am]

BILLING CODE 3510-22-P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 20 October 2011, at 10 a.m. in the Commission offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington DC 20001-2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: <http://www.cfa.gov>. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by e-mailing staff@cfa.gov; or by calling 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: September 27, 2011 in Washington DC.

Thomas Luebke,

Secretary

[FR Doc. 2011-25408 Filed 10-5-11; 8:45 am]

BILLING CODE 6330-01-M

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2011-0070]

Alternative Testing Requirements for Small Batch Manufacturers

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: Section 14(i)(4)(A)(i) of the Consumer Product Safety Act, 15 U.S.C. 2063(i)(4)(A)(i), provides that the Commission, in implementing third party testing requirements, under

certain circumstances, may allow small batch manufacturers to use alternative testing requirements in lieu of testing prescribed in an applicable consumer product safety rule, ban, standard, or regulation. If, however, the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt eligible small batch manufacturers from third party testing requirements. Through this notice, the Commission is announcing that it will conduct a public hearing to receive views from all interested parties about whether such alternative testing requirements are available or economically practicable or, in the absence of economically practicable alternatives, whether an exemption from third party testing is appropriate.

DATES: The public hearing will begin at 10 a.m. EST on October 26, 2011.

ADDRESSES: The public hearing will be held in the Hearing Room, 4th Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814.

Online Registration and Webcast: Members of the public who wish to attend the public hearing are requested to preregister online at: <http://www/cpsc.gov>. You may preregister until 5 p.m. EST on October 25, 2011. This public hearing also will be available live via webcast on October 26, 2011, at: <http://www/cpsc.gov/webcast>. Registration is not necessary to view the webcast. A transcript will be made of the proceedings of the public hearing.

Oral Presentations and Written Comments: To make oral presentations, participants must preregister online. Presenters must also submit a request to make an oral presentation, and the written text of such presentation, captioned "Alternative Testing Requirements for Small Batch Manufacturers Public Hearing," by electronic mail (e-mail) to: cpsecos@cpsecos.gov, or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on October 21, 2011. Commenters should limit their presentations to 15 minutes, exclusive of questioning by the Commissioners or CPSC staff. We may limit the time further for any presentation and impose other restrictions to avoid excessive duplication of presentations.

Participants who are unable to make an oral presentation may submit written comments regarding the issues outlined under **SUPPLEMENTARY INFORMATION** captioned, "Alternative Testing Requirements for Small Batch

Manufacturers Public Hearing" by electronic mail (e-mail) to: cpsecos@cpsecos.gov, or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on October 21, 2011. Any information submitted in writing or presented orally to the CPSC at the public hearing will become part of the public record.

FOR FURTHER INFORMATION CONTACT:

Concerning requests and procedures for oral presentations of comments, contact: Rockelle Hammond, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504-6833; e-mail: cpsecos@cpsecos.gov. For all other matters, contact: Robert Howell, Deputy Executive Director, Safety Operations, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504-7621; e-mail: rhowell@cpsecos.gov.

SUPPLEMENTARY INFORMATION: Section 14(a)(2)(A) of the Consumer Product Safety Act, 15 U.S.C. 2063(a)(2)(A), provides that every manufacturer of a children's product that is subject to a children's product safety rule shall submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a CPSC-approved third party conformity assessment body to be tested for compliance with such children's product safety rule. Further, section 14(i)(2) requires continued testing of children's products, directing the Commission to, by regulation, establish protocols and standards—

(i) For ensuring that a children's product tested for compliance with an applicable children's product safety rule is subject to testing periodically and when there has been a material change in the product design or manufacturing process, including the sourcing of component parts;

(ii) For the testing of representative samples to ensure continued compliance;

(iii) For verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and

(iv) For safeguarding against the undue influence on a third party conformity assessment body by a manufacturer or private labeler. The Commission has been working to adopt a testing and certification rule that sets forth the continued testing requirements mandated by section 14(i). In this context, we have explored possible alternatives for small batch manufacturers to reduce the burden and cost of third party testing on such

entities. However, as originally adopted, section 14 imposed third party testing on all manufacturers of children's products that are subject to a children's product safety rule, irrespective of the size of the business or the number of units produced, thereby limiting the Commission's ability to provide such relief. As recently amended by H.R. 2715, however, section 14(i)(4) provides special rules for small batch manufacturers through which the Commission is required, in implementing third party testing requirements, to take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements. In addition, small batch manufacturers of covered products, under certain circumstances, may use alternative testing requirements, if such alternatives are available. Under section 14(i)(4)(E)(i), a "covered product" means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year. Section 14(i)(4)(E)(ii) defines the term "small batch manufacturer" to mean a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year.

In light of this new authority, the Commission seeks to hear from interested stakeholders about whether such alternatives are available and what such alternatives would entail. For example, alternatives for a particular rule may include different screening techniques, sampling procedures, or a first party testing regime. Staff has also been exploring the idea of co-op approaches to testing expense. However, if the Commission determines that no such alternative testing requirement is available or economically practicable for a particular rule, ban, regulation, or standard, section 14(i)(4)(ii) permits the Commission to exempt small batch manufacturers from third party testing requirements. Thus, in addition to seeking information about alternative testing requirements, the Commission also wants to hear from interested

parties about whether they seek exemption from third party testing requirements because alternatives are not available or are not economically practicable. The Commission will explore at the hearing whether exemptions are appropriate with regard to any and all children's product safety rules for which small batch manufacturers may need relief. We note, however, that in some cases, even if alternatives are available and economically practicable, we may not allow the use of such an alternative (or, if it is determined that no alternative is available, the Commission may not permit an exemption) where the Commission determines that full compliance with the third party testing requirements is reasonably necessary to protect public health or safety. Moreover, sections 14(i)(4)(C)(i) and (ii) prohibit the Commission from providing alternative testing requirements or exemptions for any of the third party testing requirements contained in clauses (i) through (v) of section 14(a)(3)(B) (lead paint, full-size or non-full-size cribs, pacifiers, small parts, children's metal jewelry, baby bouncers, walkers, and jumpers) or durable infant or toddler products, as defined in section 104(f) of the Consumer Product Safety Improvement Act of 2008, 15 U.S.C. 2056(a)(f).

In seeking information about possible alternative testing requirements, we stress that any such alternative must satisfy the underlying objectives prescribed in the children's product safety rule for which the alternative is sought, and must provide reasonable methods to ensure compliance. Every rule, ban, standard, or regulation issued by the Commission is the result of careful analysis, review, and research through which alternatives are evaluated and certain standard criteria are met. In that process, Commission staff has considered possible alternative testing requirements to minimize the burden of testing since passage of the CPSIA. With regard to chemical testing, for example, staff has approved the use—in appropriate circumstances—of XRF screening techniques for lead. In addition, staff has been following

closely the development of screening techniques for phthalates. Where appropriate, and when the screening methods are reliable and reproducible, staff would be open to allowing the use of screening techniques to mitigate testing costs for chemical content testing of children's products and toys or the heavy metals content of the paints and surface coatings used on toys.

Screening techniques, however, are not appropriate alternative testing requirements for all children's product safety rules. For example, staff is not aware of any screening technique that would detect the flammability of a child's carpet and rug. In addition, many of the performance standards and tests in our rules have particularized test methods for which an alternative simply does not appear to be practicable. The bicycle standard, for example, contains rigorous performance standards to reduce unreasonable risks of injury, including exacting and well-documented test procedures that are analyzed to ensure the reproducibility of the results and minimize interlaboratory variability.

Therefore, as a threshold matter, any alternative testing requirement submitted to the Commission for consideration, in addition to satisfying the fundamental purpose of the rule for which an alternative is presented, must demonstrate acceptable performance in the areas of:

- Accuracy;
- Precision;
- Repeatability;
- Reproducibility;
- Range;
- Sensitivity (to test setup and/or test environment);
- Relevance (usefulness in predicting consumer product performance); and
- Correlation between the proposed alternative and existing regulatory testing requirements.

Using these criteria, stakeholders should submit specific and well-documented information on the availability and economic practicability of alternative testing requirements for the following children's product safety rules:

16 CFR Part No. (or Test Method or Standard)	Description
1420	All-Terrain Vehicles.
1203	Bicycle Helmets.
1512	Bicycles.
1513	Bunk Beds.
1500.86(a)(5)	Clacker Balls.
1500.86(a)(7) and (8)	Dive Sticks and Other Similar Articles.
1505	Electrically Operated Toys or Articles.
1615	Flammability of Children's Sleepwear, Sizes 0 through 6X.
1616	Flammability of Children's Sleepwear, Sizes 7 through 14.

16 CFR Part No. (or Test Method or Standard)	Description
1610	Flammability of Clothing Textiles.
1632	Flammability of Mattresses and Mattress Pads.
1633	Flammability (Open-Flame) of Mattress Sets.
1611	Flammability of Vinyl Plastic Film.
1215	Infant Bath Seats.
Sec. 101 of CPSIA (Test Method CPSC-CH-E1001-08 or CPSC-CH-E1001-08.1).	Lead Content in Children's Metal Products.
Sec. 101 of CPSIA (Test Method CPSC-CH-E1002-08 and/or CPSC-CH-E1002-08.1).	Lead Content in Children's Non-Metal Products.
Sec. 108 of CPSIA (Test Method CPSC-CH-C1001-09.3)	Phthalate Content of Children's Toys and Child Care Articles.
1510	Rattles.
1630	Surface Flammability of Carpets and Rugs.
1631	Surface Flammability of Small Carpets and Rugs.
1217	Toddler Beds.
(ASTM F963)	Toys.

Stakeholders seeking an exemption from one of the above-listed rules should submit information to the Commission demonstrating that an alternative testing requirement is not available or economically practicable. In addition, because the Commission cannot grant an exemption where it determines that full compliance with the third party testing provisions of the CPSIA "is reasonably necessary to protect the public health and safety," the Commission is accepting comments on this issue. The Commission intends this hearing to fulfill all of the notice and hearing requirements of HR 2715 with regard to the amendment of Section 14(i)(2)(B)(ii)(4) of the CPSA, "Special Rules for Small Batch Manufacturers."

Any information submitted in writing or presented orally to the CPSC at the public hearing will become part of the public record. Access to the docket to read background documents, including a transcript of the public meeting, or comments received, will be made available at: <http://www.regulations.gov> under Docket No. CPSC-2011-0070.

Dated: October 3, 2011.

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

[FR Doc. 2011-25876 Filed 10-5-11; 8:45 am]

BILLING CODE 6355-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Advisory Committee Meetings

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on October

26 and October 27, 2011; at the Johns Hopkins University Applied Physics Laboratory, 11100 Johns Hopkins Road, Laurel, MD 20723.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Board will discuss interim finding and recommendations resulting from ongoing Task Force activities. The Board will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture and homeland security.

DATES: October 26 and October 27, 2011.

ADDRESSES: Johns Hopkins University Applied Physics Laboratory, 11100 Johns Hopkins Road, Laurel, MD 20723.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301-3140, via e-mail at debra.rose@osd.mil, or via phone at (703) 571-0084.

SUPPLEMENTARY INFORMATION: In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. 2) and 41 CFR 102-3.155, the Department of Defense has determined that these Defense Science Board Quarterly meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by

the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address in **FOR FURTHER INFORMATION CONTACT**, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: September 30, 2011.

Aaron Siegel,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-25744 Filed 10-5-11; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the Performance Review Board

AGENCY: Department of Defense (DoD), Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) of the Defense Finance and Accounting Service (DFAS). The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and

performance scores to the Deputy Secretary of Defense.

DATES: *Effective Date:* October 21, 2011.

FOR FURTHER INFORMATION CONTACT:

Denise Thornburg, DFAS SES Program Manager, Defense Finance and Accounting Service, Arlington, Virginia, (303) 337-3288.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Defense Finance and Accounting Service PRB:

Teresa McKay,
Richard Gustafson,
David McDermott,
Nancy Zmyslinski.

Executives listed will serve a one-year renewable term, effective October 21, 2011.

Dated: October 3, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011-25854 Filed 10-5-11; 8:45 am]

BILLING CODE 5001-06-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: October 3, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: New.

Title of Collection: Evaluation of Response to Intervention Practices for Elementary School Reading (School and Staff Practices).

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: On occasion.

Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 4,720.

Total Estimated Annual Burden Hours: 11,886.

Abstract: The Evaluation of Response to Intervention (RtI) Practices for Elementary School Reading will inform the National Assessment of the Individuals with Disabilities Education Improvement Act of 2004, and the choices of districts and schools, by studying the implementation and impact of practices to identify and intervene early with struggling readers, and when needed, determine students' eligibility for special education. The Department seeks clearance for instruments to collect data for an in-depth study of the design,

implementation, and impact of RtI programs.

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 4734. 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. 2011-25902 Filed 10-5-11; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice; 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 30, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information, and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Request for Title IV Reimbursement or Heightened Cash Monitoring 2 (HCM2).

OMB Control Number: 1845-0089.

Agency Form Number(s): N/A.

Frequency of Responses: Monthly.

Affected Public: Business or other for-profit; not-for-profit Institutions.

Total Estimated Number of Annual Responses: 732.

Total Estimated Annual Burden Hours: 3,660.

Abstract: The purpose of the form is to gather financial information from the institution in order to process claims for payment. ED Payment Analysts compare data on the form with disbursement records in the Common Origination and Disbursement system to determine what amount will be paid to the institution under the restricted method of payments. Data and signatures are collected from the institution on these forms. The data collected is in regards to the Title IV program funds that are requested and certified by the institution in the President/Owner/Chief Executive Officer and the Financial Aid Director/Third Party Servicer section of the form. The forms

are signed by the institution official and submitted when requesting payment for Reimbursement or Heightened Cash Monitoring 2 claims.

Copies of the proposed information collection request may be accessed from <http://www.edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 4716. 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. 2011-25901 Filed 10-5-11; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[FE Docket No. 11-109-LNG]

ConocoPhillips Company; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on August 22, 2011, by ConocoPhillips Company (ConocoPhillips), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 500 Billion cubic feet (Bcf) of natural gas on a short-term or spot market basis over a two year period commencing on November 30, 2011. ConocoPhillips further requests that such authorization extend to LNG supplies imported from foreign sources to which ConocoPhillips holds title, as well as to LNG supplies imported from foreign sources that ConocoPhillips may export on behalf of other entities who themselves hold title. The LNG would be exported from the LNG terminal facilities owned by Freeport LNG Development, L.P. (Freeport LNG) on Quintana Island, Texas, to any country

with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. The application was filed under section 3 of the Natural Gas Act (NGA), as amended by section 201 of the Energy Policy Act of 1992. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in Public Comment Procedures below no later than 4:30 p.m., eastern time, November 7, 2011.

ADDRESSES: Electronic Filing on the Federal eRulemaking Portal under FE Docket No. 11-109-LNG: <http://www.regulations.gov>.

Electronic Filing by e-mail: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE-34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026-4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE-34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Marc Talbert, U.S.

Department of Energy (FE-4), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478; (202) 586-7991.

Edward Myers, U.S. Department of Energy, Office of General Counsel, Fossil Energy and Energy Efficiency, Forrestal Building, Room 6B-159, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586-3397.

SUPPLEMENTARY INFORMATION:

Background

ConocoPhillips is a Delaware corporation with its principal place of business in Houston, Texas. ConocoPhillips is an independent producer and seller of natural gas that imports LNG into the United States and exports foreign-sourced LNG from the United States. On November 30, 2009, DOE/FE issued Order No. 2731, which granted ConocoPhillips authorization to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 500 Bcf of natural gas on a cumulative basis over

a two-year period commencing on the date of the authorization.¹

Current Application

In the instant application, ConocoPhillips seeks to renew its blanket authorization to export LNG previously imported into the United States from foreign sources from the Freeport LNG terminal facilities. ConocoPhillips states that its interest in securing this blanket authorization is driven by its desire to continue to utilize and optimize the long-term LNG terminalling capacity for which it has contracted at the Freeport LNG facilities and its need for flexibility to respond to periodic changes in domestic and world markets for natural gas and LNG. Specifically, ConocoPhillips asserts that once LNG has been imported into the United States and is in storage at the Freeport LNG import terminal, ConocoPhillips desires the flexibility either to export the imported LNG to other world markets or to have LNG regassified for sale into domestic markets, with this decision based primarily on prevailing market conditions.

Public Interest Considerations

In support of its application, ConocoPhillips states that pursuant to section 3 of the NGA, FE must authorize exports to a foreign country unless there is a finding that such exports “will not be consistent with the public interest.”² ConocoPhillips states that section 3 creates a statutory presumption in favor of approval of a properly framed export application.³ ConocoPhillips states further, in evaluating an export application, FE applies the principles described in DOE Delegation Order No. 0204–111 which states that domestic need for natural gas shall be the primary focus of DOE when evaluating an export application.⁴ Finally, as detailed below, ConocoPhillips states that this blanket export authorization request satisfies the public interest standard of section 3 of the NGA, as construed by DOE.

ConocoPhillips asserts that there is no domestic need for the LNG to be exported by ConocoPhillips pursuant to the blanket authorization requested. In support, ConocoPhillips states that in recent years, DOE/FE has issued a

number of blanket authorizations to export previously-imported LNG, including the one issued to ConocoPhillips in Order No. 2731, finding that such LNG is not needed to meet domestic demand for natural gas.⁵ ConocoPhillips cites numerous recent authorizations issued by DOE/FE that were all approved. ConocoPhillips states that DOE/FE concluded in a recent Freeport LNG Development L.P. authorization that, “the evidence of record indicates that United States’ consumers continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG Development L.P. seeks to export.”⁶ ConocoPhillips states that this record evidence also supports the conclusion that the foreign-sourced LNG that ConocoPhillips may export from the Freeport LNG terminal facilities pursuant to the blanket authorization requested herein is not needed to meet domestic demand.

ConocoPhillips states that the monthly reports that it has filed with DOE/FE pursuant to Order No. 2731 confirm that it has used its currently effective blanket authorization to export previously-imported LNG from the United States. ConocoPhillips states that the Order No. 2731 blanket export authorization has also facilitated the importation of LNG cargos into the U.S. by enabling it to import LNG cargos into the U.S. without fear that such cargos will become captive to the U.S. market if, in ConocoPhillips’ view, market conditions ultimately do not support delivering regassified LNG into the U.S. market. ConocoPhillips states that it has also sold LNG to Freeport LNG to replace boil off, thereby contributing to the operational stability of the Freeport LNG terminal facilities.

Environmental Impact

ConocoPhillips states that no modifications to Freeport LNG’s Quintana Island terminal are required to enable the proposed exports of LNG. ConocoPhillips also states the environmental impacts of permitting the exportation of LNG from Freeport LNG’s Quintana Island terminal facilities were already reviewed by DOE/FE in Order

No. 2644⁷ and that DOE/FE previously found that the export of LNG by ConocoPhillips from the Freeport LNG terminal facilities will have no additional environmental impact.⁸

DOE/FE Evaluation

This export application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redefinition Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export application, DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE’s policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on these issues.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Submitting comments in electronic form on the Federal eRulemaking Portal at <http://www.regulations.gov>, by following the on-line instructions and submitting such comments under FE Docket No.

⁷ Freeport LNG Development, L.P.’s blanket authorization to export LNG granted in DOE/FE Order No. 2644 on May 28, 2009, extended through May 28, 2011.

⁸ ConocoPhillips’ blanket authorization to export LNG granted in DOE/FE Order No. 2731 on November 30, 2009, extends through November 29, 2011.

¹ ConocoPhillips’ blanket authorization to export LNG granted in DOE/FE Order No. 2731 on November 30, 2009, extends through November 29, 2011.

² 15 U.S.C. 717b(a).

³ *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.*, DOE/FE Order No. 1473, 2 FE¶ 70,317 at p. 13, n. 42 (April 2, 1999), citing *Panhandle Producers and Royalty Owners Association v. ERA*, 822 F. 2d 1105, 1111 (DC Cir. 1987).

⁴ *Ibid.* at p. 14.

⁵ *ENI USA Gas Marketing LLC*, DOE/FE Order No. 2923 (March 3, 2011); *Sempra Marketing, LLC*, DOE/FE Order No. 2885 (December 3, 2010); *Cheniere Marketing, LLC* DOE/FE Order No. 2795 (June 1, 2010).

⁶ *Freeport LNG Development, L.P.*, DOE/FE Order No. 2986 (July 19, 2011) at 7.

11–109–LNG. DOE/FE suggests that electronic filers carefully review information provided in their submissions and include only information that is intended to be publicly disclosed; (2) e-mailing the filing to fergas@hq.doe.gov with FE Docket No. 11–109–LNG in the title line; (3) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**; or (4) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by ConocoPhillips is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue, SW., Washington, DC 20585. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to

the following DOE/FE Web address: <http://www.fe.doe.gov/programs/gasregulation/index.html>. In addition, any electronic comments filed will also be available at: <http://www.regulations.gov>.

Issued in Washington, DC, on September 30, 2011.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2011–25887 Filed 10–5–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

DOE/NSF Nuclear Science Advisory Committee

AGENCY: Department of Energy, Office of Science.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee (NSAC) will be renewed for a two-year period beginning on September 30, 2011.

The Committee will provide advice to the Director, Office of Science (Department of Energy), and the Assistant Director, Directorate for Mathematical and Physical Sciences (National Science Foundation), on scientific priorities within the field of basic nuclear science research.

Additionally, the renewal of the NSAC has been determined to be essential to conduct business of the Department of Energy and the National Science Foundation and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, and the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Dr. Timothy Hallman, Designated Federal Officer, at (301) 903–3613.

Issued at Washington, DC, on September 30, 2011.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2011–25888 Filed 10–5–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Issuance of a Loan Guarantee to Abengoa Bioenergy Biomass of Kansas, LLC for the Abengoa Biorefinery Project Near Hugoton, Stevens County, KS

AGENCY: U.S. Department of Energy, Loan Programs Office.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to issue a \$134 million loan guarantee under Title XVII of the Energy Policy Act of 2005 (EPAct 2005) to Abengoa Bioenergy Biomass of Kansas, LLC (Abengoa) for construction and start-up of a cellulosic ethanol plant near Hugoton, Kansas (Project). The integrated biorefinery will use a combination of biomass feedstocks, such as corn stover and wheat straw, to produce cellulosic ethanol and to generate sufficient electricity to power the facility. The Project site comprises approximately 810 acres of row-cropped agricultural land. The biorefinery facilities will be developed on 385 acres and the remaining 425 acres will continue in agricultural use and act as a buffer area between the biorefinery and the Hugoton city limits. The environmental impacts of the construction and operation of this project were analyzed pursuant to the National Environmental Policy Act (NEPA) in the *Final Environmental Impact Statement for the Proposed Abengoa Biorefinery Project near Hugoton, Stevens County, Kansas (DOE/EIS–0407F)* (Final EIS) (August 2010) and in an associated Supplement Analysis (DOE/EIS–0407/SA–1; July 2011), prepared by the DOE Office of Energy Efficiency and Renewable Energy (EERE) Golden Field Office. DOE published a Record of Decision (ROD) on January 12, 2011 (76 FR 2096) to provide Federal funding under Section 932 of EPAct 2005 to Abengoa for the Project. The project for which DOE earlier provided funding under Section 932, with some modifications, is the same project for which DOE is now making a decision to issue a loan guarantee under Title XVII of EPAct 2005. DOE Loan Programs Office determined that the project analyzed in the Final EIS and Supplement Analysis

encompasses all activities covered by the loan guarantee.

ADDRESSES: Copies of this ROD and the Final EIS may be obtained by contacting Sharon Thomas, NEPA Document Manager, Environmental Compliance Division, Loan Programs Office (LP-10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202-586-5335; or e-mail Sharon.R.Thomas@hq.doe.gov, or by accessing these documents on the DOE NEPA Web site at <http://energy.gov/nepa> and on the Loan Programs Web site at <http://www.loanprograms.energy.gov>.

FOR FURTHER INFORMATION CONTACT: For further information about this ROD, contact Sharon Thomas mailto:Sharon.R.Thomas@hq.doe.gov, as indicated in the **ADDRESSES** section above. For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202-586-4600; leave a message at 800-472-2756; or e-mail askNEPA@hq.doe.gov. Information about DOE NEPA activities and access to DOE NEPA documents are available through the DOE NEPA Web site at <http://energy.gov/nepa>.

SUPPLEMENTARY INFORMATION:

Background

The Abengoa Project will be constructed on a 385-acre parcel near Hugoton, Kansas. Abengoa has optioned an additional 425 acres immediately east of the biorefinery parcel, between the biorefinery and the Hugoton city limits, as a buffer area. The planned usage of the optioned parcel would be to continue its use as irrigated agricultural land, to test production of biomass feedstocks, and for biomass storage. The biomass-to-ethanol and cogeneration facility proposed by Abengoa would use lignocellulosic biomass (biomass) as feedstock to produce biofuels and electricity. Biomass, including corn stover, wheat straw, milo stubble, mixed warm season grasses (such as switchgrass), and other available materials, would be harvested as feedstock and fermented to produce ethanol and potentially lignin. The biorefinery's cogeneration facility would also produce biopower, or bioenergy, in the form of electricity. The cogeneration facility co-located at the site would use direct-firing (that is, using the biomass as a solid fuel in a biomass boiler) to produce steam. Steam produced in the biomass boiler would be used for

facility processes and to produce electricity.

Under Section 932 of EPCA 2005, Congress directed DOE to carry out a program to demonstrate the commercial application of integrated biorefineries for the production of biofuels, in particular ethanol, from lignocellulosic feedstocks. To implement its responsibilities under Section 932, DOE issued a funding opportunity announcement in February 2006 for the design, construction, and startup of commercial-scale integrated biorefineries. In February 2007, DOE EERE selected Abengoa and five other applicants for negotiation of award. In December 2009, Abengoa applied for a loan guarantee from the Department's Loan Programs Office pursuant to Title XVII of EPCA 2005.

NEPA Review

In August 2008, DOE published in the **Federal Register** its *Notice of Intent to Prepare an Environmental Impact Statement and Notice of Wetlands Involvement for the Abengoa Biorefinery Project near Hugoton, KS* (73 FR 50001), starting a 45-day public scoping period during which DOE held a public scoping meeting in Hugoton, Kansas. In April 2009, DOE re-opened public scoping and published in the **Federal Register** its *Amended Notice of Intent to Modify the Scope of the Environmental Impact Statement for the Abengoa Biorefinery Project near Hugoton, KS* (74 FR 19543). The amended notice informed the public about changes in the Project relevant to the scope of the ongoing EIS. DOE conducted a 30-day public scoping period and held a second public scoping meeting in Hugoton, Kansas. On September 23, 2009, DOE published in the **Federal Register** its *Notice of Availability for the Draft Environmental Impact Statement for the Abengoa Biorefinery Project Near Hugoton, Stevens County, KS* (DOE/EIS-0407D) (74 FR 48525) (Draft EIS). On September 25, 2009, the U.S. Environmental Protection Agency (EPA) listed the Draft EIS in its weekly notice of availability (74 FR 48951).

DOE conducted a public hearing in Hugoton during the 45-day public comment period on the Draft EIS. DOE prepared a comment-response chapter for the Final EIS (Chapter 10) that includes each public comment received on the Draft EIS and DOE's response.

DOE issued the Final EIS, and EPA listed the Final EIS in its weekly notice of availability on August 20, 2010 (75 FR 51458). DOE issued a ROD, published on January 12, 2011 (76 FR 2096), to provide Federal funding under Section 932 of EPCA 2005 to Abengoa

for the Project (identified in the Final EIS and ROD as the Proposed Action).

Since issuance of the ROD, Abengoa has proposed a modification to the Proposed Action. Under the original Proposed Action, the biorefinery would process approximately 2,500 dry short tons per day of feedstock and produce up to 19 million gallons of denatured ethanol per year and 125 megawatts of electricity, 75 of which would be sold commercially. Under the Modified Proposed Action, the biorefinery would process approximately 1,000 dry short tons per day of feedstock and produce up to 25 million gallons of denatured ethanol per year and 20 megawatts of electricity for use at the facility, none of which would be sold to the grid. In July 2011, pursuant to DOE NEPA regulations (10 CFR 1021.314), DOE issued a *Supplement Analysis for the Final Environmental Impact Statement for the Proposed Abengoa Biorefinery Project near Hugoton, Stevens County, Kansas* (DOE/EIS-0407/SA-1) that examined the potential environmental impacts of the Modified Proposed Action and addressed whether they were within the range of the potential environmental impacts analyzed in the Final EIS. Based on the Supplement Analysis, DOE determined on July 7, 2011, that the Modified Proposed Action would not constitute a substantial change in actions previously analyzed and would not present significant new circumstances or information relevant to the environmental concerns and bearing on the previously analyzed actions or impacts, within the meaning of 40 CFR 1502.9(c) and 10 CFR 1021.314. Accordingly, DOE determined that a supplement to the FEIS was not required. On August 19, 2011, DOE announced its decision to offer a conditional commitment to Abengoa to provide a \$134 million loan guarantee to support the financing of the Project (Modified Proposed Action).

Alternatives Considered

In the Final EIS, DOE considered three alternatives, including the Project as identified in the Final EIS as the Proposed Action (selected by DOE in the January 2011 ROD), an Action Alternative, and the No Action Alternative. These alternatives were described in detail and fully analyzed in the Final EIS.

The DOE decision to select the Proposed Action (provide Federal funding under Section 932 of EPCA 2005 for the Project) includes best management practices and mitigation measures identified in Chapter 6 of the Final EIS, Best Management Practices

and Mitigation, and summarized in the January 2011 ROD. These practices and mitigation measures, and additional mitigation measures identified in the Supplement Analysis for the Modified Proposed Action, will be implemented for the Project. Mitigation measures beyond those specified in permit conditions will be addressed in a mitigation action plan (MAP) that DOE will prepare pursuant to 10 CFR 1021.331. The MAP and annual monitoring reports will be available on the DOE NEPA Web site (<http://energy.gov/nepa>) and the DOE Golden Field Office Web site (http://www.eere.energy.gov/golden/Reading_Room.aspx).

DOE's decision in this ROD is whether or not to issue a \$134 million loan guarantee to Abengoa to support construction and start-up of the Project. Accordingly, DOE's alternatives are (1) to issue a loan guarantee to Abengoa for the Proposed Action alternative selected in the January 2011 ROD and subsequently modified (the Modified Proposed Action described in the Supplement Analysis), and (2) No Action Alternative, i.e., no loan guarantee.

Environmentally Preferred Alternative

Issuance of a loan guarantee for the Project would result in both beneficial and adverse potential environmental impacts. Potential beneficial impacts include those associated with reductions in greenhouse gas emissions and a decrease in water withdrawals; adverse impacts include those associated with a substantial increase in transportation activity and minor impacts from air emissions. On balance, DOE regards the No Action Alternative, which would result in no change in existing environmental conditions, as the environmentally preferred alternative.

Decision

On January 12, 2011, DOE announced the issuance of a ROD to provide Federal funding under Section 932 of EPCA 2005 to Abengoa for the Project. DOE's decision in this ROD is to select alternative (1) identified above: To issue a loan guarantee for construction and start-up of the Project (the Modified Proposed Action as described in the Supplement Analysis). Under alternative (2), the No Action Alternative, DOE would not issue a loan guarantee for the Project, and it is unlikely that Abengoa would implement the Project as currently planned. While the direct and indirect environmental impacts of the Project would be avoided under the No Action Alternative, the

benefits that would be gained from the development, demonstration, and commercial operation of an integrated biorefinery that uses lignocellulosic feedstocks would not be realized. In addition, no benefits would be realized from the reduction of air pollutants and emissions of greenhouse gases by displacing gasoline with biofuel.

Approval of the loan guarantee for the Project meets DOE's purpose and need pursuant to Title XVII of EPCA 2005 (42 U.S.C. 16511–16514) for eligible projects under Section 1703 of Title XVII, which authorizes the Secretary of Energy to make loan guarantees for projects that (1) avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases and (2) employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. Issuance of loan guarantees for projects under Section 1703 of Title XVII of EPCA 2005 facilitates the acceleration of the commercialization of innovative, environmentally-friendly technologies that will have an impact on ensuring clean, affordable, and reliable supplies of energy. The purpose and need for DOE's loan guarantee action is to comply with DOE's mandate under Title XVII of EPCA 2005 by selecting projects that meet the goals of the Act.

In addition, the Project is also eligible for a loan guarantee under Section 1705 of Title XVII (implemented pursuant to Section 406 of the American Recovery and Reinvestment Act of 2009 (ARRA)). Eligible Section 1705 projects include renewable energy projects and related manufacturing facilities, electric power transmission projects, and leading edge biofuels projects. The primary purposes of ARRA are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. Issuances of loan guarantees for eligible projects under Section 1705 are designed to address the current economic conditions facing the nation. To qualify under Section 1705, projects must commence construction by September 30, 2011.

Mitigation

This ROD incorporates all practicable means to avoid or minimize environmental harm. The Project that will be supported by issuance of the DOE loan guarantee includes all mitigation conditions applied by DOE for this Project in its Final EIS, January 2011 ROD, and Supplement Analysis. In the Supplement Analysis, DOE concluded that additional mitigation

measures are warranted to reduce potential impacts from accidental releases of anhydrous ammonia. Mitigation measures beyond those specified in permit conditions will be addressed in a MAP that DOE will prepare pursuant to 10 CFR 1021.331. The MAP will explain how the mitigation measures will be planned, implemented, and monitored. DOE will ensure that commitments in the ROD are incorporated into DOE's loan guarantee agreement with Abengoa. The MAP and annual monitoring reports will be available on the DOE NEPA Web site (<http://energy.gov/nepa>) and the DOE Golden Field Office Web site (http://www.eere.energy.gov/golden/Reading_Room.aspx).

DOE's loan guarantee agreements require the applicant to comply with all applicable laws and the MAP, including mitigation measures contained therein. An applicant's failure to comply with applicable laws and the MAP would constitute a default. Upon the continuance of a default, DOE would have the right under the loan guarantee agreement between it and the applicant to exercise usual and customary remedies. To ensure that the applicant so performs, the DOE Loan Programs Office proactively monitors all operative loan guarantee transactions.

Issued in Washington, DC, on September 20, 2011.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2011-25857 Filed 10-5-11; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Issuance of a Loan Guarantee to First Solar, Inc., for the Desert Sunlight Solar Farm Project

AGENCY: U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to issue a loan guarantee under Title XVII of the Energy Policy Act of 2005 (EPCA 2005) to First Solar, Inc., (First Solar) for construction and start-up of the Desert Sunlight Solar Farm Project (DSSFP or the Project), a 550-megawatt (MW) nominal capacity solar photovoltaic power generating facility on approximately 4,144 acres, all of which is administered by the U.S. Department of the Interior, Bureau of Land Management (BLM), in Riverside County, California. The potential environmental impacts of constructing and operating this project were analyzed pursuant to the National Environmental

Policy Act (NEPA) in *Plan Amendment/Final Environmental Impact Statement for the Desert Sunlight Solar Farm Project* (76 **Federal Register** [FR] 21402; April 15, 2011) prepared by the BLM Palm Springs-South Coast Field Office with DOE as a cooperating agency. BLM consulted DOE during preparation of the EIS, DOE provided comments to BLM on the content, and BLM addressed those comments in the Final EIS. DOE subsequently determined that the project analyzed in the Final EIS is substantially the same as the project that would be covered by the DOE loan guarantee and that its own NEPA procedures had been satisfied, and DOE adopted the Final EIS (DOE/EIS-0448) (76 FR 37112; June 24, 2011).

ADDRESSES: Copies of this ROD and the Final EIS may be obtained by contacting Joseph Marhamati, NEPA Document Manager, Environmental Compliance Division, Loan Programs Office (LP-10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202-586-8198; or e-mail joseph.marhamati@hq.doe.gov. The Final EIS and this ROD are also available on the DOE NEPA Web site at: <http://nepa.energy.gov>, and on the Loan Programs Web site at: <http://www.loanprograms.energy.gov>.

FOR FURTHER INFORMATION CONTACT: For further information about this ROD, contact Joseph Marhamati, as indicated in the **ADDRESSES** section above. For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC-54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202-586-4600; leave a message at 800-472-2756; or e-mail askNEPA@hq.doe.gov. Information about DOE NEPA activities and access to DOE NEPA documents are available through the DOE NEPA Web site at <http://nepa.energy.gov>.

SUPPLEMENTARY INFORMATION:

Background

The proposed DSSFP is a photovoltaic solar electrical generating facility using commercial, thin-film cadmium telluride solar module technology on a total of approximately 4,144 acres of BLM-administered Federal land in Riverside County, California, six miles north of Desert Center, between the cities of Coachella to the west and Blythe to the east. The Project includes an operations and maintenance facility, solar energy visitor's center, and an on-site electric transmission substation. Also, the Project includes a 220-kilovolt

(kV) Gen-Tie Line (generation interconnection line) that will transmit the electricity generated to the regional transmission system, through the proposed new Red Bluff Substation where the power will feed into Southern California Edison's existing "Devers Palo Verde 1" 500-kV transmission line. The Gen-Tie Line will be 12.1 miles long. In addition, the Project will include a distribution line, an electrical transmission line, telecommunication facilities, and an access road (approximately 7.3 miles long).

In November 2009, the BLM Palm Springs-South Coast Field Office received an application pursuant to Title V of the Federal Land Policy and Management Act (43 United States Code [U.S.C.] 1761) for a right-of-way (ROW) grant to construct, operate, maintain, and decommission a project identified as the Desert Sunlight Solar Farm Project on BLM-administered Federal land in Riverside County, California. The BLM California Desert Conservation Area (CDCA) Plan requires all sites identified for power generation or transmission facilities that are not identified in the CDCA Plan to acquire a Plan Amendment to the CDCA Plan. BLM approved the Proposed Plan Amendment to the CDCA Plan to allow the DSSFP and approved a solar energy ROW grant to First Solar for the project. BLM published a Notice of Availability for its ROD in the **Federal Register** on August 15, 2011 (76 FR 50493).

In December 2009, First Solar applied to DOE for a loan guarantee under Title XVII of EPAct 2005, as amended by Section 406 of the American Recovery and Reinvestment Act of 2009 (Recovery Act). On January 7, 2010, First Solar submitted its Part II application for a \$1.24 billion loan guarantee to support the financing of the DSSFP.

NEPA Review

BLM was the lead Federal agency in the preparation of the DSSFP EIS, and DOE was a cooperating agency pursuant to a Memorandum of Agreement between DOE and BLM signed in January 2010. DOE reviewed the content of the draft EIS and provided comments to BLM to ensure that information requirements of DOE NEPA regulations (10 Code of Federal Regulations part 1021) were satisfied and that the analyzed alternatives encompassed the DOE proposed loan guarantee for construction and start-up of DSSFP.

On January 13, 2010, BLM published "Notice of Intent To Prepare an Environmental Impact Statement for the Proposed First Solar Desert Sunlight Solar Farm Project, Riverside County, CA and Possible Land Use Plan

Amendment" in the **Federal Register** (75 FR 1801), with a 30-day scoping period for public comments that closed on February 12, 2010. The U.S. Environmental Protection Agency (EPA) published a Notice of Availability of the Draft EIS and the Draft CDCA Plan Amendment for DSSFP in the **Federal Register** on August 27, 2010 (75 FR 52736). The Draft EIS was available for a 90-day public comment period, which closed on November 26, 2010. Comments received on the Draft EIS were addressed in the *Plan Amendment and Final Environmental Impact Statement for the Desert Sunlight Solar Energy Project (Final EIS)*, and the EPA published a Notice of Availability in the **Federal Register** on April 15, 2011 (76 FR 21345). All substantive comments received during the 30-day waiting period for the Final EIS were reviewed and responded to in Section 5.3 of BLM's *Record of Decision for the Desert Sunlight Solar Farm Project* (BLM ROD). BLM published the Notice of Availability for its ROD in the **Federal Register** on August 15, 2011 (76 FR 50493). Links to these documents can be found on the BLM Web site: <http://www.blm.gov/ca/st/en/prog/energy/fasttrack/First/fedstatus.html>.

Alternatives Considered

BLM considered six alternatives: (1) The project identified in the Final EIS as the Proposed Action with Land Use Plan Amendment (4,144-acre site layout and 550 MW output); (2) an Alternate Action Alternative with Land Use Plan Amendment (reconfigured 4,110-acre site layout and 550 MW output); (3) a Reduced Acreage Alternative with Land Use Plan Amendment (3,303-acre site layout and 413 MW output); (4) No Action Alternative A (No Issuance of a Right-of-Way Grant and No Land Use Plan Amendment); (5) No Action Alternative B (No Project with Plan Amendment to identify the area as unsuitable for solar energy development); and (6) No Action Alternative C (No Project with Plan Amendment to identify the area as suitable for solar energy development). Chapter 2 of the Final EIS describes these alternatives in detail, and they are fully analyzed in Chapter 4 of the Final EIS. Alternative 1 was identified in the Final EIS as the Preferred Alternative and ultimately selected by BLM. BLM also approved part of Final EIS Alternative 5 that makes the remainder of the Project Study Area (approximately 14,500 acres) unavailable for large-scale solar energy development.

The DOE decision is whether or not to issue a loan guarantee to First Solar

for \$1.24 billion to support construction and start-up of the DSSFP. Accordingly, the DOE alternatives are to issue the loan guarantee to First Solar for construction and start-up of the DSSFP under the Proposed Action identified as the BLM Selected Alternative in the BLM ROD, and the No Action Alternative. Under the No Action Alternative, DOE would not issue a loan guarantee for the project and it is not likely that First Solar would implement the project as currently planned.

Environmentally Preferable Alternative

BLM's environmentally preferred alternative is the No Action Alternative involving No Project with Plan Amendment to Identify the Area as Unsuitable for Solar Development (Alternative 5). This alternative would not allow development of the proposed project or other solar energy generating projects at this location and would have no impacts on the ground. BLM indicated in its ROD that this alternative would not allow the development of renewable energy, and this alternative was not chosen in full by BLM. However, a portion of the alternative was approved which made the remainder of the Project Study Area unavailable to solar development.

DOE has decided that its proposed Alternative, to issue a loan guarantee for construction and start-up of the DSSFP identified as the Proposed Action in the Final EIS, is environmentally preferable. DOE has determined that this alternative offers substantial environmental benefits due to anticipated reductions in greenhouse gas emissions as described in the Final EIS, and because all practicable means to avoid or minimize environmental harm, as described in the Final EIS and BLM ROD and its appendices for the DSSFP, are required by BLM as mitigation measures.

Consultation

As the lead Federal agency for the DSSFP, BLM complied with Section 106 of the National Historic Preservation Act and consulted with the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and interested Native American tribes; complied with Section 7 of the Endangered Species Act and the Bald and Golden Eagle Protection Act and consulted with the U.S. Fish and Wildlife Service; and entered into government-to-government consultations with a number of tribal governments. In addition, BLM consulted with the U.S. Army Corps of Engineers, which determined that the project site does not impact waters of

the United States and that a Clean Water Act permit will not be required, and the State of California and Riverside County regarding compliance with state and local laws. Chapter 5 of the BLM Final EIS summarizes consultations with agencies and other entities.

Intentional Destructive Acts

As a part of its review, DOE verified that a discussion of acts of terrorism, sabotage or other intentional destructive acts was included in the Final EIS. DOE concludes that the proposed DSSFP presents an unlikely target for an act of terrorism or sabotage. Further, as discussed in the Final EIS, the site security measures provide appropriate levels of security to protect electrical infrastructure from malicious mischief, vandalism, or domestic/foreign terrorist attacks.

Decision

DOE has decided to issue a loan guarantee for construction and start-up of DSSFP identified as the Proposed Action with Land Use Plan Amendment alternative in the Final EIS, which BLM selected in its ROD.

Approval of the loan guarantee for DSSFP responds to the DOE purpose and need pursuant to Title XVII Section 1705 of EAct 2005 (42 U.S.C. 16511–16514). Section 1705 authorizes a program for rapid deployment of renewable energy projects and related manufacturing facilities, electric power transmission projects, and leading-edge biofuels projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. The Section 1705 Program is designed to address the economic conditions of the Nation, in part, through renewable energy, transmission, and leading-edge biofuels projects. To be eligible, projects must commence construction by September 30, 2011.

Mitigation

The DSSFP project for which DOE has decided to issue a loan guarantee, includes mitigation measures, terms, and conditions applied by BLM in its ROW grants. The mitigation measures, terms, and conditions represent practicable means by which to avoid or minimize environmental harm from the selected alternative (Proposed Action). BLM is the lead Federal agency for the DSSFP project under NEPA and is responsible for ensuring compliance with all adopted mitigation measures, terms, and conditions for the DSSFP project set forth in the Final EIS and

BLM ROD. The mitigation measures, terms, and conditions are provided in Appendix L of the Final EIS and Appendix 2 of the BLM ROD. A Compliance Monitoring Plan for those measures, terms, and conditions is provided in Appendix 5 of the BLM ROD.

The DOE loan guarantee agreement requires that the applicant comply with all applicable laws and the terms of the ROW grant, including mitigation measures contained therein. An applicant's failure to comply with applicable laws and the ROW grant would constitute a default. Upon continuance of a default, DOE would have the right under the loan guarantee agreement between DOE and the applicant to exercise usual and customary remedies. To ensure that the applicant so performs, the Loan Programs Office proactively monitors all operative loan guarantee transactions.

Issued in Washington, DC, on September 29, 2011.

Jonathan M. Silver,

Executive Director, Loan Programs Office.

[FR Doc. 2011–25891 Filed 10–5–11; 8:45 am]

BILLING CODE 6450–10–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board Chairs

AGENCY: Department of Energy.

ACTION: Notice of open teleconference.

SUMMARY: This notice announces a teleconference of the Environmental Management Site-Specific Advisory Board (EM SSAB) Chairs. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this teleconference be announced in the **Federal Register**.

DATES: Thursday, October 20, 2011; 11 a.m.–3 p.m.

FOR FURTHER INFORMATION CONTACT: Catherine Alexander, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; Phone: (202) 586–7711.

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 Topics

- EM Program Update.
- EM SSAB Chairs' Round Robin: Top Three Site-Specific Topics and Achievements.

- 2012–2013 Budget Update and American Recovery and Reinvestment Act Close-Out.

- Waste Disposition Update.

- Update on DOE Order 435.1: Radioactive Waste Management.

- EM SSAB Chairs' Roundtable Discussion: Product Development.

Public Participation: The teleconference is open to the public. Members of the public who would like to join the proceedings by telephone should contact Elizabeth Schmitt, Public Participation Coordinator, at least 72 hours prior to the meeting to register and obtain call-in information. Ms. Schmitt can be reached via e-mail at elizabeth.schmitt@em.doe.gov, or phone at (202) 586–1135.

Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda during the teleconference should contact Catherine Alexander at the address or telephone number listed above. Requests must be received five days prior to the teleconference. The 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, or as the agenda allows, to present comments.

Minutes: Minutes will be available by writing or calling Catherine Alexander at the address or phone number listed above. Minutes will also be available at the following Web site: <http://www.em.doe.gov/stakepages/ssabchairs.aspx>.

Issued at Washington, DC, on September 30, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–25889 Filed 10–5–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–64–000; Docket No. ER11–3657–000]

Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association v. Entergy Services, Inc.; Notice of Complaint

Take notice that on September 26, 2009, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and 18 CFR 385.206 and 385.212 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, and the applicable Tariff on file with the Commission, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi, Public Service Commission of Yazoo City, Mississippi, Arkansas Electric Cooperative Corporation, and South Mississippi Electric Power Association (Complainants) filed a complaint against Entergy Services, Inc. (Respondent), alleging that the Respondent has not properly implemented the rate redetermination (Update) procedures contained in its Tariff, therefore, the 2011 Update filed by the Respondent in Docket No. ER11–3657–000 would impose rates and charges that are contrary to the Tariff on file with the Commission and are unjust and unreasonable in violation of the Federal Power Act.

The Complainant certifies that copies of the complaint were served on the contacts for Entergy Services, Inc. as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 19, 2011.

Dated: September 29, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–25833 Filed 10–5–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF11–6–000]

Wabash Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Planned Wabash Gas Storage Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meeting

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Wabash Gas Storage Project (Project) involving construction and operation of facilities proposed by Wabash Gas Storage, LLC (Wabash) near Paris in Edgar County, Illinois. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the

scoping period will close on October 31, 2011.

Comments may be submitted in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meeting scheduled as follows:

FERC Public Scoping Meeting,
Wabash Gas Storage Project, 6 p.m.—
Thursday, October 20, 2011,
Knights of Columbus Meeting Hall,
614 North Main Street, Paris, IL 61944,
(217) 465-1085.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, you may be contacted by a Wabash representative about the acquisition of an easement to construct, operate, and maintain the planned pipeline and storage facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations for the pipeline right-of-way and storage lease fail to produce an agreement, Wabash could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" is available for viewing on the FERC Web site (<http://www.ferc.gov>). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Wabash plans to develop a previously abandoned aquifer natural gas storage facility in Edgar County, Illinois. The Project involves the redevelopment of the Elbridge and Nevins subsurface gas storage fields in Edgar County, Illinois.

The Elbridge surface facilities include the Central Facility which would be comprised of:

- five gas storage injection and withdrawal wells;
- a 14,000 horsepower compressor station;
- valving, dehydration and separation equipment;

- one water disposal injection well; and
- one 50,000 barrel (bbl) produced water pond.

The Nevins surface facilities include the Nevins Facility which would be comprised of:

- three gas storage injection and withdrawal wells;
- metering, separation equipment, and flow control equipment;
- one water disposal injection well; and
- one 10,000 bbl produced water pond.

In addition, the following facilities would be constructed to support the Project:

- three observation wells located around the perimeter of each storage field;
- two plugged and abandoned wells, located at the apex of each field, that would be re-entered and converted to observation wells;
- a 1.4 mile, 16-inch-diameter bi-directional delivery pipeline that would interconnect with the existing Midwestern Paris Compressor Stations;
- a 4.5 mile, 20-inch-diameter bi-directional pipeline, and a 6-inch-diameter produced water pipeline that would connect the Nevins Facility and the Central Facility; and
- one meter station and a launcher/regulation station, located immediately adjacent to the Paris Compressor Station property.

The storage facility would have a working gas capacity of 14 billion cubic feet with injection and withdrawal rates of 200,000 million British thermal units per day.

The general location of the project facilities is shown in Appendix 1.¹

Land Requirements for Construction

For the aboveground facilities, approximately 31 acres would be disturbed. Following construction activities, approximately 13 acres would be permanently maintained for the Project operations. Approximately 18 would be acres necessary for construction would be restored and allowed to revert to former uses.

Construction of the pipelines would disturb approximately 68 acres during construction. Of that, approximately 34 acres would be allowed to revert to

previous land use following construction activities and the remaining 34 acres would be permanently maintained.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us² to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- geology and soils;
- water resources, and fisheries;
- vegetation and wildlife;
- cultural resources;
- socioeconomics;
- land use;
- air quality and noise; and
- reliability and public safety.

We will also evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments

¹ The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at <http://www.ferc.gov> using the link called "eLibrary" or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502-8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

² "We," "us," and "our" refer to the environmental staff of the Commission's Office of Energy Projects.

on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Illinois State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.³ We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance. Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by Wabash. This preliminary list of issues may be changed based on your comments and our analysis.

- Air Quality
- Noise and vibration impacts
- Socioeconomic impacts
- Geology and hydrogeology
- Wetlands and waterbodies
- Threatened and endangered species
- Public safety

³ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before October 31, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number PF11-6-000 with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502-8258 or efiling@ferc.gov.

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at www.ferc.gov under the link to *Documents and Filings*. An *eComment* is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at www.ferc.gov under the link to *Documents and Filings*. With *eFiling*, you can provide comments in a variety of formats by attaching them as a file with your submission. New *eFiling* users must first create an account by clicking on "*eRegister*." You will be asked to select the type of filing you are making. A comment on a particular project is considered a "Comment on a Filing"; or

(3) You may mail a paper copy of your comments to the Commission at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for

project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Becoming an Intervenor

Once Wabash files its application with the Commission, you may want to become an "intervenor" which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the "e-filing" link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until a formal application for the project is filed with the Commission.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC Web site (<http://www.ferc.gov>) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number, excluding the last three digits in the Docket Number field (*i.e.*, PF11-6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings

by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to <http://www.ferc.gov/esubscribenow.htm>.

Finally, public meetings or site visits will be posted on the Commission's calendar located at <http://www.ferc.gov/EventCalendar/EventsList.aspx> along with other related information.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25839 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11-130-000]

Southcross Alabama Pipeline LLC; Notice of Filing

Take notice that on September 28, 2011, Southcross Alabama Pipeline LLC (SAGS) submitted a revised Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 ("NGPA"). SAGS's filing proposes a name change from Enterprise Alabama Intrastate, LLC to Southcross Alabama Pipeline LLC, as more fully detailed in the petition.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 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 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25832 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459-309]

AmerenUE; Notice of Application for Amendment of License, and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-project use of project lands and waters.
- b. *Project No:* 459-309.
- c. *Date Filed:* July 6, 2011.
- d. *Applicant:* Union Electric Company, dba AmerenUE.
- e. *Name of Project:* Osage Hydroelectric Project.
- f. *Location:* The proposed non-project use would be located in McCoy Branch Cove, Lake of the Ozarks in Camden County, Missouri.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r
- h. *Applicant Contact:* Mr. Joe Daly, AmerenUE, 1901 Chouteau Avenue St. Louis, MO 63166-6149. 573-365-9207.
- i. *FERC Contact:* Bill Doran at (202) 502-6795, or email: william.doran@ferc.gov.
- j. *Deadline for filing comments, motions to intervene, and protest:* October 31, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web

site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. Please include the project number (P-459-309) on any comments, motions, or recommendations filed.

k. *Description of Request:* AmerenUE, requests Commission authorization to permit the Monarch Cove Development to expand an existing marina located within McCoy Branch Cove. Monarch Cove Development requests permission to construct two new docks, retain existing modifications made to three existing previously permitted docks, and retain one existing, but unpermitted, dock with proposed modifications. The proposal would provide an additional 110 boat slips and 32 personal watercraft (PWC) lifts to the facility. The expanded facility would represent a total of 14 docks, 232 boat slips, 60 PWC lifts and 28 double PWC slips. No fueling facilities or dredging activity is associated with the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) Bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25834 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1651-060]

Lower Valley Energy; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* License article amendment.

b. *Project No:* 1651-060.

c. *Date Filed:* July 22, 2011.

d. *Applicant:* Lower Valley Energy.

e. *Name of Project:* Swift Creek Hydroelectric Project.

f. *Location:* The Swift Creek Project is located on Swift Creek, a tributary of the Salt River, east of the town of Afton in Lincoln County, Wyoming. The project consists of an upper and lower development each of which has a dam and powerhouse.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791a-825r.

h. *Applicant Contact:* Mr. Wade Hirschi, Compliance Officer, Lower Valley Energy, P.O. Box 188, Afton, WY 83110, 307-885-3175.

i. *FERC Contact:* Mr. Robert Ballantine at 202-502-6289, or robert.ballantine@ferc.gov

j. *Deadline for filing comments, motions to intervene, and protest:* October 31, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov/docs-filing/efiling.asp>. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. Please include the project number (P-1651-060) on any comments, motions, or recommendations filed.

k. *Description of Request:* Lower Valley Energy, licensee for the Swift Creek Hydroelectric Project, requests the Commission to amend license Article 408, which, in part, requires a minimum flow release or project inflow, whichever is less, from both of the dams into Swift Creek from 20 cubic feet per second (cfs) during daylight hours from May 1 through September 30 to 5 cfs at all times. Article 408 already requires 5 cfs from October 1 through April 30 at all times (24 hours). Therefore, minimum flow release would be 5 cfs year round. Amendment of Article 408 would also make Article 409 obsolete. Article 409 requires the licensee to limit the rate of change in river flow (ramping rate) at the project when increasing flows from 5 cfs to 20 cfs and when decreasing flows from 20 cfs to 5 cfs. If

an amendment to Article 408 is approved, no changes in minimum flow would occur and no ramping of the project would be necessary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202-502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call 202-502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents: Any filing must (1) Bear in all capital letters the title "Comments", "Protest", or "Motion to Intervene" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25835 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14238-000]

NorthHydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 29, 2011, NorthHydro, LLC (NorthHydro or applicant) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Scootene Wasteway Hydroelectric project (project) near Richland in Franklin County, Washington. The wasteway was constructed by the U.S. Bureau of Reclamation as part of the Columbia Basin Project, and is situated within and operated by the South Columbia Basin Irrigation District. The wasteway functions as a diversion of surplus water from the irrigation system to the existing Scootene reservoir. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would collect all surplus flows below the Scootene wasteway outlet structure. The following new facilities are proposed: (1) A 63-inch, 2,850-foot-long underground penstock that would collect water from the Scootene wasteway; (2) a powerhouse containing one turbine/generator unit with a capacity of 1,110 kilowatts; (3) a

4.2-mile-long, 115-kilovolt transmission line connecting to the existing Ringold substation; and (4) appurtenant facilities. The estimated annual generation of the project would be 4.8 gigawatt-hours.

Applicant Contact: Mr. Darius Ruen, P.E., NorthHydro, LLC, 3201 Huetter Road, Suite 102, Coeur d'Alene, Idaho 83814; phone (208) 292-0820.

FERC Contact: Patrick Murphy; phone (202) 502-8755.

Deadline for Filing Comments, Motions to Intervene, Competing Applications (Without Notices of Intent), or Notices of Intent to File Competing Applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14238-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25838 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No., 14237-000]

NorthHydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 29, 2011, NorthHydro, LLC (NorthHydro or applicant) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the 46A Wasteway Hydroelectric project (project) near Richland in Franklin County, Washington. The wasteway was constructed by the U.S. Bureau of Reclamation as part of the Columbia Basin Project, and is situated within and operated by the South Columbia Basin Irrigation District. The wasteway functions as a diversion of surplus water from the irrigation system. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would collect all excess flows below the 46A wasteway outlet structure. The following new facilities are proposed: (1) A diversion structure that would collect water from the wasteway; (2) two 63-inch-diameter, 750-foot-long underground penstocks connecting the diversion structure with a powerhouse; (3) two turbine/generator units with a combined capacity of 1,600 kilowatts; (4) a 7.5-mile-long, 115-kilovolt transmission line connecting to the existing Ringold substation; and (5) appurtenant facilities. The estimated annual generation of the project would be 6.75 gigawatt-hours.

Applicant Contact: Mr. Darius Ruen, P.E., NorthHydro, LLC, 3201 Huetter Road, Suite 102, Coeur d'Alene, Idaho 83814; phone (208) 292-0820.

FERC Contact: Patrick Murphy; phone (202) 502-8755.

Deadline for Filing Comments, Motions to Intervene, Competing Applications (Without Notices of Intent), or Notices of Intent to File Competing Applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically

via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14237-000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25837 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14236-000]

NorthHydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 29, 2011, NorthHydro, LLC (NorthHydro or applicant) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), to study the feasibility of developing the proposed 16.4 Wasteway Hydroelectric project (project) near Richland in Franklin County, Washington. The wasteway was constructed by the U.S Bureau of Reclamation as part of the Columbia Basin Project, and is situated within and operated by the South Columbia Basin Irrigation District. The wasteway functions as a diversion of surplus water from the irrigation system. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application

during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The project would collect all excess flows below the wasteway outlet structure. The following new facilities are proposed: (1) A diversion structure that would collect water from the wasteway; (2) three 63-inch diameter, 4,900 foot-long underground penstocks connecting the diversion structure with a powerhouse; (3) three turbine/generator units with a combined capacity of 1,750 kilowatts; (4) a 7.5-mile-long, 115-kilovolt transmission line connecting to the existing Ringold substation; and (5) appurtenant facilities. The estimated annual generation of the project would be 10.0 gigawatt-hours.

Applicant Contact: Mr. Darius Ruen, P.E., NorthHydro, LLC, 3201 Huetter Road, Suite 102, Coeur d'Alene, Idaho 83814; phone (208) 292-0820.

FERC Contact: Patrick Murphy; phone (202) 502-8755.

Deadline for Filing Comments, Motions to Intervene, Competing Applications (Without Notices of Intent), or Notices of Intent to File Competing Applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR

385.2001(a)(1)(iii) and the instructions on the Commission's Web site <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll free at 1-866-208-3676, or for TTY, (202) 502-8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at <http://www.ferc.gov/docs-filing/elibrary.asp>. Enter the docket number (P-14236-000) in the docket number

field to access the document. For assistance, contact FERC Online Support.

Dated: September 29, 2011.

Kimberly D. Bose,
Secretary.

[FR Doc. 2011-25836 Filed 10-5-11; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-9475-4]

Clean Water Act Section 303(d): Availability of List Decisions

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of EPA's Responsiveness Summary Concerning EPA's April 13, 2011 Public Notice of Proposed Decisions to Add Waters and Pollutants to Louisiana's 2008 Section 303(d) List.

On April 13, 2011 EPA published a notice in the **Federal Register** at 76 FR 20664-20665 providing the public the opportunity to review its decision to partially approve and proposal to partially disapprove Louisiana's 2008 Section 303(d) List. Specifically, EPA approved Louisiana's listing of 409 waterbody pollutant combinations, and associated priority rankings. EPA proposed to disapprove Louisiana's decisions not to list three waterbodies. These three waterbodies were added by EPA because the applicable numeric water quality standards marine criterion for dissolved oxygen was not attained in these segments.

Based on the Responsiveness Summary, EPA finds no new information or persuasive arguments as to why the three waters should not be added to the 2008 Louisiana Section 303(d) List as proposed. Therefore, EPA is taking Final Action on the addition of three waterbody pollutant combinations to the final Louisiana 2008 Section 303(d) List. The basis for these decisions is described in EPA's Responsiveness Summary and the Record of Decision.

ADDRESSES: Copies of EPA's Responsiveness Summary Concerning EPA's September 28, 2011 Public Notice of Final Decisions to Add Waters and Pollutants to Louisiana's 2008 Section 303(d) List can be obtained at EPA Region 6's Web site at <http://www.epa.gov/region6/water/npdes/tmdl/index.htm#303dlists>, or by writing or calling Ms. Diane Smith at Water Quality Protection Division, U.S. Environmental Protection Agency

Region 6, 1445 Ross Ave., Dallas, TX 75202–2733, telephone (214) 665–2145, facsimile (214) 665–6490, or e-mail: smith.diane@epa.gov. Underlying documents from the administrative record for these decisions are available for public inspection at the above address. Please contact Ms. Smith to schedule an inspection.

FOR FURTHER INFORMATION CONTACT: Diane Smith at (214) 665–2145.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish Total Maximum Daily Loads (TMDLs) according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of Section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The list of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7).

Consistent with EPA's regulations, Louisiana submitted to EPA its 2008 listing decisions under Section 303(d) on August 25, 2009. On April 13, 2011, EPA approved Louisiana's 2008 listing of 409 water body-pollutant combinations and associated priority rankings, and proposed to disapprove Louisiana's decisions not to list three waterbodies. On September 28, 2011, EPA finalized the action to disapprove Louisiana's 2008 listing decisions not to list three water quality limited segments. EPA identified these additional waters and pollutants along with priority rankings for inclusion on the 2008 Section 303(d) List.

Dated: September 28, 2011.

Miguel I Flores,

Director, Water Quality Protection Division, Region 6.

[FR Doc. 2011–25766 Filed 10–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9476–4]

Good Neighbor Environmental Board; Notification of Public Advisory Committee Teleconference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of Public Advisory Committee Teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Good Neighbor Environmental Board (GNEB) will hold a public teleconference on November 2, 2011 from 11 a.m. to 1 p.m. Eastern Standard Time. The meeting is open to the public. For further information regarding the teleconference and background materials, please contact Mark Joyce at the number listed below.

Background: GNEB is a Federal advisory committee chartered under the Federal Advisory Committee Act, PL 92463. GNEB provides advice and recommendations to the President and Congress on environmental and infrastructure issues along the U.S. border with Mexico.

Purpose of Meeting: The purpose of this teleconference is to discuss and approve the Good Neighbor Environmental Board's Fourteenth Report, which focuses on the potential environmental and economic benefits of renewable energy development in the U.S.-Mexico border region.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at <http://www.epa.gov/ofacmo/gneb>.

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or e-mail at joyce.mark@epa.gov. To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 30, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–25881 Filed 10–5–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0786; FRL–9476–3]

Proposed Approval of the Central Characterization Project's Remote-Handled Transuranic Waste Characterization Program at Sandia National Laboratory

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA or we) is announcing the availability of, and soliciting public comments for 45 days on, the proposed approval of the radioactive, remote-handled (RH), transuranic (TRU) waste characterization program implemented by the Central Characterization Project (CCP) at Sandia National Laboratory (SNL) in Albuquerque, New Mexico. This waste is intended for disposal at the Waste Isolation Pilot Plant (WIPP) in New Mexico.

In accordance with the WIPP Compliance Criteria, EPA evaluated the characterization of RH TRU debris waste from SNL–CCP during an inspection conducted in three steps: Observation of the Visual Examination (VE) and sampling process at SNL on March 8, 2011; dose-to-curie (DTC) measurements on May 10, 2011 at SNL; and, the formal baseline inspection on June 7–8, 2011 in Golden, Colorado. Using the systems and processes developed as part of the U.S. Department of Energy's (DOE's) Carlsbad Field Office (CBFO) program, EPA verified whether DOE could adequately characterize RH TRU waste consistent with the Compliance Criteria. The results of EPA's evaluation of SNL–CCP's RH program and its proposed approval are described in the Agency's inspection report, which is available for review in the public dockets listed in **ADDRESSES**. We will consider public comments received on or before the due date mentioned in **DATES**.

This notice summarizes the waste characterization processes evaluated by EPA and EPA's proposed approval. As required by the 40 CFR 194.8, at the end of a 45-day comment period EPA will evaluate public comments received, and if appropriate, finalize the reports responding to the relevant public comments, and issue a final report and approval letter to DOE.

DATES: Comments must be received on or before November 21, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0786, by one of the following methods:

• <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

• *E-mail*: to a-and-r-docket@epa.gov.
 • *Fax*: 202-566-1741.
 • *Mail*: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Attn: Docket ID No. EPA-HQ-OAR-2011-0786. The Agency's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov>. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket

procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Rajani Joglekar or Ed Felcorn, Radiation Protection Division, Center for Waste Management and Regulation, Mail Code 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; *telephone number*: 202-343-9601; *fax number*: 202-343-2305; *e-mail address*: joglekar.rajani@epa.gov or felcorn.ed@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments*. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

II. Background

DOE is developing the WIPP, near Carlsbad in southeastern New Mexico, as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102-579), as amended (Pub. L. 104-201), TRU waste consists of materials that have atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

TRU waste is itself divided into two categories, based on its level of radioactivity. Contact-handled (CH) TRU waste accounts for about 97 percent of the volume of TRU waste currently destined for the WIPP. It is packaged in 55-gallon metal drums or in metal boxes and can be handled under controlled conditions without any shielding beyond the container itself. The maximum radiation dose at the surface of a CH TRU waste container is 200 millirems per hour. CH waste primarily emits alpha particles that are easily shielded by a sheet of paper or the outer layer of a person's skin.

Remote-handled (RH) TRU waste emits more radiation than CH TRU waste and must therefore be both handled and transported in shielded casks. Surface radiation levels of unshielded containers of remote-handled transuranic waste exceed 200 millirems per hour. RH waste primarily emits gamma radiation, which is very penetrating and requires concrete, lead, or steel to block it.

On May 13, 1998, EPA issued a final certification of compliance for the WIPP facility. The final rule was published in the **Federal Register** on May 18, 1998 (63 FR 27354). The Agency officially recertified WIPP on November 18, 2010 (75 FR 70584). Both the certification and recertification determined that WIPP complies with the Agency's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C, and is therefore safe to contain TRU waste.

The final WIPP certification decision includes conditions that (1) Prohibit shipment of TRU waste for disposal at WIPP from any site other than Los Alamos National Laboratories (LANL) until EPA determines that the site has established and executed a quality assurance program, in accordance with

194.22(a)(2)(i), 194.24(c)(3) and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR Part 194); and (2) (with the exception of specific, limited waste streams and equipment at LANL) prohibit shipment of TRU waste for disposal at WIPP (from LANL or any other site) until EPA has approved the procedures developed to comply with the waste characterization requirements of 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR Part 194). The Agency's approval process for waste generator sites is described in 194.8 (revised July 2004).

Condition 3 of the WIPP Certification Decision requires EPA to conduct independent inspections at DOE's waste generator/storage sites of their TRU waste characterization capabilities before approving their program and the waste for disposal at the WIPP. The Agency's inspection and approval process gives EPA (a) Discretion in establishing technical priorities, (b) the ability to accommodate variation in the site's waste characterization capabilities, and (c) flexibility in scheduling site waste characterization inspections.

As described in Section 194.8(b), EPA's baseline inspections evaluate each waste characterization process component (equipment, procedures, and personnel training/experience) for its adequacy and appropriateness in characterizing TRU waste destined for disposal at WIPP. During an inspection, the site demonstrates its capabilities to characterize TRU waste(s) and its ability to comply with the regulatory limits and tracking requirements under 194.24. A baseline inspection may describe any limitations on approved waste streams or waste characterization processes [194.8(b)(2)(iii)]. In addition, a baseline inspection approval must specify what subsequent waste characterization program changes or expansion should be reported to EPA [194.8(b)(4)]. The Agency is required to assign a Tier 1 (T1) or Tier 2 (T2) designation to the reportable changes depending on their potential impact on data quality. A T1 designation requires that the site must notify EPA of proposed changes to the approved components of an individual waste characterization process (such as radioassay equipment or personnel), and EPA must also approve the change before it can be implemented. A waste characterization element with a T2 designation allows the site to implement changes to the approved components of individual waste characterization processes (such as visual examination procedures) but requires EPA notification. The Agency may choose to

inspect the site to evaluate technical adequacy before approval. EPA inspections conducted to evaluate T1 or T2 changes are follow-up inspections under the authority of 194.24(h). In addition to the follow-up inspections, if warranted, EPA may opt to conduct continued compliance inspections at TRU waste sites with a baseline approval under the authority of 194.24(h).

The site inspection and approval process outlined in 194.8 requires EPA to issue a **Federal Register** notice proposing the baseline compliance decision, docket the inspection report for public review, and seek public comment on the proposed decision for a period of 45 days. The report must describe the waste characterization processes EPA inspected at the site, as well as their compliance with 194.24 requirements.

III. Proposed Baseline Compliance Decision

EPA has performed a baseline inspection of RH TRU waste characterization activities at SNL-CCP (EPA Inspection No. EPA-SNL-CCP-RH-06.11-8). The purpose of EPA's inspection was to verify that the waste characterization program implemented at SNL-CCP for characterizing RH TRU, retrievably-stored, debris waste is technically adequate and meets the regulatory requirements at 40 CFR 194.24.

The inspection took place in three steps: observation of the Visual Examination (VE) and sampling process at SNL on March 8, 2011; dose-to-curie (DTC) measurements on May 10, 2011 at SNL; and, the formal baseline inspection on June 7-8, 2011, held in Golden, Colorado. The Agency's inspection team evaluated: acceptable knowledge (AK) records; DTC, in conjunction with radionuclide-specific scaling factors supported by radiochemical analyses of smear samples from the parcels; and VE to confirm the physical and radiological contents of waste containers.

The inspection's scope included one RH waste stream, SNL-HCF-S5400-RH, consisting of research and experimental debris generated at SNL from 1973 through 1992. Decontamination operations conducted at SNL from 1995-1997 produced a total of 32 parcels of RH TRU waste that comprise Waste Stream SNL-HCF-S5400-RH. During this inspection, however, EPA evaluated the characterization process for containers from a subset of this waste stream, specifically 19 waste parcels of the waste group PKE00044, referred to as PKE00044 in the

accompanying inspection report. The remaining 13 parcels of Waste Stream SNL-HCF-S5400-RH are in two other waste groups, PKE00047 with nine parcels and PKE00027/54 with four parcels. Both of these PKEs will require separate Tier 1 approvals prior to disposal of waste containers belonging to these groups at WIPP.

EPA is proposing to approve the SNL-CCP waste characterization program implemented to characterize RH debris waste from the waste group PKE00044 that was evaluated during this baseline inspection and documented in the accompanying inspection report. The proposed approval includes the following:

(1) The AK process for 19 parcels of the retrievably-stored TRU debris waste from the waste group PKE00044 belonging to SNL Waste Stream SNL-HCF-S5400-RH.

(2) The radiological characterization process using DTC and scaling factors for assigning radionuclide values to 19 parcels of waste from the waste group PKE00044 from Waste Stream SNL-HCF-S5400-RH that is documented in CCP-AK-SNL-501, Revision 1, and supported by the calculation packages referenced in this report.

(3) The VE process to identify waste material parameters (WMPs) and the physical form of the debris waste SNL-HCF-S5400-RH.

This baseline inspection evaluated SNL-CCP's RH waste characterization program for technical adequacy and, when approved, SNL-CCP will continue to use the approved program components to characterize RH waste in accordance with the conditions and restrictions discussed in this report.

This proposed approval applies to 19 parcels from the waste group PKE00044. Upon final approval, however, SNL-CCP may add containers to SNL RH waste group PKE00044, provided the following conditions are met:

1. Additional containers have a pedigree similar to the containers in PKE00044 described in the accompanying inspection report; and
2. SNL-CCP can demonstrate that the radionuclide scaling factors used for PKE00044 are technically appropriate for use in the DTC determination of the radiological characterization of the additional containers.

When SNL-CCP RH identifies additional containers to be added to the waste group PKE00044, notification and submission of the appropriate supporting documentation to EPA will be necessary prior to disposal at the WIPP. Upon receiving the AK and radiological content documentation for

the newly-generated RH waste containers to be added to PKE00044, EPA will verify (a) the adequacy and applicability of the scaling factors discussed in the baseline inspection report to the additional containers, (b) the common radiological aspects of the 19 original parcels of PKE00044 and the additional containers, and (c) the technical adequacy of the AK

documentation. EPA will evaluate this documentation and, upon determining it to be adequate, SNL-CCP may dispose of the additional containers at the WIPP facility.

In addition, RH containers with different AK pedigree and new or different radionuclide scaling factors that may belong to the waste group PKE00044 and RH containers from the

remaining two waste groups (PKE00047 and PKE00027/54) will require a T1 evaluation and approval prior to disposal at the WIPP.

Table 1 below (which is outlined in the accompanying inspection report) identifies the proposed tiering changes based on the baseline inspection elements.

TABLE 1—TIERING OF RH TRU WASTE CHARACTERIZATION PROCESSES IMPLEMENTED BY SNL-CCP
 [Based on June 6–8, 2011 baseline inspection]

RH Waste characterization process elements	SNL-CCP RH Waste characterization process—T1 changes	SNL-CCP RH Waste characterization process—T2 changes*
Acceptable Knowledge (AK)	Two remaining waste groups (PKE00047 and PKE00027/54) belonging to a debris waste stream SNL-HCF-S5400-RH and any new RH waste stream not approved to date or modification of an approved waste stream to include additional containers, if new or different radionuclide scaling factors are required (AK1). Substantive modification(s)** that have the potential to affect the characterization process to CCP-AK-SNL-500 or CCP-AK-SNL-502 (AK2, AK6).	Notification to EPA: <ul style="list-style-type: none"> • Upon completion of revisions of CCP-AK-SNL-500, CCP-AK-SNL-502, CCP-TP-005, or nonconformance and corrective action procedures that require CBFO approval*** (AK2, AK5, AK6, AK14). • When the final or revised WSPF, CRR, and related attachments are available (AK10). • When AK accuracy reports are completed, prepared annually at a minimum (AK11). • When Attachment 4 of CCP-TP-005 is generated to reflect the updated AKSR Source Document Reference List (AK6). • When Add Container Memoranda have been prepared (AK5). • When additional Discrepancy Resolution Reports have been prepared (AK4). • If a Correlation and Surrogate Summary Form (CSSF) is prepared (AK11).
Radiological Characterization (RC), including Dose-To-Curie (DTC).	Application of new scaling factors for isotopic determination other than those documented in CCP-AK-SNL-501 (RC4, RC5). Use of any alternate radiological characterization procedure other than DTC with established scaling factors as documented in CCP-TP-504 and CCP-AK-SNL-501, Revision 1, respectively, or substantive modification** thereof (RC4, RC5). Any new RH waste stream not approved to date or the addition of containers to an approved waste stream that requires changing the established radionuclide scaling factors or radiological characterization process (RC1).	Notification to EPA upon completion of revisions of CCP-AK-SNL-501 or CCP-TP-504 that require CBFO approval*** (RC1, RC8). Notification to EPA of availability of a revised radiological characterization report, if required for the addition of containers to the approved waste streams (RC5).
Visual Examination (VE)	VE by reviewing existing audio/visual recordings for Summary Waste Category not covered by this approval (VE2). VE by any new process for S5000 debris wastes (VE2).	Notification to EPA upon completion of changes to VE procedure(s) that require CBFO approval*** (VE1) Addition of new S5000 debris waste streams (VE2).

*SNL-CCP will report all T2 changes to EPA every three months.

** Substantive modification refers to a change with the potential to affect SNL-CCP's RH waste characterization process, e.g., the use of an inherently different type of measurement instrument or the use of probes not described in CCP-TP-504, excluding changes related to solely to safety or to address administrative concerns.

*** Notification to EPA is not necessary when document updates are editorial in nature or are required solely to address administrative concerns.

IV. Availability of the Baseline Inspection Report for Public Comment

EPA has placed the report discussing the results of the Agency's inspection of the SNL-CCP Site in the public docket as described in ADDRESSES. In accordance with 40 CFR 194.8, EPA is providing the public 45 days to comment on these documents. The Agency requests comments on the

proposed approval decision, as described in the inspection report. EPA will accept public comment on this notice and supplemental information as described in Section 1 above. The Agency will not make a determination of compliance before the 45-day comment period ends. At the end of the public comment period, EPA will evaluate all relevant public comments

and revise the inspection report as necessary. If appropriate, the Agency will then issue a final approval letter and inspection report, both of which will be posted on the WIPP Web site.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A-93-02 and is available for review in Washington, DC, and at the three EPA WIPP

informational docket locations in Albuquerque, Carlsbad, and Santa Fe, New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: September 26, 2011.

Michael P. Flynn,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2011-25860 Filed 10-5-11; 8:45 am]

BILLING CODE 6560-50-P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 13, 2011, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883-4009, TTY (703) 883-4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 8, 2011.

B. New Business

- Proposal to Form Farm Credit Foundations, a Service Corporation.
- Farmer Mac Non-Program Investments and Liquidity—Proposed Rule.

Dated: October 4, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011-26029 Filed 10-4-11; 4:15 pm]

BILLING CODE 6705-01-P

FEDERAL TRADE COMMISSION

[File No. 112 3084]

Phusion Projects, LLC, et al.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 2, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Phusion Projects, File No. 112 3084” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/phusionprojectsconsent>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janet Evans (202-326-2125) or Carolyn L. Hann (202-326-2745), FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission’s Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 3, 2011), on the World Wide Web, at <http://www.ftc.gov/os/actions.shtm>. A paper copy can be

obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 2, 2011. Write “Phusion Projects, File No. 112 3084” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone’s Social Security number, date of birth, driver’s license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any “[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,” as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).¹ Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to

¹In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c), 16 CFR 4.9(c).

heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/phusionprojectsconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov#!/home>, you also may file a comment through that Web site.

If you file your comment on paper, write "Phusion Projects, File No. 112 3084" on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before November 2, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright (the "respondents"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw the agreement or make final the agreement's proposed order.

This matter involves the marketing for Four Loko, a fruit-flavored malt beverage product. Four Loko contains 11% to 12% alcohol by volume ("ABV") and is sold in a 23.5 oz can. The respondents promoted Four Loko through product packaging, Internet advertising including fan photo contests, and print solicitations to potential distributors.

According to the FTC complaint, the respondents represented in its marketing materials that a 23.5 oz can of 11% or 12% ABV Four Loko: (a) Contains the alcohol equivalent to one or two regular, 12 oz beers, and (b) could safely be consumed in its entirety on a single occasion. The complaint alleges that both claims are false or misleading because a 23.5 oz can of 11% ABV Four Loko contains alcohol equivalent to 4.3 regular beers and a 23.5 oz can of 12% ABV Four Loko contains alcohol equivalent to 4.7 regular beers. In addition, the complaint alleges that the respondents' failure to disclose these facts was deceptive, in light of their representation that a can of Four Loko contained a single serving.

The proposed consent order contains provisions designed to prevent the respondents from engaging in similar acts and practices in the future. Parts I and II apply to the defined term, "covered flavored malt beverages." Part I prohibits the corporate respondent and controlling respondents (generally defined as the individual respondents, when such individual(s) is, or collectively are, a significant shareholder or directly or indirectly manage or control any entity) from offering for sale, selling, or distributing Four Loko or any other covered flavored malt beverage in a container that provides more than 1.5 oz of ethanol (approximately two and one half (2½) regular beers) unless the label discloses, clearly and conspicuously, the following statement:

"This can [or bottle] has as much alcohol as [] regular (12 oz, 5% alc/vol) beers."

Part I sets forth specific approved fonts and font sizes, placement requirements (for both cans and bottles larger and smaller than 12 oz), and a formula for calculating the number of regular beers in the container. This part also provides that the second set of brackets shall be replaced by the number of 0.6 oz servings of ethanol in the product. Part I is designed to address the allegedly false representation that Four Loko contains the alcohol equivalent to one or two regular, 12 oz beers. The disclosure requirement is designed to alert consumers to the actual number of servings of alcohol in the container.

Part II of the proposed order further prohibits, commencing six (6) months after date of issuance of the order, the corporate respondent and controlling respondents from offering for sale, selling, or distributing Four Loko or any other covered flavored malt beverage in a container that provides more than 1.5

oz of ethanol unless the container is resealable.

Together, Parts I and II of the proposed order are designed to address the allegedly false representation that Four Loko can safely be consumed on a single occasion. The disclosure requirement is designed to alert consumers to the number of servings of alcohol in the container, and the resealability requirement makes it possible for consumers to drink a portion of the container's content and to save some for later.

Part III of the proposed order prohibits the respondents from misrepresenting the alcohol content of any alcohol beverage product. Part III also prohibits the respondents from depicting in advertising any alcohol beverage product containing more than 1.5 oz of ethanol being consumed directly from the container. This provision also addresses the respondents' representation that a can of Four Loko can be safely consumed on a single occasion. This prohibition provides a clear standard for compliance by the respondents and for enforceability by the FTC.

Part IV of the proposed order states that the order does not prohibit the respondents from making any representation about any alcohol beverage product that is specifically required by regulation or order by the U.S. Department of Treasury Alcohol and Tobacco Tax and Trade Bureau pursuant to the Federal Alcohol Administration Act.

Parts V through IX of the proposed order require the respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to its personnel; to notify the Commission of changes in corporate structure that might affect compliance obligations under the order; to notify the Commission of changes in any of the individual respondents' business or employment that might affect compliance obligations under the order; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 2011-25884 Filed 10-5-11; 8:45 am]

BILLING CODE 6750-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Delegation of Authorities

Notice is hereby given that I have delegated to the Administrator, Centers for Medicare & Medicaid Services (CMS), and the Commissioner, Food and Drug Administration (FDA), with authority to re-delegate, the authorities vested in the Secretary of the Department of Health and Human Services under Section 6004 of the Patient Protection and Affordable Care Act, Public Law 111-148, which adds Section 1128H [42 U.S.C. 1320a-7i] to the Social Security Act.

I hereby delegate to CMS the authority vested in the Secretary to issue guidance and take other appropriate actions, to the extent that Section 1128H [42 U.S.C. 1320a-7i] relates to Titles XVIII (Medicare), XIX (Medicaid), or XXI (State Children's Health Insurance Program) of the Social Security Act.

I hereby delegate to FDA all other authority vested in the Secretary under Section 1128H [42 U.S.C. 1320a-7i]. This shall include, but is not limited to, issuing guidance and taking other appropriate action to the extent that Section 1128H [42 U.S.C. 1320a-7i] relates to Section 503 of the Federal Food, Drug, and Cosmetic Act; identifying the information to be collected as allowed by Sections 1128H(a)(1)(B) [42 U.S.C. 1320a-7i(a)(1)(B)] and 1128H(a)(2)(B) [42 U.S.C. 1320a-7i(a)(2)(B)]; and generally, with respect to the information to be submitted under Section 1128H(a) [42 U.S.C. 1320a-7i(a)], issuing guidance and taking other appropriate action to identify the information to be submitted and the manner of submission, and overseeing and making arrangements for the collection, maintenance, and availability of such information.

This delegation shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Administrator, CMS, the Commissioner, FDA, or other CMS and FDA officials, which involve the exercise of these authorities prior to the effective date of this delegation.

This delegation of authorities is effective upon date of signature.

Authority: 44 U.S.C. 3101.

Dated: September 30, 2011.

Kathleen Sebelius,

Secretary of Health and Human Services.

[FR Doc. 2011-25851 Filed 10-5-11; 8:45 am]

BILLING CODE 4150-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, November 4, 2011, from 8:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT:

Karen Brooks, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850, (301) 427-1801. For press-related information, please contact Karen Migdail at (301) 427-1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827-4840, no later than October 21, 2011. The agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850. Ms. Campbell's phone number is (301) 427-1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to AHRQ's conduct of its mission including providing guidance on (A) Priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of

the Agency in light of private sector activity and opportunities for public private partnerships.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

On Friday, November 4, there will be a subcommittee meeting for the National Healthcare Quality and Disparities Report scheduled to begin at 7:30 a.m. The Council meeting will convene at 8:30 a.m., with the call to order by the Council Chair and approval of previous Council summary notes. The AHRQ Director will present her update on current research, programs, and initiatives. The final agenda will be available on the AHRQ Web site at <http://www.ahrq.gov> no later than October 31, 2011.

Dated: September 26, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011-25692 Filed 10-5-11; 8:45 am]

BILLING CODE 4160-90-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11-11KS]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS D-74, 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

Community-Based Surveillance of Supports for Healthy Eating and Active Living—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

There is growing consensus among experts that the environment plays a critical role in promoting or discouraging healthy choices and behaviors. For example, consumption of a healthful diet may be constrained by lack of access to fresh foods, and physical activity, particularly as it relates to active forms of transportation, such as walking and bicycling, may be limited by poor street design or concerns about safety. Policies implemented by municipalities can change local environments to support residents' decisions to consume healthful diets and be physically active.

CDC has identified 24 strategies that local communities can implement to encourage healthy eating and active living, as well as indicators for monitoring community-level progress in implementing these strategies. However, at this time, there is no systematic national information collection about community-level policies related to healthy eating and active living, or how these policies are changing over time. Although some public health surveillance systems measure health and behavioral factors at the individual level, these systems are insufficient to address broader contextual factors, such as community-level supports and

policies related to nutrition and physical activity.

To address this gap in information, CDC proposes to conduct a pilot study to examine the feasibility of establishing a national community-level surveillance system on policy supports for healthful eating and active living. The pilot study will be conducted in two states with a sample of 400 communities, 200 in each state. Respondents will be local governments from a representative sample of municipalities in each state. The sample frame will be generated from the U.S. Census of Governments.

The proposed pilot study is designed to address three key methodological objectives. The first objective is to test the feasibility of the proposed sampling frame and to answer sample design issues related to determining sampling criteria for inclusion, as well as the development of weights and estimates.

The second objective is to identify and critically evaluate whether respondents in diverse municipalities of various sizes and organizational structures are able to answer a self-administered survey questionnaire. The survey questionnaire includes 42 items on the following topics: Community-wide planning efforts for healthy eating and active living, the built environment and policies that support physical activity, and policies and practices that support access to healthy food and healthy eating. The estimated burden per response is one hour. Issues to be addressed include critical assessment of the strengths and weaknesses of methods for identifying the best respondents for completing the survey questionnaire; conducting a limited process evaluation that identifies the barriers and challenges respondents may incur in providing reasonable and current data for the questionnaire; and arriving at a data collection instrument with the lowest possible threshold for respondent burden.

The third objective is to identify and critically evaluate different methods of study recruitment and non-response follow-up. A split-sample approach will be used to assign each target respondent to one of two groups: A low-intensity recruitment group or a moderate-intensity recruitment group. All target respondents in the study sample will receive e-mail reminders to encourage participation in the survey. Target respondents in the moderate-intensity recruitment group will also receive up to three telephone contacts to address questions. These follow-up contacts will serve as additional reminders. The estimated burden per telephone contact is five minutes.

Results of the methodological component of the feasibility study will be used to assess the feasibility of establishing a national surveillance system and the best methods for encouraging a high response rate in a representative sample of communities.

The overall goal is to establish a surveillance system that will be useful to local, state, and federal public health programs that promote healthful eating and physical activity. Information to be collected through surveillance will help these groups identify areas for community-level interventions, track the progress of communities in changing policy and environmental supports, and evaluate interventions that address the obesity epidemic through changing diet and physical activity.

Target respondents will be city/town planners and managers, or individuals with similar responsibilities. The majority of survey responses will be collected using a secure, web-based survey data collection system. A paper version of the survey will also be available. OMB approval is requested for one year. Participation is voluntary and 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 hr)	Total burden (in hr)
City/Town Manager-Planner	Survey Questionnaire	400	1	1	400
	Telephone Follow-up for Non-Responders.	200	3	5/60	50
Total .....	.....	.....	.....	.....	450

Dated: September 29, 2011.
Daniel Holcomb,
Reports Clearance Officer, Centers for Disease Control and Prevention.
 [FR Doc. 2011-25753 Filed 10-5-11; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-11-0805]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 or send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS D-74, 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

Racial and Ethnic Approaches to Community Health (REACH) US Evaluation—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2007, the Centers for Disease Control and Prevention (CDC) launched Racial and Ethnic Approaches to Community Health across the U.S. (REACH US), a national multilevel program to reduce and eliminate health disparities in racial and ethnic minorities. Priority populations for the program are African American, American Indian, Alaska Native, Hispanic American, Asian American, and Pacific Islander citizens. Each state or community funded through the REACH US program developed a community action plan building on the application, synthesis, and dissemination of promising community public health practices in one or more priority areas: Breast and cervical cancer; cardiovascular disease; diabetes mellitus; adult/older adult immunization, hepatitis B, and/or tuberculosis; asthma; and infant mortality. The program priority areas were selected based on statistical analysis of "excess deaths," which examined differences in minority health in relation to non-minority health and identified the specific health areas that accounted for the majority of the higher

annual proportion of minority deaths in the U.S.

As part of the REACH US evaluation plan, CDC sponsored household-based risk factor surveys in 2009, 2010, and 2011 (OMB No. 0920-0805, exp. 2/28/2012). Respondents were selected based on a unique address-based sampling approach that targets specific geographic areas across the country where REACH U.S. interventions have been implemented. The risk factor survey data allow CDC to track trends in community health in the areas where REACH U.S. interventions have been launched.

CDC is requesting OMB approval to conduct two additional cycles of data collection in 2012 and 2013. Risk factor surveys will be conducted in 28 REACH U.S. communities (900 individuals per community). After households have been selected through address-based sampling, health information will be collected through a self-administered, mailed questionnaire, or through interviews conducted by telephone or in-person with members of the selected households. The surveys will help to assess the prevalence of various risk factors associated with chronic diseases, deficits in breast and cervical cancer screening and management, and deficits in adult immunizations. Survey results will also be used to assess progress towards the national goal of eliminating health disparities within minority populations.

OMB approval is requested for two years. Minor changes to the survey questions will be implemented, and adjustments will be made to the estimated number of respondents. Respondents will be adults ages 18 years and older. Participation is voluntary and there are no costs to respondents except their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Members of REACH U.S. communities.	Screening Interview	14,700	1	3/60	735
	Household Member Interview	10,600	1	15/60	2,650
	REACH Study Booklet self-administered questionnaire.	24,300	1	15/60	6,075
Total .....	.....	.....	.....	.....	9,460

Dated: September 29, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011-25755 Filed 10-5-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the CDC, National Center for Environmental Health (NCEH) announces the following aforementioned committee meeting:

Dates and times:

November 14, 2011, 8:15 a.m.–5 p.m.

November 15, 2011, 9 a.m.–5 p.m.

November 16, 2011, 9 a.m.–12 p.m.

Place: The Westin Atlanta North at Perimeter, Seven Concourse Parkway, Atlanta, Georgia, (770) 395-3900

Status: This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 100 people. Opportunities will be provided during the meeting for oral comments.

Purpose: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Agenda items will include the following: Healthy Homes and Childhood Lead Poisoning Prevention State Presentation; Federal agency updates; Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP) updates; Updates and recommendations from the Educational Intervention Workgroup, Laboratory Workgroup, Consumer Product Workgroup and the Blood Lead Level of Concern Workgroup.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Claudine Johnson, Program Operation Assistant or Nikki Walker, Healthy Homes and Lead Poisoning Prevention Branch, Division of Environmental Emergency Health Services, NCEH, CDC, 4770 Buford Hwy, NE., Mailstop F-60, Atlanta, GA 30341, telephone (770) 488-3629, Nikki Walker (770) 488-7225 fax (770) 488-3635.

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 29, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011-25843 Filed 10-5-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)—Health Disparities Subcommittee (HDS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting of the aforementioned subcommittee:

Time and Date: 9 a.m.–4 p.m., October 26, 2011.

Place: CDC, Thomas R. Harkin Global Communications Center, Room 117, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 25 people. The public is welcome to participate during the public comment period, which is tentatively scheduled from 3:30 p.m. to 4 p.m. This meeting is also available by teleconference. Please dial (877) 953-5019 and enter code 5280655.

Purpose: The Subcommittee will provide advice to the CDC Director through the ACD on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

Matters To Be Discussed: The agenda will include the following: (1) Discussion regarding increasing minority representation in public health through CDC's Minority Undergraduate Student Program; (2) briefing and discussion on social determinants of health.

The agenda is subject to change as priorities dictate.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, HDS, ACD, CDC, 1600 Clifton Road, NE., Mailstop E-67, Atlanta, Georgia 30333, Telephone: (404) 498-2320, E-mail: LEL1@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 30, 2011.

Catherine Ramadei,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011-25842 Filed 10-5-11; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention (CDC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), CDC announces the following meeting of the aforementioned committee.

Time and date: 8:30 a.m.–2:30 p.m., October 27, 2011.

Place: CDC, 1600 Clifton Road, NE., Building 21, Rooms 1204 A/B, Atlanta, GA 30333. This meeting is also available by teleconference. Please dial (877) 930-8819 and enter code 1579739.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. To accommodate public participation in the meeting, a conference telephone line will be available. The public is welcome to participate during the public comment period. The public comment period is tentatively scheduled for 1:40 p.m. to 1:45 p.m.

Purpose: The committee will provide advice to the CDC Director on strategic and other broad issues facing CDC.

Matters To Be Discussed: The Advisory Committee to the Director will receive updates from the Global Workgroup; State, Tribal, Local and Territorial Workgroup; Surveillance and Epidemiology Workgroup; and the Communications Workgroup, as well as an update from the CDC Director.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Carmen Villar, MSW, Designated Federal Officer, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D-14, Atlanta, Georgia 30333. Telephone 404/639-7000. E-mail: GHickman@cdc.gov. The deadline for notification of attendance is October 21, 2011. To register for this meeting, please send an e-mail to ACDDirector@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 30, 2011.
Catherine Ramadei,
Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2011-25853 Filed 10-5-11; 8:45 am]
BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Personal Responsibility Education Program (PREP) Multi-Component Evaluation—Design Survey.
OMB No.: New collection.

Description: The Family and Youth Services Bureau. (HHS/ACF/ACYF/FYSB) and the Office of Planning, Research, and Evaluation(HHS/ACF/OPRE) in the Administration for Children and Families (ACF) propose a data collection activity as part of the Personal Responsibility Education Program (PREP) Multi-Component Evaluation.

In addition to other activities, the PREP Evaluation will document the design of the PREP State grant programs via data gathered from States and selected sub-awardees funded by PREP. The findings will be of interest to the general public, federal and state policy-makers, PREP sub-awardees, community-based organizations, and other organizations interested in teen pregnancy prevention programming.

The proposed activity involves the collection of information through telephone conversations or in-person interviews held with administrators and program staff at the State and sub-awardee level. The data collection instrument will focus on information related to program context, administration, and design. This includes, but is not limited to: Program goals and strategy/approach, program setting, population characteristics, state-level requirements and processes, program monitoring, and training and technical assistance.

Respondents: State Level Coordinators; Program Directors; Program Staff; General Staff; Schools and Organizations; and Community-Based Organizations.

ANNUAL BURDEN ESTIMATES

Design survey				
Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Discussion Guide for use with State Level Coordinators and State-Level Staff	46	1	1	46
Discussion Guide for use with Program Staff; Schools and Organizations; and Community-Based Organizations	46	1	1	46
Estimated Annual Burden Total for Design Survey				92

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: OPREinfocollection@acf.hhs.gov. In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: OPREinfocollection@acf.hhs.gov. All requests should be identified by the title of the information collection.

OMB Comment: OMB is required to make a decision concerning the

collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202-395-6974, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,
Reports Clearance Officer.
 [FR Doc. 2011-25849 Filed 10-5-11; 8:45 am]
BILLING CODE 4184-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-N-0648]

Center for Devices and Radiological Health; Standard Operating Procedures for Network of Experts; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of draft standard operating procedures (SOPs) for a new "Network of Experts." The draft SOPs describe a new process for staff at the Center for Devices and Radiological Health (CDRH, the center) to gain access to scientific, engineering, and medical expertise when it is needed to supplement existing knowledge and expertise within the Center.

DATES: Submit either electronic or written comments on the report by November 7, 2011.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for electronic

access to the document. Submit electronic comments on the preliminary report 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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Nada O. Hanafi, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5422, Silver Spring, MD 20993-0002, 301-796-5427.

SUPPLEMENTARY INFORMATION:

I. Background

In September 2009, the Task Force on the Utilization of Science in Regulatory Decision Making (Task Force) and the 510(k) Working Group were established to address critical challenges facing the Center and our external constituents. The 510(k) Working Group was charged with evaluating the premarket notification (510(k)) program and exploring actions CDRH can take to enhance our 510(k) decision making. The Task Force was charged with making recommendations on how the Center can quickly incorporate new science—including evolving information, novel technologies, and new scientific methods—into its decision making in as predictable a manner as is practical. The 510(k) Working Group and Task Force made recommendations and then developed a plan of action for implementation of these 510(k) and Science Recommendations. This plan identified internal and administrative matters to be addressed and included an action item of leveraging external expertise.

II. The Draft SOPs

FDA is announcing the availability of two draft SOPs, one entitled, “Network of Experts—Expert Utilization Standard Operating Procedure” and one entitled, “Network of Experts—Expert Enrollment Standard Operating Procedure.” The purpose of the draft SOPs is to develop a network of external experts to appropriately and efficiently leverage external scientific expertise, and to describe the process for staff engagement with external experts. The network will be built on a series of agreements with external organizations including professional, scientific, and medical organizations and academic institutions. The draft SOPs describe CDRH processes for providing CDRH staff with access to scientific, engineering, and medical expertise

when it is needed to supplement existing knowledge and expertise within CDRH. The network of experts is designed to broaden CDRH’s exposure to scientific viewpoints, but not to provide external policy advice or opinions.

CDRH has a knowledgeable, professional internal cadre of scientific expertise, including over 800 scientists, engineers, and clinicians. Despite this internal resource, it is unrealistic to expect CDRH staff to encompass all of the applicable expertise and experience necessary to fulfill our mission given the rapidly growing variety and complexity of medical devices. This is particularly true when it comes to new and emerging fields of science and pioneering technologies. In these areas, it is often necessary for our experts to gain further scientific understanding from external sources. The Network of Experts will facilitate this exchange.

In developing the draft SOPs, CDRH assessed best practices. CDRH is also beginning a pilot project to use these draft SOPs on a trial basis. Experience from the pilot, along with comments on this notice, will further assist the agency in determining whether the draft SOPs should be improved going forward.

III. 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.

IV. Electronic Access

Persons interested in obtaining a copy of the draft SOPs may do so by using the Internet. The draft SOP entitled: “Network of Experts—Expert Utilization Standard Operating Procedure” can be obtained from FDA’s Web site at <http://www.fda.gov/AboutFDA/CentersOffices/CDRH/CDRHReports/ucm271521.htm>. The draft SOP entitled: “Network of Experts—Expert Enrollment Standard Operating Procedure” can be obtained from FDA’s Web Site at <http://www.fda.gov/AboutFDA/CentersOffices/CDRH/CDRHReports/ucm271523.htm>. The draft SOPs are also available from <http://www.regulations.gov> and can be located using the docket number found in brackets in the heading of this document.

Dated: September 29, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011-25597 Filed 10-5-11; 8:45 am]

BILLING CODE 4160-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2011-D-0721]

Guidance for Industry on Implementation of the Fee Provisions of the FDA Food Safety Modernization Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled “Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act.” FDA is issuing this guidance to provide answers to common questions that might arise about the new fee provisions and FDA’s plans for their implementation in fiscal year (FY) 2012.

DATES: Submit either electronic or written comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Regulatory Affairs, Office of Resource Management, 12420 Parklawn Dr., Rm. 2012, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to <http://www.regulations.gov>. Submit written comments to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amy Waltrip, Office of Regulatory Affairs, Office of Resource Management, 12420 Parklawn Dr., Rm. 2012, Rockville, MD 20857, 301-796-8811.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled “Implementation of the Fee Provisions of Section 107 of the FDA Food Safety Modernization Act.” The purpose of the guidance document is to provide

guidance to industry on the implementation of the fee provisions of section 107 of the FDA Food Safety Modernization Act of 2011 (FSMA) (Pub. L. 111–353). Section 107 of FSMA amended section 743 of the Federal Food, Drug, and Cosmetic Act to provide FDA with the authority to collect fees related to food. In the **Federal Register** of August 1, 2011 (76 FR 45820), FDA published a notice establishing fee rates for FY 2012 for domestic and foreign facility reinspections, recall orders, and importer reinspections. On October 1, 2011, FDA will begin implementation of the fee provisions of section 107 of FSMA. The guidance document is intended to provide answers to common questions that might arise about the new fee provisions and FDA's plans for their implementation in FY 2012.

This guidance is being issued consistent with FDA's good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). This guidance is being implemented without prior public comment because the Agency has determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). The Agency made this determination because the fee provisions of FSMA are currently being implemented, and guidance is needed to help effectuate the implementation. The guidance provides information necessary for affected persons to understand the implementation of these FSMA fee provisions. Although this guidance document is immediately in effect, it remains subject to comment in accordance with the Agency's GGP regulation.

The guidance represents the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the guidance 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.

III. Electronic Access

Persons with access to the Internet may obtain the guidance document at either <http://www.fda.gov/RegulatoryInformation/Guidances/default.htm> or <http://www.regulations.gov>. Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: September 30, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–25831 Filed 10–5–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

[Docket Number: **OIG–1204–N**]

Proposed Revision of Performance Standards for State Medicaid Fraud Control Units

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and opportunity for comment.

SUMMARY: This notice seeks comment on an OIG proposal to revise standards for assessing the performance of the State Medicaid Fraud Control Units (MFCUs or Units). This proposal would replace and supersede standards published on September 26, 1994 (59 FR 49080).

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on December 5, 2011.

ADDRESSES: In commenting, please refer to the file code **OIG–1204–N**. Because of staff and resource limitations, OIG cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at <http://www.regulations.gov>.

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Office of Congressional and Regulatory Affairs, Department of Health & Human Services, Attention: **OIG–118–N**, Room 5541, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201. Please allow sufficient time for mailed comments to

be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver, by hand or courier, your written comments before the close of the comment period to Office of Inspector General, Department of Health & Human Services, Cohen Building, Room 5541, 330 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–1343.

We do not accept comments by FAX transmission. All submissions received must include the agency name and docket number for this **Federal Register** document. All comments, including attachments and other supporting materials received, are subject to public disclosure.

FOR FURTHER INFORMATION CONTACT:

Richard B. Stern, OIG Office of Evaluation and Inspections, (202) 619–0480.

Patrice S. Drew, Office of External Affairs, (202) 619–1368.

SUPPLEMENTARY INFORMATION:

I. Background

The mission of the MFCUs, as established in Federal statute, is to investigate and prosecute Medicaid provider fraud and patient abuse and neglect. The States are responsible for operation of the MFCUs and receive reimbursement for a percentage of their costs from the Federal Government. Under section 1903(a)(6) of the Social Security Act (Act), States are reimbursed for 90 percent of their costs for the first 3 years of an MFCU's operation and 75 percent for subsequent years. All MFCUs are currently reimbursed at 75 percent of the costs of operating a certified MFCU.

OIG is delegated authority under 1903(q) and 1903(a)(6) of the Act to certify and annually recertify Units as eligible for Federal Financial Participation (FFP), and to reimburse States for costs incurred in operating an MFCU. Through the certification and recertification process, OIG ensures that the Units meet the requirements for FFP set forth in section 1903(q) of the Act and in OIG regulations found at 42 CFR part 1007. The performance standards set forth in this guidance document constitute the standards that OIG will apply in determining the effectiveness of State Units in carrying out MFCU required functions. As part of the recertification process, OIG reviews

reports from the Units, obtains information from other Federal and State agencies, and conducts periodic onsite reviews.

Under 1903(q), an MFCU must be a "single, identifiable entity of the State government" and be "separate and distinct" from the State Medicaid agency. The Unit must be an office of the State Attorney General's office, another State government office with statewide prosecutorial authority, or operate under a formal arrangement with the State Attorney General's office. The MFCU must investigate and prosecute Medicaid fraud cases, under State law, on a statewide basis. OIG regulations also require MFCUs to enter into agreements with the State Medicaid agency to ensure the referral of suspected provider fraud cases.

Under the statute, a MFCU must also have procedures for investigating and prosecuting (or referring for prosecution) allegations of patient abuse and neglect in Medicaid-funded facilities. A MFCU may also investigate and prosecute abuse and neglect in "board and care" facilities, such as assisted living facilities, even if such facilities do not receive Medicaid payments. Finally, the statute and regulations require that MFCUs be composed of a team of attorneys, auditors, and investigators.

Under section 1902(a)(61) of the Act, as added by Public Law 103-66, section 13625 (1994), all States must operate MFCUs unless they demonstrate to the Secretary of HHS that they can operate without a Unit. Currently, 49 States and the District of Columbia have established MFCUs and 1 State, North Dakota, operates without a MFCU after receiving permission from HHS in 1994. Under section 1902(a)(61), States must operate a MFCU that effectively carries out the functions and requirements described in 1903(q), as determined in accordance with standards established by the Secretary of HHS. The guidance proposed in this **Federal Register** notice sets forth the performance standards OIG will consider in determining whether State MFCUs are effectively carrying out their statutory functions under 1903(q).

These standards amend and update performance standards that were initially published in 1994. The performance standards have been used by OIG as part of the certification process to assess whether a MFCU is operating effectively. Where OIG determines there are deficiencies in meeting the standards, OIG will work with the Unit to improve performance. OIG may also make recommendations for improvement and will monitor the

Unit's implementation of any such recommendations. Ultimately, a Unit that is continuously not operating effectively could be designated as a high-risk grantee and OIG may make a separate determination regarding the Unit's certification status under section 1903(q). Based on our experience in overseeing the MFCUs since 1994, we are proposing in this notice to revise the standards.

II. Standards for Assessing MFCU Performance

Performance Standard 1—Compliance With Requirements

A Unit conforms with all applicable statutes, regulations, and policy directives, including:

A. Section 1903(q) of the Social Security Act, containing the basic requirements for operation of a MFCU;

B. OIG regulations for operation of a MFCU contained in 42 CFR part 1007;

C. Other Federal regulations and policies applicable to the Medicaid program, including grant administration requirements at 45 CFR part 92 and Federal cost principles at 2 CFR part 225;

D. OIG policy transmittals as maintained on the OIG Web site; and

E. Other applicable conditions of the State's award.

Performance Standard 2—Staffing

A Unit maintains reasonable staff levels and office locations in relation to the State's Medicaid program expenditures and in accordance with staffing allocations approved in its budget. In meeting this standard, the following performance indicators will be considered:

A. The Unit employs the number of staff that is included in the Unit's budget estimate as approved by OIG.

B. The Unit employs a total number of professional staff, including attorneys, auditors, and investigators, that is commensurate with the State's total Medicaid program expenditures and that enables the Unit to effectively investigate and prosecute (or refer for prosecution) the volume of case referrals and workload for both Medicaid fraud and patient abuse and neglect.

C. The Unit employs a mix and number of attorneys, auditors, investigators, and other professional staff, that is both commensurate with the State's total Medicaid program expenditures and that allows the Unit to effectively investigate and prosecute (or refer for prosecution) the volume of case referrals and workload for both Medicaid fraud and patient abuse and neglect.

D. The Unit employs a number of support staff in relation to its overall size that allows the Unit to operate effectively.

E. Office locations are distributed throughout the State, and are adequately staffed, commensurate with the volume of case referrals and workload for each location.

Performance Standard 3—Policies and Procedures

A Unit establishes written policies and procedures for its operations and ensures that staff are familiar with, and adhere to, policies and procedures. In meeting this standard, the following performance indicators will be considered:

A. The Unit has written guidelines or manuals that contain current policies and procedures, consistent with these performance standards, for the investigation and prosecution of Medicaid fraud and patient abuse and neglect.

B. The Unit adheres to current policies and procedures in its operations.

C. Procedures include a process for referring cases, when appropriate, to Federal and State agencies. Referrals to State agencies, including the State Medicaid agency, should identify whether further investigation or other administrative action is warranted, such as the collection of overpayments.

D. Written guidelines and manuals are readily available to all Unit staff, either online or in hard copy.

E. Policies and procedures address training standards for Unit employees.

Performance Standard 4—Maintaining Adequate Referrals

A Unit takes steps to maintain an adequate volume and quality of referrals from the single State Medicaid agency and other sources. In meeting this standard, the following performance indicators will be considered:

A. The Unit takes steps, such as the development of operational protocols, to ensure that the State Medicaid agency and other agencies refer to the Unit all suspected provider fraud cases.

B. Consistent with 42 CFR 1007.9(g), the Unit provides timely written notice to the State Medicaid agency when referred cases are accepted or declined for investigation.

C. The Unit provides periodic feedback to the State Medicaid agency and other referral sources on the adequacy of both the volume and quality of its referrals.

D. The Unit provides timely information to the State Medicaid agency when the Medicaid agency

requests information on the status of MFCU investigations, including when the Medicaid agency requests quarterly certification pursuant to 42 CFR 455.23(d)(3)(ii).

E. The Unit takes steps to ensure that the State Long Term Care Ombudsman and other officials and agencies refer to the Unit suspected patient abuse and neglect cases.

F. The Unit takes steps, through public outreach or other means, to encourage the public to refer cases to the Unit.

Performance Standard 5—Maintaining a Continuous Case Flow

A Unit takes steps to maintain a continuous case flow and to complete cases in an appropriate timeframe based on the complexity of the cases. In meeting this standard, the following performance indicators will be considered:

A. Supervisors approve the opening and closing of all investigations.

B. Supervisors review the progress of cases as part of a performance management system and take action as necessary to ensure that each stage of an investigation and prosecution is completed in an appropriate timeframe.

C. Delays to investigations and prosecutions are supported and justified based on resource constraints or other exigencies.

Performance Standard 6—Case Mix

A Unit's case mix, as practicable, covers all significant provider types and includes a mix of fraud and patient abuse and neglect cases. In meeting this standard, the following performance indicators will be considered:

A. The Unit seeks to have a mix of cases from all significant provider types in the State.

B. For those States that rely substantially on managed care entities for the provision of Medicaid services, the Unit includes a commensurate number of managed care cases in its mix of cases.

C. The Unit seeks to allocate resources among provider types based on levels of Medicaid expenditures or other risk factors. Special Unit initiatives may focus on specific provider types.

D. As part of its case mix, the Unit at all times maintains a substantial number of patient abuse and neglect cases.

Performance Standard 7—Maintaining Case Information

A Unit maintains case files in an effective manner and develops a case management system that allows efficient access to case information and other performance data. In meeting this

standard, the following performance indicators will be considered:

A. Supervisory reviews are conducted periodically, consistent with MFCU policies and procedures, and are noted in the case file.

B. Case files include all relevant facts and information and justify the opening and closing of the cases.

C. Significant documents, such as charging documents and settlement agreements, are included in the file.

D. Interview summaries are written in a timely manner, as defined by MFCU policies and procedures.

E. The Unit has an information management system that manages and tracks case information from initiation to resolution.

F. The Unit has an information management system that allows for the reporting of aggregate case information.

Performance Standard 8—Performance Outcome and Measurement

A Unit has a process for monitoring and measuring the outcome of cases. In meeting this standard, the following performance indicators will be considered when determining how effectively the Unit detects, investigates and prosecutes (or refers for prosecution) Medicaid fraud and patient abuse and neglect:

A. The Unit maintains a performance management system or relies upon the State's performance management system as it applies to the Unit.

B. If establishing its own performance system, the Unit develops performance outcomes, such as the following:

1. The number of cases opened and closed and the reason that cases are closed.

2. The length of time taken to determine whether to open a case referred by the State Medicaid agency or other referring source.

3. The number, age, and types of cases in the Unit's inventory/docket.

4. The number of referrals received by the Unit and the number of referrals to other agencies made by the Unit.

5. The dollar amount of overpayments identified.

6. The number of cases criminally prosecuted by the Unit or referred to others for prosecution, the number of individuals or entities charged, and the number of pending prosecutions.

7. The number of criminal convictions and the number of civil judgments.

8. The dollar amount of fines, penalties, and restrictions ordered in a criminal case; the dollar amount of recoveries and the types of relief obtained through civil judgments or pre-filing settlements.

9. Non-case specific work of the Unit which enhances the Unit's mission,

such as training activities for provider groups and other public integrity or law enforcement offices; outreach and training for State and county social service agencies; liaison meetings with managed care organizations; and publication of fraud alerts or other information for areas within the Unit's jurisdiction.

C. The Unit establishes annual performance goals for each identified outcome.

D. The Unit annually evaluates whether it has achieved its goals.

E. If the Unit maintains a strategic plan, the Unit aligns performance outcomes and goals with the plan.

Performance Standard 9—Cooperation With Federal Authorities on Fraud Cases

A Unit cooperates with OIG and other Federal agencies in the investigation and prosecution of Medicaid and other health care fraud. In meeting this standard, the following performance indicators will be considered:

A. The Unit communicates on a regular basis with the OIG Office of Investigations (OI) and other Federal agencies investigating or prosecuting health care fraud in the State.

B. The Unit cooperates and, as appropriate, coordinates with OI and other Federal agencies on cases being pursued jointly, cases involving the same suspects or allegations, and cases that have been referred to the Unit by OI or another Federal agency.

C. The Unit makes available, upon request by Federal investigators and prosecutors, all information in its possession concerning provider fraud or fraud in the administration of the Medicaid program.

D. For cases that require the granting of "extended jurisdiction" to investigate Medicare or other Federal health care fraud, the Unit seeks permission from OI or other relevant agencies under procedures as set by those agencies.

E. For cases that have significant civil fraud potential, the Unit investigates and prosecutes such cases under State authority or refers such cases to OIG or the U.S. Department of Justice.

F. The Unit transmits to OIG, for purposes of program exclusions under section 1128 of the Act, all pertinent information on MFCU convictions within 30 days of sentencing, including charging documents, plea agreements, and sentencing orders.

G. The Unit reports qualifying cases to the Healthcare Integrity & Protection Databank or successor data bases.

Performance Standard 10—Program Recommendations

A Unit makes statutory or programmatic recommendations, when warranted, to the State government. In meeting this standard, the following performance indicators will be considered:

A. The Unit, when warranted and appropriate, makes statutory recommendations to the State legislature to improve the operation of the Unit, including amendments to the enforcement provisions of the State code.

B. The Unit, when warranted and appropriate, makes other regulatory or administrative recommendations regarding program integrity issues to the State Medicaid agency and to other agencies responsible for Medicaid operations or funding.

C. The Unit monitors actions taken by the State legislature and the State Medicaid or other agencies in response to recommendations.

D. The Unit reports program recommendations to OIG.

Performance Standard 11—Agreement With Medicaid Agency

A Unit periodically reviews its Memorandum of Understanding (MOU) with the single State Medicaid agency to ensure that it reflects current practice, policy, and legal requirements. In meeting this standard, the following performance indicators will be considered:

A. The MOU reflects current policy and practice by both the Unit and the State Medicaid agency.

B. The MOU meets current Federal legal requirements as contained in law or regulation, including 42 CFR § 455.21, "Cooperation with State Medicaid fraud control units," and 42 CFR 455.23, "Suspension of payments in cases of fraud."

C. The MOU is consistent with current Federal and State policy, including any policies issued by OIG or the Centers for Medicare & Medicaid Services (CMS).

D. Consistent with Performance Standard 4, the MOU establishes a process to ensure the receipt of an adequate volume and quality of referrals to the Unit from the State Medicaid agency.

E. The MOU incorporates by reference the *CMS Performance Standard for Referrals of Suspected Fraud from a Single State Agency to a Medicaid Fraud Control Unit*.

Performance Standard 12—Fiscal Control

A Unit exercises proper fiscal control over Unit resources. In meeting this standard, the following performance indicators will be considered:

A. The Unit director, or the director's designee, approves and signs the Unit's budget and estimated expenditures.

B. The Unit director, or the director's designee, approves and signs all fiscal and administrative reports concerning Unit expenditures.

C. The Unit maintains an equipment inventory that is updated on a regular basis to reflect all property under the Unit's control.

D. The Unit maintains an effective time and attendance system.

E. The Unit applies generally accepted accounting principles in its control of Unit funding.

F. The Unit employs a financial system in which all funds are assigned to individual accounts according to their source and all expenditure items can be traced to the original funding stream and account.

Performance Standard 13—Training

A Unit maintains an annual training plan for all professional disciplines. In meeting this standard, the following performance indicators will be considered:

A. The Unit maintains a training plan for each professional discipline that includes an annual minimum number of training hours and that is at least as stringent as required for professional certification.

B. The Unit ensures that professional staff complies with its training plans and maintains records of the staff's compliance.

C. Professional certifications are maintained for all staff, including continuing education requirements.

D. The Unit participates in training offered by OIG, CMS, and other MFCUs, as funding permits.

E. Through cross-training or by other means, Unit staff receive training on the role and responsibilities of the State Medicaid agency and other law enforcement partners.

Daniel R. Levinson,

Inspector General.

[FR Doc. 2011-25894 Filed 10-5-11; 8:45 am]

BILLING CODE 4152-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Submission for OBM Review; Comment Request; New Proposed Collection, Environmental Science Formative Research Methodology Studies for the National Children's Study**

SUMMARY: Under the provisions of Section (3507(a)(1)(D)) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for reinstatement of approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23603-23605, and allowed 60 days for public comment. Two written comments and two verbal comments were received. The verbal comments expressed support for the broad scope of the study. The written comments were identical and questioned the cost and utility of the study. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Environmental Science Formative Research Methodology Studies for the National Children's Study (NCS). *Type of Information Request:* New. *Need and Use of Information Collection:* The Children's Health Act of 2000 (Pub. L. 106-310) states:

(a) **PURPOSE.**—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) **IN GENERAL.**—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) REQUIREMENT.—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children’s well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children’s Health Act, the results of formative research will be used to maximize the efficiency (measured by scientific robustness, participant and infrastructure burden, and cost) of environmental sample collection procedures and technology, storage

procedures, accompanying questionnaires, and assays, and thereby inform data collection methodologies for the National Children’s Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB’s generic clearance to collect environmental samples from homes and child care settings, and conduct accompanying short surveys related to the physical and chemical environment.

The results from these formative research projects will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study environmental sample and information collection in a manner that minimizes public information collection burden compared to burden anticipated if these projects were incorporated directly into

either the NCS Vanguard or Main Study. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Women of child-bearing age, fathers, public health and environmental science professional organizations and practitioners, and schools and child care organizations. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study.

Annual reporting burden: See Table 1. The annualized cost to respondents is estimated at: \$780,000 (based on \$10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, ENVIRONMENTAL SCIENCE

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Home Air	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Home Water	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Home Dust	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Air	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Water	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
School and Child Care Facility Dust	NCS participants	4,000	1	1	4,000
	Members of NCS target population (not NCS participants).	4,000	1	1	4,000
Small, focused survey and instrument design and administration.	NCS participants	4,000	2	1	8,000
	Members of NCS target population (not NCS participants).	4,000	2	1	8,000
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Focus groups	NCS participants	2,000	1	1	2,000
	Members of NCS target population (not NCS participants).	2,000	1	1	2,000
	Health and Social Service Providers.	2,000	1	1	2,000
	Community Stakeholders	2,000	1	1	2,000
Cognitive interviews	NCS participants	500	1	2	1,000
	Members of NCS target population (not NCS participants).	500	1	2	1,000

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, ENVIRONMENTAL SCIENCE—Continued

Data collection activity	Type of respondent	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Total	69,000	.....	.....	78,000

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NIH Desk Officer, by E-mail to OIRA_submission@omb.eop.gov, or by fax to 202-395-6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Jamelle E. Banks, Public Health Analyst, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive, Room 2A18, Bethesda, Maryland, 20892, or call a non-toll free number (301) 496-1877 or E-mail your request, including your address to banksj@mail.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: September 30, 2011.

Jamelle E. Banks,

Public Health Analyst, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.

[FR Doc. 2011-25868 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: November 15, 2011.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301-496-7628, ff6p@nih.gov.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25897 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: October 26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abdelouahab Aitouche, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7812, Bethesda, MD 20892, 301-435-2365, aitouche@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel:

Adverse Metabolic Side Effects of Second Generation Psychotropic Medications Leading to Obesity and Diabetes.

Date: October 27, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bleasdale, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, 301-435-4514, bleasdaleje@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIB Pediatric and Fetal Applications.

Date: October 28, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: John Firrell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, 301-435-2598, firrellj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Program Project: Methods in Crystallization.

Date: November 2-3, 2011.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John L. Bowers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892, (301) 435-1725, bowersj@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Immune Mechanism.

Date: November 2-3, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301-495-1506, jakesse@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Pathogenesis Review.

Date: November 2-3, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rolf Menzel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, 301-435-0952, menzelro@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: November 2, 2011.

Time: 12:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Weihua Luo, M.D., PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301-435-1170, luow@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25896 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 9, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Land, Ballroom, Durham, NC.

Contact Person: Linda K Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural

Research and Training, Nat'l Institute of Environmental Health Sciences, P.O. Box 12233, MD EC-30, Research Triangle Park, NC 27709, (919) 541-1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: September 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25874 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Applications for High-Throughput-Enabled Structural Biology Partnerships (U01).

Date: October 24, 2011.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3AN12B, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Margaret J. Weidman, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18B, Bethesda, MD 20892, 301-594-3663, weidmanma@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical

Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 29, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25866 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Scientific Management Review Board.

The NIH Reform Act of 2006 (Pub. L. 109-482) provides organizational authorities to HHS and NIH officials to: (1) Establish or abolish national research institutes; (2) reorganize the offices within the Office of the Director, NIH including adding, removing, or transferring the functions of such offices or establishing or terminating such offices; and (3) reorganize, divisions, centers, or other administrative units within an NIH national research institute or national center including adding, removing, or transferring the functions of such units, or establishing or terminating such units. The purpose of the Scientific Management Review Board (also referred to as SMRB or Board) is to advise appropriate HHS and NIH officials on the use of these organizational authorities and identify the reasons underlying the recommendations.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Scientific Management Review Board.

Date: October 26, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: Presentation and discussion will focus on NIH activities related to SMRB recommendations issued in its Report on Translational Medicine and Therapeutics; Report on the NIH Clinical Center; and Report on Substance Use, Abuse, and

Addiction Research at NIH. The Board will also discuss future SMRB activities. Further information for this meeting, including the agenda, will be available at <http://smrb.od.nih.gov>. Time will be allotted on the agenda for public comment. To sign up for public comments electronically, please send an email with your name and affiliation to the Contact Person's e-mail address listed below by October 25, 2011. Sign up for public comments in person will begin approximately at 8:30 a.m. on October 26, 2011. Sign-up participants' comments will be restricted to one person per sign in. In the event that time does not allow for all those interested to present oral comments, anyone may file written comments using the Contact Person's address below.

Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Lyric Jorgenson, PhD, Office of Biotechnology Activities, Office of Science Policy, Office of the Director, NIH, National Institutes of Health, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, smrb@mail.nih.gov, (301) 496-6837.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

The meeting will also be webcast. The draft meeting agenda, meeting materials, dial-in information, and other information about the SMRB, will be available at <http://smrb.od.nih.gov>.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitors vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25865 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Vascular and Hematology Integrated Review Group, Atherosclerosis and Inflammation of the Cardiovascular System Study.

Date: October 17-18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435-1210, chaudhaa@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vascular and Hematology AREA Proposals.

Date: October 25-26, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, M.D., PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301-435-1777, zouai@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering Sciences and Technologies R15 Panel 1: Area Proposals.

Date: October 26-27, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Raymond Jacobson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858,

MSC 7849, Bethesda, MD 20892, 301-996-7702, jacobsonrh@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology.

Date: October 27-28, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Denise Wiesch, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435-0684, wieschd@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

September 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25877 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurodevelopment and Neurodegeneration.

Date: October 25-27, 2011.

Time: 1 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joanne T Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435-1178, fujii@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Risk, Prevention and Health Behavior.

Date: October 26, 2011.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Claire E Gutkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301-594-3139, gutkincl@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AREA applications in Child and Adult Psychopathology, Cognition, and Aging.

Date: November 1-2, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301-594-3163, champoum@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25875 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Clinical Sciences and Epidemiology National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the

competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: November 14, 2011.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, PhD., Senior Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, 6116 Executive Boulevard, Room 2201, Bethesda, MD 20892, (301) 496-7628, wojcikb@mail.nih.gov.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/bsc/cse/cse.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 30, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25873 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Open Meeting

Notice is hereby given that the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), a research institute of the National Institutes of Health (NIH), Department of Health and Human Services (DHHS), plans to hold a scientific meeting.

Title: "Meeting on Measurement of Urinary Symptoms (MOMUS)."

Dates: November 14-15, 2011.

Time: 8:30 a.m.–6 p.m.

Place: Building 45, Natcher Center Main Auditorium, NIH campus, Bethesda, MD.

Meeting Objectives:

A. Discuss the uses and shortcomings of current symptom-based instruments in research of lower urinary tract dysfunction (LUTD).

B. Disseminate state-of-the-art methodology to improve patient reported outcomes (PRO) of symptomatic LUTD.

C. Discuss the validation and qualification process of new measurement tools, and patient phenotyping.

D. Align the new LUTD symptom measurement tool among involved parties.

This workshop is free and open to the public. We encourage registration for those attending in person (see Web address below).

Individuals with disabilities who need reasonable accommodations should indicate your needs on the registration form or contact Ms. Mary Compton at The Scientific Consulting Group, Inc. by e-mail at mcompton@scgcorp.com or by telephone to 301-670-4990.

For more information, including an agenda, registration and visitor information, please visit the Workshop Web site: <http://www2.niddk.nih.gov/News/Calendar/MOMUS2011>.

Contact Person: Ziya Kirkali, M.D.; Senior Scientific Advisor, Division of Kidney, Urology and Hematology, NIDDK, NIH. Phone: 301-594-7718 E-mail: kirkaliz@mail.nih.gov.

Dated: September 29, 2011.

Robert Star,

Director, KUH/NIDDK, National Institutes of Health.

[FR Doc. 2011-25872 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Minority Biomedical Research Support Behavioral Applications.

Date: October 27, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18C, Bethesda, MD 20892, 301-594-2771, johnsonrh@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: September 29, 2011.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011-25870 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health (NIH), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 66 FR 6617, January 22, 2001, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect organizational changes in the National Institute on Minority Health and Health Disparities (NIMHD).

Section N-B, Organization and Functions, is amended as follows: Immediately after the paragraph headed "National Institute of Minority Health and Health Disparities" (NE, formerly HNE), insert the following:

Office of the Director (OD) (NE 1 formerly HNE 1). Determines and provides leadership to the Institute's

programs, plans, and policies; Provides leadership for the NIH minority health and health disparities research and activities including the implementation of the Minority Health and Health Disparities Research and Education Act (Pub. L. 106-525) and the Patient Protection and Affordable Care Act (Pub. L. 111-148) and other relevant public laws as they relate to the NIMHD mission; Directs an integrated system of coordination for the NIH health disparities research program; Directs the Institute's development and coordination of minority health and health disparities research programs, activities, and strategic partnerships with the NIH Institutes and Centers, NIH Office of the Director, Federal agencies, State, local, tribal, and regional public health agencies and private entities; Provides leadership for the NIH health disparities strategic plan and budget; Leads the management, communications, legislation, strategic planning, science policy and ethics activities for the Institute; and Provides leadership for developing and revising the national definition for health disparity population in consultation with the Agency for Healthcare Research and Quality.

Office of Extramural Research Administration (OERA) (NE 16, formerly HNE 16). Responsible for the administration of the Institute's extramural research dealing with peer review activities, grants management, extramural grants policy, and ethics issues (patient rights, animal rights, financial conflict of interest, *etc.*); Facilitates Institute-wide communication and coordination regarding extramural policy, planning, and analysis; Provides advice and guidance to the Director regarding the Institute's peer and objective review processes as well as NIH extramural programs, policies and procedures; Recommends mechanisms to be used or develops mechanisms to accomplish program objectives; Provides leadership to program, review, and grants management staff in writing solicitations for grants and contracts and reviews funding opportunity announcements for clearance; Develops, implements, and manages integrated policies and procedures affecting all NIMHD extramural activities, and assures appropriate training, information dissemination, and systems for NIMHD extramural staff and the extramural research community; Interprets, advises, and ensures NIMHD staff adherence to and understanding of impact of NIH and Department of Health and Human Services extramural

policies; Represents the Institute as liaison for *NIH Guide to Grants and Contracts* and the NIH Early Notification System (ENS); and Administers the Public Health Service Guidelines on Misconduct in Science and manages the Institute's Confidentiality Certificate program and the Grant Appeals Process.

Office of Administrative Management (OAM) (NE 17, formerly HNE 17). Directs, coordinates, and conducts administrative activities of the Institute including personnel and staffing, purchase and maintenance of equipment and supplies, and acquisition and management of space; Performs analytical studies related to the administrative organization, processes and procedures of the Institute and establishes effective administrative controls; Designs and conducts management analyses, studies and surveys including manpower utilization, workload measurement, work simplification, etc., for all parts of the Institute; Develops and/or provides advice on the development and implementation of general administrative policies, procedures and guidelines throughout the Institute; Interprets, analyzes, and makes recommendations concerning delegations and re-delegations of program and administrative authorities and develops appropriate delegating documents; Supervises, directs, manages, and coordinates the planning and execution of the Institute's budget process and financial management operations, which includes providing guidance to Institute leadership and staff on budget preparation and management; Oversees the records management activities of the Institute; Coordinates the Institute's committee management functions; and Oversees and coordinates the Institute's information technology (IT) activities.

Office of Communications and Public Liaison (OCPL) (NE 18, formerly HNE 18). Serves as the focal point for the Institute's communications, public affairs, media relations, and public liaison activities; Develops and conducts a comprehensive communications program utilizing various communications vehicles to interpret, develop, test, and disseminate the programs, policies, goals and research accomplishments supported and carried out by the NIMHD to diverse audiences including the public, the media, the biomedical community, healthcare providers, and specialized groups; Develops short- and long-term communications policies, goals, objectives, and strategies in support of the mission and priorities of the

Institute; Manages the Institute's Web site including content, policies, standards, guidelines, and a central Web-based resource for information and research findings on minority health and health disparities; Coordinates NIH communications activities related to minority health and health disparities in collaboration with the NIH Institutes and Centers; Coordinates and manages the Institute's intranet content; Manages correspondence control, and clearance services for the Institute; Coordinates and collaborates with other organizational components on health communications research activities.

Office of Strategic Planning, Legislation, and Scientific Policy (OSPLSP) (NE 19, formerly HNE 19). Serves as the focal point for NIMHD's science policy, strategic planning and evaluation activities; Provides leadership for the development of strategic plans, policies, goals, objectives, and techniques in support of the Institute's mission; Coordinates, develops, and implements an ongoing strategic planning process for the Institute and ensures that the Institute has a long-range, sustainable vision and program plan for carrying out its mandates; Leads the Institute's efforts to plan, coordinate, review, and evaluate research and other activities on minority health and health disparities conducted or supported by the NIH Institutes and Centers, consistent with the NIMHD's authorizing statute; Provides leadership for the development of an integrated and effective NIH health disparities strategic plan and budget consistent with the authorizing statute; Provides leadership for the legislative activities of the Institute, which includes analyzing and tracking legislation relevant to the mission of the Institute, and makes recommendations for legislative proposals; and Conducts and coordinates policy analysis related to various aspects of minority health and health disparities.

Division of Scientific Programs (DSP) (NE 3, formerly, HNE 3). Serves as the focal point for planning, directing, implementing and managing the Institute's extramural research programs, including its legislatively mandated extramural research programs and other research, research training, research capacity building, career development, and community-based participatory research initiatives; Manages a diverse portfolio of special projects with respect to minority health conditions and other populations with health disparities; and Determines program priorities and recommends funding strategies to achieve program goals.

Division of Data Management and Scientific Reporting (DDMSR) (NE 4, formerly, HNE 4). Provides leadership for knowledge management and scientific reporting; Maintains a Health Disparities Information (HDI) database to facilitate the collection, interpretation, and analysis of data, education, dissemination, and communication of information to various audiences in collaboration with other Institute organizational components; Collaborates with the NIMHD OSPLSP to analyze and synthesize data on minority health and health disparities research conducted and supported by the NIH Institutes and Centers; Coordinates reporting requests on the Institute and NIH activities on minority health and health disparities research; Provides epidemiological and statistical expertise for the Institute on planning, designing, and implementing research studies, and to support research programs; Coordinates data-collection activities and reporting on minority health and health disparities including the Institute's implementation of relevant policies, regulations, and laws; Provides advice to the Institute senior management and program officials on data collection standards and guidelines; Coordinates Institute activities under the Privacy Act; and Administers the Institute's Freedom of Information Act activities.

Division of Intramural Research (OIR) (NE 5, formerly, HNE 5). Provides leadership for the Institute's intramural research program to prevent, diagnose, treat and understand diseases and conditions that disproportionately affect health disparity populations; Plans, develops, and conducts innovative transdisciplinary research focusing on the linkage between biological and nonbiological determinants of health in health disparity populations to include basic, behavioral, social sciences and clinical research; Develops, coordinates and implements training and career development programs in minority health and health disparities research; Collaborates with and coordinates intramural research on minority health and health disparities conducted by the NIH Institutes and Centers; Integrates new research into the Institute's program structure; and Provides advice to the Institute Director and staff on matters of scientific interest to the Institute.

Delegations of Authority Statement: All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this reorganization and are consistent with

this reorganization shall continue in effect, pending further redelegation.

Dated: August 8, 2011.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2011-25862 Filed 10-5-11; 8:45 am]

BILLING CODE 4140-01-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; correction.

SUMMARY: The Coast Guard published in the **Federal Register** of October 4, 2011, a notice announcing a Great Lakes Pilotage Advisory Committee (GLPAC) public meeting on October 18, 2011, in Washington, District of Columbia. This notice corrects that previous notice to add an explanation for why 15-days advance notice was not given.

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.

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.

SUPPLEMENTARY INFORMATION: The Coast Guard's October 4, 2011 notice of the October 18, 2011, GLPAC meeting inadvertently failed to contain an explanation for its publication less than 15 calendar days prior to the meeting, as required by General Services Administration rules 41 CFR 102-3.150(b). The reason the notice was published only 14 calendar days prior to the meeting was a Coast Guard administrative delay. The Coast Guard regrets the delay in publication, but notes that the notice was published 14

days prior to the meeting and was publicly available on the **Federal Register** Web site 19 calendar days prior to the meeting. Additionally, all known interested parties were made aware of the meeting with sufficient time for planning purposes.

It is critical that this meeting be held on the announced meeting date because the advisory committee members have limited availability for the remainder of the calendar year. Delays in committee discussions could have significant ramifications for ongoing Coast Guard studies and evaluations on the agenda for the upcoming meeting. Maintaining the current meeting schedule allows the Coast Guard to continue deliberations and forward progress regarding the bridge hour study, a key component of the statutory ratemaking authority of the Great Lakes Pilotage program.

If you have been adversely affected by the one-day delay in publishing the notice, contact Mr. David Dean (see **FOR FURTHER INFORMATION CONTACT**) and the Coast Guard will make every effort to accommodate you.

Dated: September 29, 2011.

Kathryn A. Sinniger,

Chief, Office of Regulations and Administrative Law (CG-0943), U.S. Coast Guard.

[FR Doc. 2011-25817 Filed 10-5-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4030-DR; Docket ID FEMA-2011-0001]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA-4030-DR), dated September 12, 2011, and related determinations.

DATES: *Effective Date:* September 12, 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 September 12, 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 Commonwealth of Pennsylvania resulting from Tropical Storm Lee beginning on September 3, 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 Commonwealth of Pennsylvania.

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 in the designated areas and Hazard Mitigation throughout the Commonwealth. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for 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, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this major disaster:

Adams, Bradford, Columbia, Cumberland, Dauphin, Lancaster, Lebanon, Luzerne, Lycoming, Montour, Northumberland, Perry, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wyoming, and York Counties for Individual Assistance.

All counties within the Commonwealth of Pennsylvania 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. 2011-25867 Filed 10-5-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4026-DR; Docket ID FEMA-2011-0001]

New Hampshire; 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 Hampshire (FEMA-4026-DR), dated September 3, 2011, and related determinations.

DATES: *Effective Date:* September 3, 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 September 3, 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 Hampshire resulting from Tropical Storm Irene beginning on August 26, 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 Hampshire.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas 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 and Hazard Mitigation 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 Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New Hampshire have been designated as adversely affected by this major disaster:

Carroll, Coos, Grafton, and Merrimack Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of New Hampshire 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. 2011-25864 Filed 10-5-11; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-4019-DR; Docket ID FEMA-2011-0001]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency
Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA-4019-DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 1, 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: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 31, 2011.

Halifax and Lenoir Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,
Administrator, Federal Emergency
Management Agency.

[FR Doc. 2011-26039 Filed 10-4-11; 4:15 pm]

BILLING CODE 1505-01-D

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release

AGENCY: U.S. Customs and Border
Protection (CBP), Department of
Homeland Security.

ACTION: 60-Day Notice and request for
comments; Extension of an existing
collection of information: 1651-0013.

SUMMARY: As part of its continuing effort
to reduce paperwork and respondent

burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate and Release (CBP Form 7523). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13).

DATES: Written comments should be received on or before December 5, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229-1177, at 202-325-0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting information concerning the following information collection:

Title: Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release.

OMB Number: 1651-0013.

Form Number: CBP Form 7523.

Abstract: CBP Form 7523, *Entry and Manifest of Merchandise Free of Duty, Carrier's Certificate of Release*, is used by carriers and importers as a manifest

for the entry of merchandise free of duty under certain conditions. CBP Form 7523 is also used by carriers to show that articles being imported are to be released to the importer or consignee, and as an inward foreign manifest for vehicles of less than 5 tons arriving from Canada or Mexico with merchandise conditionally free of duty. CBP uses this form to authorize the entry of such merchandise. CBP Form 7523 is authorized by 19 U.S.C. 1484 and provided for by 19 CFR 123.4 and 19 CFR 143.23. This form is accessible at http://forms.cbp.gov/pdf/CBP_Form_7523.pdf.

Current Actions: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to the information being collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 4,950.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Responses: 99,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8,247.

Dated: October 3, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011-25934 Filed 10-5-11; 8:45 am]

BILLING CODE 9111-14-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2011-N150; 20124-1115-0000-F4]

Draft Conservation Plan and Draft Environmental Assessment; Dunes Sagebrush Lizard, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; announcement of public meetings.

SUMMARY: The Texas Comptroller of Public Accounts (Applicant) has applied for an Enhancement of Survival Permit under the Endangered Species Act (Act) of 1973, as amended. The permit application includes the draft Texas Conservation Plan for the Dunes Sagebrush Lizard (TCP). The draft TCP will function as a Candidate Conservation Agreement with Assurances between the U.S. Fish and

Wildlife Service (Service) and the Applicant for the dunes sagebrush lizard (*Sceloporus arenicolus*) throughout its range in Texas. The Applicant proposes to implement conservation measures for this species by removing threats to its survival and protecting its habitat. If the dunes sagebrush lizard becomes listed in the future, the draft TCP will also serve as a Habitat Conservation Plan (HCP) in support of future applications for Incidental Take Permits under the Act. The draft TCP and the draft Environmental Assessment (EA) are available for public review, and we seek public comment on the potential issuance of the above permits.

DATES: Public meetings: Public meetings are not required for this level of analysis under the National Environmental Policy Act (NEPA). However, if the Applicant wishes to hold public meetings on the TCP, the Service will participate in these meetings and include any recorded comments on the draft EA in the final EA. This is provided that any public meeting is announced in local newspapers at least 14 days prior to the date of the meeting and the public meeting is held at least 14 days prior to the close of the comment period.

Comment-period end: To ensure consideration, please send your written comments by December 5, 2011.

ADDRESSES: Persons wishing to review the application, the draft TCP, the draft EA, or other related documents may obtain copies by written or telephone request to Allison Arnold, Southern Edwards Plateau Sub-Office, 512-203-5145 (U.S. mail address below). Electronic copies of these documents will also be available for review on the Austin Ecological Services Field Office Web site: <http://www.fws.gov/southwest/es/AustinTexas/>. The application and related documents will be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the below San Antonio address.

Comments concerning the application, the draft TCP, the draft EA, or other related documents should be submitted in writing, by one of the following methods:

E-mail: dunessagebrushlizard@fws.gov.

U.S. mail: Allison Arnold, Southern Edwards Plateau Sub-Office, U.S. Fish and Wildlife Service, 12861 Galm Road, San Antonio, TX 78254. Please refer to Permit number TE-55322A-0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Allison Arnold at the U.S. Fish and

Wildlife Service, Southern Edwards Plateau Sub-Office (address above) or Allison_Arnold@fws.gov (e-mail).

SUPPLEMENTARY INFORMATION: With the assistance of the Service, the Applicant proposes to implement conservation measures for the dunes sagebrush lizard (*Sceloporus arenicolus*) by removing threats to the survival of the species and protecting its habitat. The proposed conservation plan would be in effect for 30 years in west and northwest Texas. This area constitutes the TCP's Planning Area, with Covered Areas being private lands and State trust lands that provide suitable habitat or are being improved or restored to provide suitable habitat for the dunes sagebrush lizard. The Candidate Conservation Agreement with Assurances (CCAA) is in addition to a larger conservation effort for the dunes sagebrush lizard across its range within Texas and New Mexico. A combined Candidate Conservation Agreement and CCAA for the dunes sagebrush lizard, also known as the sand dune lizard, and the lesser prairie-chicken, among the Service, the Bureau of Land Management, and the Center of Excellence for Hazardous Materials Management, has been implemented to address conservation measures on Federal and non-Federal lands in New Mexico, since its signature on December 8, 2008. The TCP addressing conservation strategies across the dunes sagebrush lizard's range in Texas has been developed as a CCAA in support of a section 10(a)(1)(A) enhancement of survival permit and includes provisions to implement the TCP as an HCP in support of a potential section 10(a)(1)(B) incidental take permit should the species become listed in the future and a permit application is received under these provisions.

If approved, participants who are fully implementing the CCAA provisions of the TCP and enhancement of survival permit will be provided assurances that, should the dunes sagebrush lizard be listed, the Service will not require them to provide additional land, water, or financial resources, nor will there be any further restrictions to their land, water, or financial resources than they committed to under the CCAA provisions of the TCP (50 CFR 17.22(d) and 17.32(d)). Furthermore, if the dunes sagebrush lizard is listed, participants would be provided incidental take authorization under the enhancement of survival permit, through certificates of inclusion, for the level of incidental take on the enrolled lands consistent with the activities under the CCAA provisions of the TCP. Similar assurances would be

provided through the HCP provisions of the TCP for participants who are fully implementing the HCP provisions and are covered by a potential incidental take permit and certificates of participation, if applicable (50 CFR 17.22(b) and 17.32(b)).

Background

The dunes sagebrush lizard is native to a small area of southeastern New Mexico and west Texas. The species only occurs in sand dune complexes associated with shinnery oak. Oil and gas development near dunal complexes, along with shinnery oak removal for the enhancement of forage production for grazing, has increased fragmentation of dunes sagebrush lizard habitat and gaps in the species' range. In 2001, the Service determined that listing of the dunes sagebrush lizard was warranted but precluded because of other higher priority species, and the species was designated as a candidate for listing under the Act.

The TCP was initiated in order to facilitate conservation and restoration of the dunes sagebrush lizard on private and State trust lands in Texas. Conservation benefits for the dunes sagebrush lizard are expected in the form of avoidance and minimization of potential incidental take, habitat enhancement and restoration, reduction of threats to the species, and mitigation of the effects of any incidental take, as appropriate. The Applicant also proposes to encourage creative partnerships among public, private, and government entities to conserve the dunes sagebrush lizard and its habitat. The Applicant has committed to guiding the implementation of the TCP and requests issuance of the enhancement of survival permit in order to address the take prohibitions of section 9 of the Act should the species become listed in the future.

The draft TCP Texas Conservation Plan and application for the enhancement of survival permit are not eligible for categorical exclusion under the National Environmental Policy Act (NEPA) of 1969. A draft Environmental Assessment has been prepared to further analyze the direct, indirect, and cumulative impacts of the TCP on the quality of the human environment and other natural resources.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Public Availability of Comments

All comments we receive become part of the public record. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Joy E. Nicholopoulos,

*Acting Regional Director, Region 2,
Albuquerque, New Mexico.*

[FR Doc. 2011-25759 Filed 10-5-11; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000.L14200000 BJ0000]

Notice of Stay of Filing of Plat; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Stay of Filing of Plat.

SUMMARY: On Monday, August 8, 2011, the Bureau of Land Management (BLM), Colorado, published a Notice of Stay of Filing of Plats, in the **Federal Register** (76 FR 48174) declaring the intent to file certain plats on September 30, 2011. The BLM Colorado State Office is publishing this notice to inform the public that a stay has been placed on the proposed filing of the plat and field notes of the dependent resurvey and surveys in Township 9 South, Range 93 West, Sixth Principal Meridian, Colorado, accepted on August 5, 2010, pending consideration of the protest and/or appeal that was filed. A plat will not be officially filed until after disposition of protest and/or appeal.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215-7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239-3856.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2011-25771 Filed 10-5-11; 8:45 am]

BILLING CODE 4310-JB-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-NER-HPPC-0317-6990; 4780-NERI-409]

General Management Plan/Abbreviated Final Environmental Impact Statement, New River Gorge National River, West Virginia**AGENCY:** National Park Service, Department of the Interior.**ACTION:** Notice of Availability.

SUMMARY: The National Park Service (NPS) announces the availability of the Abbreviated Final Environmental Impact Statement for the General Management Plan (GMP/EIS) for New River Gorge National River, West Virginia. When approved, the plan will provide guidance to park management for administration, development, and interpretation of park resources over the next 20 years.

The Abbreviated Final GMP/EIS includes an analysis of agency and public comments received on the Draft GMP/EIS with NPS responses, errata sheets detailing editorial corrections to the Draft GMP/EIS, and copies of agency and substantive public comments. Action Alternative Five, as described in the Draft GMP/EIS, remains the NPS Preferred Alternative.

DATES: The NPS will execute a Record of Decision (ROD) no sooner than 30 days after the date of publication by the Environmental Protection Agency of a Notice of Availability of the Abbreviated Final GMP/EIS in the **Federal Register**.

ADDRESSES: The Abbreviated Final GMP/EIS is available online at the NPS Planning, Environment and Public Comment (PEPC) Web site (<http://parkplanning.nps.gov/neri>). Hardcopies of the document are available for inspection at the Park Headquarters in Glen Jean, West Virginia. Requests for a hard copy may be made by contacting the park at (304) 465-6526.

FOR FURTHER INFORMATION CONTACT: Don Striker, Superintendent, New River Gorge National River, P.O. Box 246, Glen Jean, West Virginia 25846, (304) 465-0508.

SUPPLEMENTARY INFORMATION: Consistent with Federal laws, regulations, and National Park Service policies, the Draft GMP/EIS was available for public and agency review from January 13, 2010, through April 16, 2010. Copies of the Draft GMP/EIS were available at the park office, by request, and on the NPS Planning, Environment, and Public Comment (PEPC) Web site (<http://parkplanning.nps.gov/neri>). Public open

houses were held on March 9, 10, and 11, 2010 in Hinton, Beckley, and Fayetteville, WV, respectively. The Draft GMP/EIS described and analyzed the environmental impact of five alternatives to guide the development and future management of the National River. Alternative 1 would continue current management and trends.

Alternative 2 would emphasize the substantial differences among subareas of the gorge and would build upon the opportunities of the north and south ends of the park, while retaining a primitive and remote feeling in the middle of the park. Alternative 3 would unify the park by providing a north-south through-park hike-and-bike trail, enhancing existing scenic roads, and building new access and facilities in the middle of the park. Alternative 4 would enhance the river gateways and the rim to river experiences at these primary access points and orientation venues. Alternative 5 would preserve areas for primitive recreational experiences from end to end of the park and would intersperse cultural and interpretive resource focal areas, establish a north-south through-park connector of scenic roads and trails, develop partnerships with gateway communities, and improve rim to river experiences. The Abbreviated Final GMP/EIS responds to, and incorporates, agency and public comments received on the Draft GMP/EIS. An abbreviated format was used because comments received during the public review period required only minor responses and editorial changes to the Draft GMP/EIS. The abbreviated format also allows the NPS to produce a simple brief document and avoid costly reprinting of the entire 900-page document. No changes have been made to the alternatives or to the impact analyses presented in the Draft GMP/EIS. Therefore, Action Alternative Five remains as the NPS Preferred Alternative and the environmentally preferred alternative.

The public release of the Abbreviated Final GMP/EIS will be followed by a no-action period that will end no sooner than 30 days from the date of publication by the Environmental Protection Agency of a Notice of Availability of the Abbreviated Final GMP/EIS in the **Federal Register**. After the 30-day no action period, a Record of Decision will be prepared to document the selected alternative and set forth any stipulations for implementation of the GMP. The Abbreviated Final GMP/EIS and the Draft GMP/EIS constitute the complete and final documentation upon

which the Record of Decision will be based.

Dennis R. Reidenbach,*Regional Director, Northeast Region, National Park Service.*

[FR Doc. 2011-25791 Filed 10-5-11; 8:45 am]

BILLING CODE 4310-YP-P

DEPARTMENT OF THE INTERIOR**National Park Service**

[NPS-NCR-WHHO-0911-8507; 3086-SYM]

Correction of Notice of Meeting, Committee for the Preservation of the White House**AGENCY:** National Park Service, Interior.**ACTION:** Correction to a notice of meeting.

SUMMARY: This notice contains a correction to the Notice of Meeting which was published by the National Park Service (NPS) in the **Federal Register** on Wednesday, September 21, 2011 (76 FR 58535). That notice publishes an incorrect deadline date by which the NPS must receive clearance information in advance of a meeting of the Committee for the Preservation of the White House which will occur October 18, 2011. The purpose, date, time and place of the meeting are correct as published in the September 21, 2011, notice.

DATES: October 11, 2011, is the deadline for submitting appointment and clearance information in advance of the October 18, 2011, meeting.

FOR FURTHER INFORMATION CONTACT: Ann Bowman Smith, Executive Secretary, Committee for the Preservation of the White House, (202) 619-6344.

SUPPLEMENTARY INFORMATION:**Need for Correction**

On September 21, 2011, the NPS announced that a meeting of the Committee for the Preservation of the White House would take place on October 18, 2011. The NPS regrets that there is a typographical error in the **SUPPLEMENTARY INFORMATION** section of that meeting announcement ("Notice of Meeting, Committee for the Preservation of the White House" (76 FR 58535)).

As published, the September 21, 2011, notice provides an incorrect submission deadline date for security clearance information. That notice states: "The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth, Social Security number, city and state of residence, and country

of citizenship must be received by October 11, 2008.”

Correction of Publication

“The meeting will be open, but subject to appointment and security clearance requirements. Clearance information, which includes full name, date of birth, Social Security number, city and state of residence, and country of citizenship must be received by October 11, 2011.”

Dated: September 23, 2011.

Ann Bowman Smith,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 2011-25796 Filed 10-5-11; 8:45 am]

BILLING CODE 4312-54-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-AKR-DENA-; 9832-P807-589]

Meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council Within the Alaska Region

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting for the Denali National Park and Preserve Aircraft Overflights Advisory Council within the Alaska Region.

SUMMARY: The National Park Service (NPS) announces a meeting of the Denali National Park and Preserve Aircraft Overflights Advisory Council. The purpose of this meeting is to discuss mitigation of impacts from aircraft overflights at Denali National Park and Preserve. The Aircraft Overflights Advisory Council is authorized to operate in accordance with the provisions of the Federal Advisory Committee Act.

Public Availability of Comments: These meetings are open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the Aircraft Overflights Advisory Council. Each meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after each meeting. Before including your address, telephone 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.

DATES: The Denali National Park and Preserve Aircraft Overflights Advisory Council meeting will be held on Friday, October 28, 2011, from 9 a.m. to 5 p.m., Alaska Standard Time. The meeting may end early if all business is completed.

Location: Residence Inn Anchorage Midtown, 1025 35th Avenue, Anchorage, AK 99508. Telephone (907) 563-9844.

FOR FURTHER INFORMATION CONTACT:

Miriam Valentine, Denali Planning. E-mail: Miriam_Valentine@nps.gov.

Telephone: (907) 733-9102 at Denali National Park, Talkeetna Ranger Station, PO Box 588, Talkeetna, AK 99676. For accessibility requirements please call Miriam Valentine at (907) 733-9102.

SUPPLEMENTARY INFORMATION: Meeting location and dates may need to be changed based on weather or local circumstances. If the meeting dates and location are changed, notice of the new meeting will be announced on local radio stations and published in local newspapers.

The agenda for the meeting will include the following, subject to minor adjustments:

1. Call to Order
2. Roll Call and Confirmation of Quorum
3. Chair's Welcome and Introductions
4. Review and Approve Agenda
5. Member Reports
6. Agency and Public Comments
7. Superintendent and NPS Staff Reports
8. Agency and Public Comments
9. Other New Business
10. Agency and Public Comments
11. Set Time and Place of Next Advisory Council Meeting
12. Adjournment

Victor W. Knox,

Deputy Regional Director, Alaska.

[FR Doc. 2011-25785 Filed 10-5-11; 8:45 am]

BILLING CODE 4310-PF-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-AKR-CAKR; 9924-PYS]

Public Meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) Program

AGENCY: National Park Service, Interior.

ACTION: Notice of public meeting for the National Park Service (NPS) Alaska Region's Subsistence Resource Commission (SRC) program.

SUMMARY: The Cape Krusenstern National Monument SRC will meet to develop and continue work on NPS subsistence program recommendations and other related subsistence management issues. The NPS SRC program is authorized under Title VIII, Section 808 of the Alaska National Interest Lands Conservation Act, Public Law 96-487, to operate in accordance with the provisions of the Federal Advisory Committee Act. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting to be announced in the **Federal Register**.

Public Availability of Comments: This meeting is open to the public and will have time allocated for public testimony. The public is welcome to present written or oral comments to the SRC. This meeting will be recorded and meeting minutes will be available upon request from the park superintendent for public inspection approximately six weeks after the meeting. Before including your address, telephone 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.

If the meeting dates and location are changed, a notice will be published in local newspapers and announced on local radio stations prior to the meeting date. SRC meeting locations and dates may need to be changed based on inclement weather or exceptional circumstances.

DATES: *Cape Krusenstern National Monument SRC Meeting Date and*

Location: The Cape Krusenstern National Monument SRC will meet at the National Park Service Northwest Arctic Heritage Center, 171 Third Avenue in Kotzebue, Alaska, (907) 442-3890, on Thursday, November 17, 2011. The meeting will start at 9 a.m. and conclude at 5 p.m. or as soon business is completed.

FOR FURTHER INFORMATION ON THE CAPE KRUSENSTERN NATIONAL MONUMENT SRC

MEETING CONTACT: Frank Hays, Superintendent, or Willie Goodwin, Subsistence Community Liaison, at (907) 442-3890 or Ken Adkisson, Subsistence Manager, at (907) 443-2522 or Clarence Summers, Subsistence Manager, NPS Alaska Regional Office, at (907) 644-3603. If you are interested in applying for Cape Krusenstern National

Monument SRC membership contact the Superintendent at P.O. Box 1029, Kotzebue, AK 99752, (907) 442-3890, or visit the park Web site at: <http://www.nps.gov/cakr/contacts.htm>.

Proposed SRC Meeting Agenda

The proposed meeting agenda for each meeting includes the following:

1. Call to order.
2. Welcome and Introductions.
3. Administrative Announcements
4. Approve Agenda.
5. Approval of Minutes.
6. SRC Purpose and Membership.
 - a. Election of Chair.
 - b. Election of Vice Chair.
7. SRC Member Reports/Comments.
8. National Park Service Reports.
 - a. Superintendent Updates.
 1. Unit 23 User Issues.
 2. Local Hire/Internship.
 3. Cross Cultural Education.
 4. Climate Change Research.
 - b. Subsistence Manager.
 - c. Resource Management.
 1. Wildlife (Musk Ox, Brown Bear, Sheep).
 2. NPS Research/Studies.
 3. Ranger Report (Education, Outreach and Visitor Protection).
9. Federal Subsistence Board Update.
10. Alaska Board of Game Update.
11. Old Business.
 - a. Subsistence Uses of Bones, Horn, Antlers and Plants Environmental Assessment Update.
 - b. 2011 SRC Chairs' Workshop.
12. New Business.
 - a. Gates of the Arctic National Park SRC Draft Hunting Plan Recommendation 10-01.
13. Public and other Agency Comments.
14. SRC Work Session.
15. Select Time and Location for Next Meeting.
16. Adjourn Meeting.

Debora Cooper,

Associate Regional Director, Resources and Subsistence, Alaska Region.

[FR Doc. 2011-25783 Filed 10-5-11; 8:45 am]

BILLING CODE 4312-HR-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-696 (Third Review)]

Pure Magnesium From China; Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Pure Magnesium From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on pure magnesium from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* September 6, 2011.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202-205-3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://www.edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On September 6, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 31635, June 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.¹ Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.²

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 3, 2011, and made available to persons on the Administrative Protective Order

service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,³ and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 6, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 6, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 16, 2011.

¹ A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site (<http://www.usitc.gov>).

² Commissioner Dean A. Pinkert is not participating in this review.

³ The Commission has found the responses submitted by US Magnesium LLC, a domestic producer of pure and alloy magnesium, and Tianjin Magnesium International Co., Ltd., an exporter of pure magnesium from China, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-25805 Filed 10-5-11; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade
Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Navigation Products, Components Thereof, and Related Software*, DN 2846; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>, and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000.

General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Furuno Electric Co., Ltd. and Furuno USA Inc. on September 30, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain navigation products, components thereof, and related software. The complaint names as respondents Honeywell International

Inc. of NJ and Skyforce Avionics Ltd. of the United Kingdom.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2846") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf). Persons with questions regarding electronic filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: September 30, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-25806 Filed 10-5-11; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

Filing Procedures

AGENCY: International Trade
Commission.

ACTION: Notice of issuance of Handbook
on Filing Procedures.

SUMMARY: The United States International Trade Commission ("Commission") is issuing a Handbook on Filing Procedures to replace its Handbook on Electronic Filing Procedures. The revision is necessary to implement a new Commission requirement for electronic filing of most documents with the agency. The intended effects of the change are to increase efficiency in processing documents filed with the Commission, reduce Commission expenditures, and conform agency processes to federal government initiatives.

DATES: *Effective Date:* November 7,
2011.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary, telephone (202) 205-2000 or Gracemary R. Roth-Roffy, telephone (202) 205-3117, Office of the General Counsel, United States International Trade Commission. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202-205-1810. General information

concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>.

SUPPLEMENTARY INFORMATION: On July 6, 2011, the Commission published a notice of proposed rulemaking concerning its rules on filing, and a notice that it proposed to issue a Handbook on Electronic Filing Procedures. The Commission sought public comment on these initiatives. Comments were received, and have been taken into account in the preparation of the final version of the Handbook. The comments and the Commission's responses to the comments are set out in the notice of final rulemaking that is being published concurrently with this notice. The Commission now gives notice that a final version of the Handbook is being issued, and that it will go into effect at the same time as the revised rules. Once the Handbook is in effect, persons seeking to file documents will be required to comply with the revised Handbook on Filing Procedures, which will supersede the Commission's current Handbook on Electronic Filing Procedures. The final version of the Handbook on Filing Procedures is available on the Commission's Web site, at <https://edis.usitc.gov>.

Issued: September 29, 2011.

By Order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011-25645 Filed 10-5-11; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Preventing Occupational Hearing Loss: Stakeholder Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of public meeting.

SUMMARY: OSHA invites interested parties to participate in an informal stakeholder meeting on preventing occupational hearing loss. Every year, between 20,000 and 25,000 workers suffer from preventable hearing loss due to high workplace noise levels. The purpose of this meeting is to provide a forum and gather information on the best practices for noise reduction in the workplace, including a discussion on personal protective equipment, hearing conservation programs and engineering controls. OSHA is holding this stakeholder meeting as part of its

commitment to work with stakeholders on approaches to preventing occupational hearing loss.

DATES: The date for the stakeholder meeting is November 03, 2011, from 9 a.m. to 1 p.m. est., in Washington, DC. The deadline for registration to attend or participate in the meeting is October 27, 2011.

ADDRESSES: The meeting will be held in the Francis Perkins Building, U.S. Department of Labor, Room N-4437 A/B/C/D, at 200 Constitution Ave., NW., Washington, DC 20210. The nearest Metro station is Judiciary Square (Red Line). Photo ID is required to enter the building.

Registration to attend or participate in the meeting: To participate in the November 03, 2011 stakeholder meeting, or be a nonparticipating observer, you must register electronically, by phone, or by facsimile by close of business on October 27, 2011.

Electronically: <https://www2.ergweb.com/projects/conferences/osha/register-osha-stakeholder.htm>.

By Phone: Please call 781-674-7374.

Facsimile: Fax your request to (781) 674-2906. Registrants should label their faxes as: "Attention: OSHA Preventing Occupational Hearing Loss: Stakeholder Meeting."

When registering please indicate the following: (1) Name, address, phone, fax, and e-mail address; (2) Organization for which you work; and, (3) Organization you will represent (if different).

The meeting will last 4 hours, and be limited to approximately 30 participants. OSHA will do its best to accommodate all persons who wish to participate. OSHA encourages persons and groups having similar interests to consolidate their information and participate through a single representative. Members of the general public may observe, but not participate in, the meetings as space permits. OSHA staff will be present to take part in the discussions.

Eastern Research Group (ERG), Inc., (110 Hartwell Avenue, Lexington, MA 02421), will manage logistics for the meetings, provide a facilitator, and compile notes summarizing the discussion. These notes will not identify individual speakers. The summary notes will be available for review at <http://www.osha.gov>.

OSHA will confirm participants to ensure a fair representation of interests and a wide range of viewpoints. Nonparticipating observers who do not register for the meeting will be

accommodated as space permits. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: <http://www.osha.gov>.

FOR FURTHER INFORMATION CONTACT: Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999; e-mail: Meilinger.Francis2@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Noise-related hearing loss has been listed as one of the most prevalent occupational health concerns in the United States for more than 25 years. Every year between 20,000 and 25,000 workers suffer from preventable hearing loss due to high workplace noise levels. The Bureau of Labor Statistics has reported that nearly 125,000 workers have suffered significant, permanent hearing loss since 2004. Neither surgery nor a hearing aid can help correct this type of hearing loss.

On October 19, 2010, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) published in the **Federal Register** (FR) a proposed interpretation titled "Interpretation of OSHA's Provisions for Feasible Administrative or Engineering Controls of Occupational Noise" (<http://www.edocket.access.gpo.gov/2010/2010-26135.htm>). The proposed interpretation would have clarified the term "feasible administrative or engineering controls" as used in OSHA's noise standard. This FR notice requested comments on the proposal to clarify that the word "feasible" has its ordinary, plain meaning of "capable of being done." Comments were due December 20, 2010; however, in response to several requests from the regulated community, OSHA extended the comment period by 90 days to March 21, 2010. Over 90 comments were received in response to this proposed interpretation. OSHA stated that it would review all of the comments before making its final decision.

The proposed interpretation was subsequently withdrawn on January 19, 2011, (http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=NEWSRELEASES&p_id=19119). OSHA decided to suspend work on the proposal in order to conduct an education, outreach and consultation initiative on preventing work-related hearing loss. As part of the agency's

initiative, the agency committed to holding a stakeholder meeting on preventing occupational hearing loss to elicit the views of employers, workers, and noise control and public health professionals. The meeting announced in this notice fulfills this commitment.

II. Stakeholder Meeting

The stakeholder meeting announced in this notice will be conducted as a group discussion on views, concerns, and issues surrounding the hazards of occupational exposure to noise and how best to control them. To facilitate as much group interaction as possible, formal presentations by stakeholders will not be permitted. The stakeholder meeting discussions will center on preventing occupational hearing loss and will include such subjects as the use of personal protective equipment, effective hearing conservation programs and the use of feasible engineering controls to control noise exposure in the workplace. The discussions will focus on topics such as noise control challenges and the best practices in construction, general industry and other sectors where noise is a hazard. The specific issues to be discussed will include the following:

- What are the best practices regarding hearing conservation programs?
- What are the best practices for, as well as concerns with, using personal protective equipment for noise control?
- What are the best practices for using feasible engineering controls?
- What are examples of companies that have effective noise control programs and what are the key elements of their programs?

Authority and Signature

This document was prepared under the direction of Dr. David Michaels, Assistant Secretary of Labor for Occupational Safety and Health.

Signed at Washington, DC, on October 3, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011-25904 Filed 10-5-11; 8:45 am]

BILLING CODE 4510-29-P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 174th Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby

given that a meeting of the National Council on the Arts will be held on October 28, 2011 in Room M-09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting, from 9 a.m. to 11 a.m. (ending time is approximate), will be open to the public on a space available basis. The meeting will include opening remarks by the Chairman and swearing-in of new Council member Aaron Dworkin. This will be followed by presentations on opera, the Artists in the Workforce research study, and festivals. After these presentations, the Council will review and vote on guidelines and recommendations for funding applications, and will adjourn following concluding remarks.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY-TDD 202/682-5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682-5570.

Dated: October 3, 2011.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 2011-25869 Filed 10-5-11; 8:45 am]

BILLING CODE 7537-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 12, 2011, the National Science Foundation published a notice in the **Federal Register** of a permit modification received. The permit modification was issued on September 30, 2011 to:

David Ainley, Permit No. 2011-002 M#1.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011-25798 Filed 10-5-11; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 8th and August 22, 2011, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on September 29, 2011 to:

George Watters, Permit No. 2012 WM-001.

George Watters, Permit No. 2012 WM-001.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2011-25799 Filed 10-5-11; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–373 and 50–374; NRC–2011–0234]

Exelon Generation Company, LLC; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Exelon Generation Company, LLC (Exelon, or the licensee) to withdraw its May 6, 2011, application for proposed amendment to Facility Operating License No. NPF–11 and Facility Operating License No. NPF–18 for LaSalle County Station, Units 1 and 2, respectively, in LaSalle County, Illinois.

The proposed amendment would have revised Technical Specification 3.7.3, “Ultimate Heat Sink,” to reduce the allowed sedimentation in the core standby cooling system (CSCS) pond from ≤1.5 feet to ≤1.0 feet, which allows the temperature of the cooling water supplied to the plant to be increased from ≤101.25 °F to ≤101.95 °F, resulting in a higher volume of cooling water available in the CSCS pond.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on June 28, 2011 (76 FR 37847). However, by letter dated September 14, 2011, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated May 6, 2011, and the licensee’s letter dated September 14, 2011, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, 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 records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to pdr.resource@nrc.gov.

Dated at Rockville, Maryland, this 27th day of September, 2011.

For the Nuclear Regulatory Commission.
Araceli T. Billoch Colón,
Project Manager, Plant Licensing Branch III–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.
 [FR Doc. 2011–25786 Filed 10–5–11; 8:45 am]
BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Peace Corps will be submitting the Peace Corps Volunteer Application (OMB Control Number (0420–0005) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. Notice of the information collection was previously published in the **Federal Register** on July 11, 2011 [FR Doc. 2011–17273, pages 40755–40756], allowing for a 60-day public comment period. A correction notice to correct an error in the previous notice of information collection was published in the **Federal Register** on July 26, 2011 [FR Doc. 2011–18804, page 46525]. Peace Corps received one comment noting that Peace Corps should not use criminal history information to “engage in unlawful disparate treatment.”

The purpose of this notice is to allow an additional 30 days for public comments. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and, (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Submit comments on or before November 7, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding

this proposal. Comments should refer to the proposal by name or OMB approval number and should be sent via e-mail to: oira_submission@omb.eop.gov or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT:

Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION: The information collected by the Volunteer Application is used by the Peace Corps to collect essential information from individuals, including technical and language skills, and availability for Peace Corps service. The Volunteer Application is the document of record for an individual’s decision to apply for Peace Corps service.

Title: Peace Corps Volunteer Application.

OMB Control Number: 0420–0005.

Type of Review: Revision of a currently approved collection.

Affected Public: General public.

Respondents’ Obligation To Reply: Voluntary.

Burden to the Public:

(a) Estimated number of respondents: 14,000.

(b) Estimated average burden: 6 hours.

(c) Frequency of response: one time.

(d) Annual reporting burden: 84,000 hours.

(e) Estimated annual cost to respondents: \$0.00.

General Description of Collection: The Volunteer Application is used by Peace Corps in its assessment of an individual’s qualifications to serve as a Peace Corps Volunteer including practical and cross-cultural experience, maturity, and motivation and commitment.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC on September 29, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–25765 Filed 10–5–11; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Revision of Information Collection: OPM Online Form 1417

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance to revise an information collection. OPM Online Form 1417, the Combined Federal Campaign (CFC) Information System form, collects information from the 208 local CFC campaigns to verify campaign results and collect contact information. The proposed revisions remove data that is collected from other sources and incorporates new questions regarding the Federal employees who oversee the campaign at the local level. On February 7, 2011, we published a 60-day notice and request for comments. We received no comments.

We estimate 208 Online OPM Forms 1417 are completed annually. Each form takes approximately 30 minutes to complete. The annual estimated burden is 104 hours. The change in the estimated burden is the result of a reduction in the number of campaigns and the elimination of questions on local charity participation.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

For copies of this proposal, contact Curtis Rumbaugh on (202) 606-2564, Fax (202) 606-5056 or e-mail to curtis.rumbaugh@opm.gov. Please be sure to include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: U.S. Office of Personnel Management, Office of Information and Regulatory Affairs, Office of

Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management, or send via electronic mail to oira_submission@omb.eop.gov or fax to (202) 395-6974.

John Berry,
Director.

[FR Doc. 2011-25905 Filed 10-5-11; 8:45 am]

BILLING CODE 6325-46-P

POSTAL REGULATORY COMMISSION

[Docket No. A2011-92; Order No. 884]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on September 27, 2011, the Commission received a petition for review of the Postal Service's determination to close the Redmon post office in Redmon, Illinois. The petition was filed by Jim Cooper, Mayor of Redmon, Illinois (Petitioner) and is postmarked September 22, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-92 to consider Petitioner's appeal. If Petitioner would like to further explain his 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 November 1, 2011.

DATES: *Administrative record due (from Postal Service):* September 27, 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 27, 2011, the Commission received a petition for review of the Postal Service's determination to close the Redmon post office in Redmon, Illinois. The petition was filed by Jim Cooper, Mayor of Redmon, Illinois (Petitioner) and is postmarked September 22, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011-92 to consider Petitioner's appeal. If Petitioner would like to further explain its 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 November 1, 2011.

Issues apparently raised. Petitioner contends 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)); (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)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (See 39 U.S.C. 404(d)(2)(A)(iv)).

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 12, 2011. See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 12, 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 12, 2011.
2. Any responsive pleading by the Postal Service to this notice is due no later than October 12, 2011.
3. The procedural schedule listed below is hereby adopted.
4. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher 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 27, 2011	Filing of Appeal.
October 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 12, 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)).
November 1, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (See 39 CFR 3001.115(a) and (b)).
November 21, 2011	Deadline for answering brief in support of the Postal Service (See 39 CFR 3001.115(c)).
December 6, 2011	Deadline for reply briefs in response to answering briefs (See 39 CFR 3001.115(d)).
December 13, 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 20, 2012	Expiration of the Commission's 120-day decisional schedule (See 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-25804 Filed 10-5-11; 8:45 am]
BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. A2011-91; Order No. 883]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the West Stockholm, 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):* September 27, 2011; *deadline for notices to intervene:* October 12, 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 27, 2011, the Commission received a petition for review of the Postal Service's determination to close the West Stockholm post office in West Stockholm, New York. The petition was filed by Darrell W. Tracy for the Ad Hoc Committee to Save West Stockholm P.O.

(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. A2011-91 to consider Petitioner's appeal. If Petitioner would like to further explain its 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 November 1, 2011.

Issues apparently raised. Petitioner contends 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 12, 2011. See 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is October 12, 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 12, 2011.
2. Any responsive pleading by the Postal Service to this notice is due no later than October 12, 2011.
3. The procedural schedule listed below is hereby adopted.
4. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks 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 27, 2011	Filing of Appeal.
October 12, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
October 12, 2011	Deadline for the Postal Service to file any responsive pleading.
October 24, 2011	Deadline for notices to intervene (<i>see</i> 39 CFR 3001.111(b)).
November 1, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (<i>see</i> 39 CFR 3001.115(a) and (b)).
November 21, 2011	Deadline for answering brief in support of the Postal Service (<i>see</i> 39 CFR 3001.115(c)).
December 6, 2011	Deadline for reply briefs in response to answering briefs (<i>see</i> 39 CFR 3001.115(d)).
December 13, 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 (<i>see</i> 39 CFR 3001.116).
January 9, 2012	Expiration of the Commission's 120-day decisional schedule (<i>see</i> 39 U.S.C. 404(d)(5)).

[FR Doc. 2011-25824 Filed 10-5-11; 8:45 am]

BILLING CODE 7710-FW-P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including

whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Employee's Certification; OMB 3220-0140 Section 2 of the Railroad Retirement Act (RRA), provides for the payment of an annuity to the spouse or divorced spouse of a retired railroad employee. For the spouse or divorced spouse to qualify for an annuity, the RRB must determine if

any of the employee's current marriage to the applicant is valid.

The requirements for obtaining documentary evidence to determine valid marital relationships are prescribed in 20 CFR 219.30 through 219.35. Section 2(e) of the RRA requires that an employee must relinquish all rights to any railroad employer service before a spouse annuity can be paid.

The RRB uses Form G-346 to obtain the information needed to determine whether the employee's current marriage is valid. Form G-346 is completed by the retired employee who is the husband or wife of the applicant for a spouse annuity. Completion is required to obtain a benefit. One response is requested of each respondent. The RRB proposes no

changes to Form G-346. The RRB estimates that 4,830 G-346's will be completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 403 hours.

In accordance with amended regulation 20 CFR 217.17, the RRB proposes the implementation of Form G-346sum. Proposed Form G-346sum, which will mirror the information collected on Form G-346, will be used when an employee, after being interviewed by an RRB field office staff member "signs" the form using an alternative signature method known as "attestation". Attestation refers to the action taken by the RRB field office employee to confirm and annotate the RRB's records of the applicant's affirmation under penalty of perjury that the information provided is correct and the applicant's agreement to sign the form by proxy. The RRB estimates that 2,070 G-346sum's will be completed annually at an estimated completion time of five minutes per response. Total respondent burden is estimated at 172 hours.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Charles Mierzwa, the RRB Clearance Officer, at (312) 751-3363 or Charles.Mierzwa@RRB.GOV. Comments regarding the information collection should be addressed to Patricia Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611-2092 or e-mailed to Patricia.Henaghan@RRB.GOV. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 2011-25777 Filed 10-5-11; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Cancellation of Public Meeting

The meeting of the Railroad Retirement Board which was to be held on October 6, 2011, 10 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611 has been cancelled.

The person to contact for more information is Martha P. Rico, Secretary to the Board, Phone No. 312-751-4920.

Dated: October 3, 2011.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2011-25979 Filed 10-4-11; 11:15 am]

BILLING CODE 7905-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form F-6; OMB Control No. 3235-0292; SEC File No. 270-270.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form F-6 (17 CFR 239.36) is a form used by foreign companies to register the offer and sale of American Depositary Receipts (ADRs) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). Form F-6 requires disclosure of information regarding the terms of the depository bank, fees charged, and a description of the ADRs. No special information regarding the foreign company is required to be prepared or disclosed, although the foreign company must be one which periodically furnishes information to the Commission. The information is needed to ensure that investors in ADRs have full disclosure of information concerning the deposit agreement and the foreign company. Form F-6 takes approximately 1 hour per response to prepare and is filed by 150 respondents annually. We estimate that 25% of the 1 hour per response (.25 hours) is prepared by the filer for a total annual reporting burden of 37.5 hours (.25 hours per response × 150 responses).

The information provided on Form F-6 is mandatory to best ensure full disclosure of ADRs being issued in the U.S. All information provided to the Commission is available for public review upon request.

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 control number.

The public may view the background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to:

Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 30, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-25787 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request; Copies Available

From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form 4; OMB Control No. 3235-0287; SEC File No. 270-126.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or who is a director or any officer of the issuer of such security (collectively "insider"), must file a statement with the Commission reporting their ownership. Form 4 is a statement to disclose changes in an insider's ownership of securities. The information is used for the purpose of disclosing the equity holdings of insiders of reporting companies.

Approximately 225,000 insiders file Form 4 annually and it takes approximately 0.5 hours to prepare for a total of 112,500 annual burden hours.

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 control number.

The public may view the background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 3, 2011.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25789 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Form 3; OMB Control No. 3235-0104; SEC File No. 270-125.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Under the Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security (other than an exempted security) which registered under Section 12 of the Exchange Act (15 U.S.C. 78l), or who is a director or

an officer of the issuer of such security (collectively "insiders"), must file statement with the Commission reporting their ownership. Form 3 (17 CFR 249.103) is an initial statement of beneficial ownership of securities, Form 3 annually and it takes approximately 0.5 hours to prepare for a total of 14,500 annual burden hours.

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 control number.

The public may view the background documentation for this information collection at the following Web site, <http://www.reginfo.gov>. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: Shagufta_Ahmed@omb.eop.gov; and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this.

Dated: October 3, 2011.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25788 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA-3297; File No. S7-39-11]

Approval of Filing Fees for Exempt Reporting Advisers and Private Fund Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Notice of intent to approve filing fees for exempt reporting advisers filing Form ADV and private fund advisers filing Form PF.

SUMMARY: The Securities and Exchange Commission ("Commission") is providing notice of its intent to approve filing fees for exempt reporting advisers filing Form ADV and, consistent with one of its recent rule proposals, private fund advisers filing Form PF.

DATES: The fee for exempt reporting advisers would apply starting with the date on which the order approving the fee is published in the **Federal Register**.

If the Form PF proposal is adopted, the fees for private fund advisers would apply starting with the effective date of rule 204(b)-1 under the Investment Advisers Act of 1940 ("Advisers Act").

Hearing or Notification of Hearing: An order approving the filing fees will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary. Hearing requests should be received by the Commission by 5:30 p.m. on October 21, 2011. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

FOR FURTHER INFORMATION CONTACT: Keith Kanyan, IARD System Manager, at 202-551-6737, or Iarules@sec.gov, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-8549.

SUPPLEMENTARY INFORMATION:

Exempt Reporting Adviser Filing Fee

On June 22, 2011, the Commission adopted new rule 204-4, which requires exempt reporting advisers to file portions of Form ADV with the Commission.¹ As with registered advisers, exempt reporting advisers must file Form ADV through the Investment Adviser Registration Depository system ("IARD") and pay the Financial Industry Regulatory Authority ("FINRA"), which operates the system, a filing fee that the Commission approves.² FINRA has submitted to Commission staff a letter recommending that the filing fee for exempt reporting advisers be set at \$150 for each initial and annual report.³ Moreover, based on projections of expected revenues and expenses (including those resulting from future system enhancements) relating to the exempt adviser reporting, the Commission believes that this fee

¹ "Exempt reporting advisers" are investment advisers relying on the exemption from registration under section 203(l) or 203(m) of the Advisers Act. See *Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. IA-3221 (June 22, 2011), 76 FR 42950 (July 19, 2011) ("Implementing Adopting Release").

² See section 204(c) of the Advisers Act and rule 204-4(d).

³ FINRA letter dated September 28, 2011, available at <http://www.sec.gov/rules/other/2011/finraletter092811-pherafees.pdf>.

amount would reflect costs reasonably associated with these filings and the development and maintenance of the system. This fee would apply starting with the date on which the order approving the fee is published in the **Federal Register**.

In the Implementing Adopting Release, we indicated that, at the time, we expected the filing fees for exempt reporting advisers would be the same as those charged registered investment advisers.⁴ On further consideration, we believe at this time that a tiered filing fee structure is unnecessary for exempt reporting advisers. The lowest fee charged to registered advisers is for advisers having under \$25 million in assets under management. Few exempt reporting advisers are likely to have less than \$25 million in assets under management because advisers under that threshold are generally prohibited from registering with the Commission under section 203A of the Advisers Act and, therefore, would not be relying on the applicable exemptions. In addition, although we expect that many exempt reporting advisers will have assets under management that would place them in the group of registered advisers paying the highest filing fees, we have estimated that exempt reporting advisers will use the IARD less during the year than registered advisers.⁵ We agree, therefore, that a single fee is appropriate for these advisers regardless of their assets under management.

Form PF Filing Fees

On January 26, 2011, the Commission and the Commodity Futures Trading Commission released a joint proposal that would require hedge fund advisers and other private fund advisers to report certain information regarding the private funds they advise.⁶ Under the

proposal, registered investment advisers managing one or more private funds would periodically file all or part of the proposed Form PF. The Commission would make the information they report available to the Financial Stability Oversight Council for use in monitoring systemic risk.

The proposal would require advisers to file Form PF electronically but left the selection of the filing system and operator for later consideration. Having considered the options for such a filing system, the Commission has determined that, if Form PF is adopted, FINRA will develop and maintain the filing system as an extension of the existing IARD.⁷ The Commission believes that FINRA, as the current operator of the IARD, is uniquely situated to develop and deploy the Form PF filing system in a timely manner. Also, as discussed in the Form PF Proposing Release, the Commission believes that certain efficiencies, both for the Commission and for advisers, would be realized by having FINRA expand its existing platform to accommodate the confidential filing of Form PF.⁸ Commenters who responded to the Form PF Proposing Release and addressed this aspect of the proposal supported having FINRA develop the reporting system as an extension of the IARD platform if Form PF is adopted.⁹

Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3145 (January 26, 2011), 76 FR 8068 (February 11, 2011) ("Form PF Proposing Release"). "Private fund" is defined in section 202(a)(29) of the Advisers Act.

⁷ In 2000, the Commission designated FINRA as the operator of IARD, which is the electronic filing system for Form ADV. This designation was made pursuant to the Commission's authority under section 204(c) of the Advisers Act, which allows the Commission to require investment advisers to file forms "through any entity designated [by it] for that purpose" and "to pay the reasonable costs associated with [these] filings * * *." (This authority was added to the Advisers Act as section 203A(d) by section 303(a) of the National Securities Markets Improvement Act of 1996, Pub. L. 104-290, 110 Stat. 3416; moved to section 204(b) by section 7 of the Military Personnel Financial Services Protection Act, Pub. L. 109-290, 102 Stat. 1317 (2006); and re-designated as section 204(c), effective July 21, 2011, by section 404(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).) *See Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository: Approval of IARD Fees*, Investment Advisers Act Release No. 1888 (July 28, 2000), 65 FR 47807 (Aug. 3, 2000). (FINRA was formerly known as NASD.)

⁸ See section I.E of the Form PF Proposing Release (discussing efficiencies of expanding existing IARD platform to accommodate filings of Form PF). *See also* Form PF Proposing Release at note 39 and accompanying text (discussing confidentiality of Form PF information).

⁹ See comment letter of the Alternative Investment Management Association (Apr. 12, 2011) (agreeing that using the IARD and FINRA is

Section 204(c) of the Advisers Act authorizes the Commission to require that investment advisers pay the reasonable costs associated with filings, and under the Commission's proposed rule, private fund advisers would pay fees to the operator of the Form PF filing system in connection with the filing of Form PF.¹⁰ Following discussions with Commission staff, FINRA submitted a schedule of recommended filings fees for proposed Form PF.¹¹ The recommended fees are \$150 for the proposed quarterly filings and \$150 for the proposed annual filings.¹² As the Commission indicated in the Form PF Proposing Release, because advisers filing on a quarterly basis would use the system more frequently and would report more information than advisers filing on an annual basis, total annual fees would be higher for quarterly filers. Based on projections of expected revenues and expenses (including those resulting from future system enhancements) relating to the filing of the proposed Form PF, the Commission believes that these fees would reflect costs reasonably associated with these filings and the development and maintenance of the system. If the proposal is adopted, these fees would apply starting with the effective date of rule 204(b)-1.

Dated: September 30, 2011.

By the Commission.

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25821 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

a "sensible solution"); comment letter of the Managed Funds Association (Apr. 8, 2011). We explained in the Form PF Proposing Release that the filing system would need to be programmed with special confidentiality protections designed to ensure the heightened confidentiality protections created for Form PF filing information under the Dodd-Frank Act. *See* Form PF Proposing Release at note 39 and accompanying text and section I.E. These commenters expressed the view that maintaining the confidentiality of Form PF data is an important consideration in developing the filing system. If Form PF is adopted, Commission staff will work closely with FINRA in designing procedures and systems to ensure that Form PF data is handled and used in a manner consistent with the protections established in the Dodd-Frank Act.

¹⁰ See proposed rule 204(b)-1(d).

¹¹ See note 3 above.

¹² Under the proposal, advisers managing \$1 billion or more in hedge fund assets, combined liquidity fund and registered money market fund assets or private equity fund assets would file Form PF on a quarterly basis. All other private fund advisers would file on an annual basis. *See* sections I.B and I.C of the Form PF Proposing Release.

⁴ See Implementing Adopting Release, *supra* note 1, at nn. 169 and 566 and accompanying text. Currently, the fees charged registered investment advisers for both initial and annual reports on Form ADV are set at \$40 for advisers with assets under management under \$25 million; \$150 for advisers with assets under management from \$25 million to \$100 million; and \$225 for advisers with assets under management of \$100 million or higher. *See Order Approving Investment Adviser Registration Depository Filing Fees*, Investment Advisers Act Release No. 3126 (Dec. 22, 2010), 75 FR 82097 (Dec. 29, 2010).

⁵ See Implementing Adopting Release, *supra* note 1, at nn. 708 and 741 and accompanying text (estimating that each registered adviser will, on average, file one interim amendment each year while only 20% of exempt reporting advisers will, on average, file an interim amendment during that time).

⁶ The Commission proposed to adopt a new rule 204(b)-1, which would require advisers that are registered with the Commission and managing private funds ("private fund advisers") to file proposed Form PF periodically. *See* section I.L.C of

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65445; File No. SR-CBOE-2011-086]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule To Increase the Number of Series Permitted per Class in the Short Term Option Series Program

September 30, 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 19, 2011, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) 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

Chicago Board Options Exchange, Incorporated proposes to amend Rules 5.5 and 24.9 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Exchange’s Short Term Option Series Program (“Weeklys Program”) from 20 series to 30 series. 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.

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 amend Rules 5.5 and 24.9 to increase the number of Short Term Options Series (“Weekly options”) that may be opened for each option class that participates in the Exchange’s Short Term Option Series Program (“Weeklys Program”).³ Currently, a total of 20 series may be opened for trading in each class that participates in the Weeklys Program. The Exchange is proposing to increase this to a total of 30 series per class that may be opened for trading.⁴

The Weeklys Program is codified in Rule 5.5 and 24.9. These rules provide that after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day series of options on no more than fifteen option classes that expire on the Friday of the following business week that is a business day. The strike price of each Weekly option has to be fixed with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the Weekly options are initially opened for trading on the Exchange, and with strike prices being within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Weeklys Program limitations.

The principal reason for the proposed expansion is market demand for additional series in Weekly option classes in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for more series when market moving events, such as corporate events and large price swings, have occurred during the life span of an affected Weekly option class. Currently, in order to be able to respond to market demand, the Exchange is forced to

delete or delist certain series in order to make room for more in demand series.⁵ The Exchange finds this method to be problematic for two reasons.

First, the Exchange has received requests to keep series that it intends to delete/delist to make room for more in demand series. While market participants may access other markets for the deleted/delisted series, the Exchange would prefer to provide market participants with their preferred choice of markets to trade—CBOE. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by deleting/delisting and adding series, if another exchange is the last to list the less desirable series with open interest, that exchange is stuck with those series and unable to list the in demand series (because to do so would result in more than 20 series being listed on that exchange). As a result, the maximum number of series per class of options that participates in the Weeklys Program should be increased to 30 so that exchanges can list the full panoply of series that other exchange list and which the market demands.

To affect this change, the Exchange is proposing to amend Rule 5.5 and 24.9. Specifically, the Exchange is proposing to limit the initial number of series that may be opened for trading to 20 series and to limit the number of additional series that may be opened for trading to 10 series.⁶

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (“OPRA”) have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of series for classes that participate in the Weeklys Program.

The Exchange believes that the Weeklys Program has provided investors with greater trading

⁵ The Exchange deletes series with no open interest and delists series with open interest if those series are open for trading on another exchange.

⁶ Series must be added pursuant to the existing listing parameters set forth in Rule 5.5 and 24.9. Initial series shall be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strike prices listed by the Exchange shall be within thirty percent (30%) above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account shall not be considered when determining customer interest.

³ On July 12, 2005, the Commission approved the Weeklys Program on a pilot basis. See Securities Exchange Act Release No. 52011 (July 12, 2005), 70 FR 41451 (July 19, 2005) (SR-CBOE-2004-63). The Weeklys Program was made permanent on April 27, 2009. See Securities Exchange Act Release No. 59824 (April 27, 2009), 74 FR 20518 (May 4, 2009) (SR-CBOE-2009-018).

⁴ The Exchange previously increased the total number of series per Weeklys option class from 7 to 20 series. See Securities Exchange Act Release No. 58870 (October 28, 2008), 73 FR 65430 (November 3, 2008) (SR-CBOE-2008-110) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Short Term Series Option Program).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Therefore, the Exchange requests a modest expansion of the current Weeklys Program.

It is expected that other options exchanges that have adopted a Weeklys Program will submit similar proposals.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Act and the rules and regulations under the Act, in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that expanding the number of series per option class eligible to participate in the Weeklys Program will allow the investing public and other market participants to better manage their risk exposure, and would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of series per class. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity.

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

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 such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2011-086 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-2011-086. 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-2011-086 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25793 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65448; File No. SR-BYX-2011-024]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend BYX Rule 13.3 To Prohibit Members From Voting Uninstructed Shares on Certain Matters and To Align BYX Rule 13.3, Concerning the Forwarding of Proxy and Other Material and Proxy Voting, With the Rules of Other Self-Regulatory Organizations

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 16, 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 and is

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BYX Rule 13.3, entitled "Forwarding of Issuer Materials," in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Exchange is also proposing changes to BYX Rule 13.3 in order to better align the Exchange's rule with the rules of other self-regulatory organizations ("SROs").

The text of the proposed rule addition 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

Section 957 of the Dodd-Frank Act amends Section 6(b) of the Act³ to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 of the Act⁴ from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the

Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to add new paragraph (b) to BYX Rule 13.3 to prohibit a Member from giving a proxy to vote stock that is registered in its name, unless: (i) Such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

Notwithstanding the above, as proposed in new paragraph (c) to Rule 13.3, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

In order to promote consistency with FINRA Rule 2251, the Exchange also proposes to add language to the existing text of Rule 13.3 to state that for beneficial owners, the proxy materials or other materials to be forwarded on behalf of an issuer can be sent to the beneficial owner's designated investment adviser, if applicable. In conjunction with this change, the Exchange proposes to adopt the definition of "designated investment adviser" set forth in FINRA Rule 2251(f)

as Interpretation and Policy .01 to Rule 13.3.

Similarly, the Exchange proposes to add new paragraph (d) to Rule 13.3, based entirely on FINRA Rule 2251(d), to explicitly state that a Member may give a proxy to vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Proposed paragraph (d) will also state that a Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of Rule 13.3, shall obtain the requisite number of signed proxies from such holder of record. Lastly, proposed paragraph (d) also states that, notwithstanding the foregoing: (1) Any Member designated by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

The Exchange also proposes modifying the text of Rule 13.3, which currently would require forwarding of proxy material but which does not explicitly reference such material, to add such an explicit reference. The Exchange further proposes to modify the text of Rule 13.3 to reference "security holders," rather than stockholders, in the initial sentence, to ensure that the coverage of the rule applies to all securities, including debt securities to the extent applicable, and not just equity securities. The Exchange also proposes to incorporate certain language from FINRA Rule 2251 that provides additional detail regarding the material that must be provided to beneficial owners in the event of a proxy solicitation. Specifically, Rule 13.3 as amended will state that in the event of a proxy solicitation, materials provided pursuant to the Rule shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for

³ 15 U.S.C. 78f(b).

⁴ 15 U.S.C. 78l.

completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. The Rule will also require a Member to furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. Finally, the Exchange proposes to modify the title of Rule 13.3 to include reference to proxy voting.

The Exchange believes that these additional changes to Rule 13.3 will help to avoid confusion by Members of the Exchange that are also members of FINRA by further aligning the Exchange's rules with FINRA Rule 2251. In addition, the Exchange notes that it is party to an agreement with FINRA pursuant to which certain regulatory responsibility to examine and enforce common rules of the Exchange and FINRA is allocated to FINRA pursuant to Rule 17d-2 under the Act (the "17d-2 Agreement").⁵ The proposed changes to Rule 13.3 may be sufficient to incorporate Rule 13.3 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

2. Statutory Basis

Approval of the rule change proposed in this submission 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.⁶ The Exchange believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)⁷ requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5) of the Act,⁸ 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, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule 13.3(c) to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that proposed Rule 13.3(b) is consistent with Section 6(b)(5) of the Act,⁹ particularly with respect to removal of impediments to, and perfection of the mechanism of, a free and open market and a national market system, because the proposed changes will provide for consistent regulation for Members of the Exchange that are members of other SROs with analogous rules.¹⁰ Moreover, the proposed changes to Rule 13.3(a), proposed Rule 13.3(d), and proposed Interpretation and Policy .01 are consistent with FINRA Rule 2251. Accordingly, the Exchange believes that the proposal fosters cooperation amongst SROs because to the extent the Exchange is able to incorporate Rule 13.3 into the 17d-2 Agreement as a rule in common between the Exchange and FINRA (a "Common Rule"), then FINRA will conduct a review for compliance with the Common Rule to the extent a Member of the Exchange is also a member of FINRA, and the Exchange will not conduct a duplicative review of the same activity by that Member.

Finally, the Exchange believes that the proposal will contribute to investor protection by defining important requirements to which Members must abide with respect to proxy solicitation, proxy voting and delivery of proxy materials.

(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. 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-BYX-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-BYX-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 with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2011-024 and should be submitted on or before October 27, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis so that the Exchange could comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon FINRA Rule

⁵ 17 CFR 240.17d-2.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(10).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ *See, e.g.*, FINRA Rule 2251, ISE Rule 421, NYSE Arca Rule 9.4, and Nasdaq Rule 2251.

2251, as well as ISE Rule 421, Nasdaq Rule 2251, and NYSE Arca Rule 9.4.¹¹ After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹²

The Commission believes that proposed Rule 13.3(b) is consistent with Section 6(b)(5)¹³ of the Act, which provides, among other things, that the rules of the Exchange must be designed to 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, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Rule 13.3(b), a Member shall be prohibited from voting uninstructed shares unless (1) That Member is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities exchange or association of which it is also a member, provided that the Member's records clearly indicate the procedure it is following. This provision is based on ISE Rule 421, FINRA Rule 2251 and NYSE Arca Rule 9.4, which were previously approved by the Commission.¹⁴ The Commission notes that the proposed change will provide clarity to Exchange Members going forward on whether broker discretionary voting is permitted by Exchange Members under limited circumstances when the Member is also a member of another national securities exchange or association that permits broker discretionary voting. In approving this portion of the proposal, the Commission notes that Rule 13.3(b) is consistent with the approach taken under the rules of other national securities exchanges or national securities association, and for Exchange Members who are not also members of

another national securities exchange or association prohibits broker discretionary voting on any matter, consistent with investor protection and the public interest.

The Commission believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)¹⁵ of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that "final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares."¹⁶ The proposed rule change will make the Exchange compliant with the new requirements of Section 6(b)(10) by specifically prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.¹⁷

The Commission also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5)¹⁸ of the Act, which provides, among other things, that the rules of the Exchange must be designed to 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, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.¹⁹ Based on the above, the Commission finds that the Exchange's proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also believes that Proposed Rule 13.3(a), (d), and Interpretations and Policies .01 are consistent with Section 6(b)(5) of the Act²⁰ in that they are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission notes that the proposed changes will further align Rule 13.3 with FINRA Rule 2251, which should reduce regulatory confusion amongst Members that are also members of FINRA, and as the Exchange notes, may also reduce regulatory duplication should the proposed rule become a Common Rule under the 17d-2 Agreement. Finally, we note that the changes to Proposed Rule 13(a), (d), and Interpretations and Policies .01 will also further investor protection and the public interest by setting forth proxy voting requirements as to beneficial owner accounts as well as the requirements that a Member must follow when forwarding proxy or other

¹¹ See Securities Exchange Act Release 63139 (October 20, 2010), 75 FR 65680 (October 26, 2010) (SR-ISE-2010-99); 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR-FINRA-2009-066) (finding that the proposed rule change was consistent with the Act because the Rule "will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials."); 62992 (September 24, 2010), 75 FR 60844 (October 1, 2010) (SR-NASDAQ-2010-114); and 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003) (SR-PCX-2003-50).

¹² In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 11.

¹⁵ 15 U.S.C. 78f(b)(10).

¹⁶ See S. Rep. No. 111-176, at 136 (2010).

¹⁷ The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

²⁰ 15 U.S.C. 78f(b)(5).

materials to the beneficial owners of the stock or their designated investment advisors.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that good cause exists to grant accelerated approval to the proposed changes to Rule 13.3, because the proposal will conform the Exchange rule to FINRA Rule 2251, in particular, as well as ISE Rule 421, NYSE Arca Rule 9.4 and Nasdaq Rule 2251, which were published for public comment in the **Federal Register** and approved by the Commission, and for which no comments were received.²² Further, because proposed Rule 13.3 is substantially similar to the FINRA, ISE, NYSE Arca and Nasdaq rules, we do not believe it raises any new regulatory issues that were not previously considered with adoption of the rules for those other self-regulatory organizations.

Moreover, proposed Rule 13.3(c) will conform the Exchange's rules to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. Therefore, the Commission believes that good cause exists to grant accelerated approval to proposed Rule 13.3(c), because it will conform the Exchange rule to the requirements of Section 6(b)(10) of the Act. Moreover, proposed Rule 13.3(c) is substantially similar to ISE Rule 421 and Nasdaq Rule 2251.²³

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-BYX-2011-024) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011-25792 Filed 10-5-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65449; File No. SR-BATS-2011-036]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend BATS Rule 13.3 To Prohibit Members From Voting Uninstructed Shares on Certain Matters and To Align BATS Rule 13.3, Concerning the Forwarding of Proxy and Other Material and Proxy Voting, With the Rules of Other Self-Regulatory Organizations

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act" or the "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 16, 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, and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 13.3, entitled "Forwarding of Issuer Materials," in accordance with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act"). The Exchange is also proposing changes to BATS Rule 13.3 in order to better align the Exchange's rule with the rules of other self-regulatory organizations ("SROs"). The text of the proposed rule addition 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

Section 957 of the Dodd-Frank Act amends Section 6(b) of the Act³ to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12 of the Act⁴ from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote with respect to (i) The election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation, or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to add new paragraph (b) to BATS Rule 13.3 to prohibit a Member from giving a proxy to vote stock that is registered in its name, unless: (i) Such Member is the beneficial owner of such stock; (ii) such proxy is given pursuant to the written instructions of the beneficial owner; or (iii) such proxy is given pursuant to the rules of any national securities exchange or association of which it is a member provided that the records of the Member clearly indicate the procedure it is following. The Exchange is proposing to adopt these rules because other national securities exchanges and associations do allow

²¹ 15 U.S.C. 78s(b)(2).

²² See *supra* notes 11.

²³ *Id.*

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 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. 78f(b).

⁴ 15 U.S.C. 78l.

proxy voting under certain limited circumstances while the current Exchange Rules are silent on such matters. Therefore, a Member that is also a member of another national securities exchange or association may vote the shares held for a customer when allowed under its membership at another national securities exchange or association, provided that the records of the Member clearly indicate the procedure it is following.

Notwithstanding the above, as proposed in new paragraph (c) to Rule 13.3, a Member that is not the beneficial owner of a security registered under Section 12 of the Exchange Act is prohibited from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule, unless the beneficial owner of the security has instructed the Member to vote the proxy in accordance with the voting instructions of the beneficial owner.

In order to promote consistency with FINRA Rule 2251, the Exchange also proposes to add language to the existing text of Rule 13.3 to state that for beneficial owners, the proxy materials or other materials to be forwarded on behalf of an issuer can be sent to the beneficial owner's designated investment adviser, if applicable. In conjunction with this change, the Exchange proposes to adopt the definition of "designated investment adviser" set forth in FINRA Rule 2251(f) as Interpretation and Policy .01 to Rule 13.3.

Similarly, the Exchange proposes to add new paragraph (d) to Rule 13.3, based entirely on FINRA Rule 2251(d), to explicitly state that a Member may give a proxy to vote any stock registered in its name if such Member holds such stock as executor, administrator, guardian, trustee, or in a similar representative or fiduciary capacity with authority to vote. Proposed paragraph (d) will also state that a Member that has in its possession or within its control stock registered in the name of another Member and that desires to transmit signed proxies pursuant to the provisions of paragraph (a) of Rule 13.3, shall obtain the requisite number of signed proxies from such holder of record. Lastly, proposed paragraph (d) also states that, notwithstanding the foregoing: (1) Any Member designated

by a named Employee Retirement Income Security Act of 1974 (as amended) ("ERISA") Plan fiduciary as the investment manager of stock held as assets of the ERISA Plan may vote the proxies in accordance with the ERISA Plan fiduciary responsibilities if the ERISA Plan expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and has not expressly reserved the proxy voting right for the named ERISA Plan fiduciary; and (2) any designated investment adviser may vote such proxies.

The Exchange also proposes modifying the text of Rule 13.3, which currently would require forwarding of proxy material but which does not explicitly reference such material, to add such an explicit reference. The Exchange further proposes to modify the text of Rule 13.3 to reference "security holders," rather than stockholders, in the initial sentence, to ensure that the coverage of the rule applies to all securities, including debt securities to the extent applicable, and not just equity securities. The Exchange also proposes to incorporate certain language from FINRA Rule 2251 that provides additional detail regarding the material that must be provided to beneficial owners in the event of a proxy solicitation. Specifically, Rule 13.3 as amended will state that in the event of a proxy solicitation, materials provided pursuant to the Rule shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the Member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. The Rule will also require a Member to furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of Exchange Act Rule 17a-4. Finally, the Exchange proposes to modify the title of Rule 13.3 to include reference to proxy voting.

The Exchange believes that these additional changes to Rule 13.3 will help to avoid confusion by Members of the Exchange that are also members of FINRA by further aligning the Exchange's rules with FINRA Rule 2251. In addition, the Exchange notes that it is party to an agreement with FINRA pursuant to which certain regulatory responsibility to examine and enforce

common rules of the Exchange and FINRA is allocated to FINRA pursuant to Rule 17d-2 under the Act (the "17d-2 Agreement").⁵ The proposed changes to Rule 13.3 may be sufficient to incorporate Rule 13.3 into the 17d-2 Agreement, further reducing duplicative regulation of Members that are also members of FINRA.

2. Statutory Basis

Approval of the rule change proposed in this submission 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.⁶ The Exchange believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)⁷ requirements that all national securities exchanges adopt rules prohibiting members from voting, without receiving instructions from the beneficial owner of shares, on the election of a member of a board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The Exchange also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5) of the Act,⁸ 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, and, in general, protect investors and the public interest. The Exchange is adopting proposed Rule 13.3(c) to comply with the requirements of Section 957 of the Dodd-Frank Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest.

The Exchange also believes that proposed Rule 13.3(b) is consistent with Section 6(b)(5) of the Act,⁹ particularly with respect to removal of impediments to, and perfection the mechanism of, a free and open market and a national market system, because the proposed changes will provide for consistent regulation for Members of the Exchange that are members of other SROs with analogous rules.¹⁰ Moreover, the

⁵ 17 CFR 240.17d-2.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(10).

⁸ 15 U.S.C. 78f(b)(5).

⁹ *Id.*

¹⁰ See, e.g., FINRA Rule 2251, ISE Rule 421, NYSE Arca Rule 9.4, and Nasdaq Rule 2251.

proposed changes to Rule 13.3(a), proposed Rule 13.3(d), and proposed Interpretation and Policy .01 are consistent with FINRA Rule 2251. Accordingly, the Exchange believes that the proposal fosters cooperation amongst SROs because to the extent the Exchange is able to incorporate Rule 13.3 into the 17d-2 Agreement as a rule in common between the Exchange and FINRA (a "Common Rule"), then FINRA will conduct a review for compliance with the Common Rule to the extent a Member of the Exchange is also a member of FINRA, and the Exchange will not conduct a duplicative review of the same activity by that Member. Finally, the Exchange believes that the proposal will contribute to investor protection by defining important requirements to which Members must abide with respect to proxy solicitation, proxy voting and delivery of proxy materials.

(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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2011-036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BATS-2011-036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2011-036 and should be submitted on or before October 27, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis so that the Exchange could comply with the requirements imposed by the Dodd-Frank Act, and because the proposed rule text is based upon FINRA Rule 2251, as well as ISE Rule 421, Nasdaq Rule 2251, and NYSE Arca Rule 9.4.¹¹ After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹²

The Commission believes that proposed Rule 13.3(b) is consistent with

¹¹ See Securities Exchange Act Release 63139 (October 20, 2010), 75 FR 65680 (October 26, 2010) (SR-ISE-2010-99); 61052 (November 23, 2009), 74 FR 62857 (December 1, 2009) (SR-FINRA-2009-066) (finding that the proposed rule change was consistent with the Act because the Rule "will continue to provide FINRA members with guidance on the forwarding of proxy and other issuer-related materials."); 62992 (September 24, 2010), 75 FR 60844 (October 1, 2010) (SR-NASDAQ-2010-114); and 48735 (October 31, 2003), 68 FR 63173 (November 7, 2003) (SR-PCX-2003-50).

¹² In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Section 6(b)(5)¹³ of the Act, which provides, among other things, that the rules of the Exchange must be designed to 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, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Under proposed Rule 13.3(b), a Member shall be prohibited from voting uninstructed shares unless (1) That Member is the beneficial owner of the stock; (2) pursuant to the written instructions of the beneficial owner; or (3) pursuant to the rules of any national securities exchange or association of which it is also a member, provided that the Member's records clearly indicate the procedure it is following. This provision is based on ISE Rule 421, FINRA Rule 2251 and NYSE Arca Rule 9.4, which were previously approved by the Commission.¹⁴ The Commission notes that the proposed change will provide clarity to Exchange Members going forward on whether broker discretionary voting is permitted by Exchange Members under limited circumstances when the Member is also a member of another national securities exchange or association that permits broker discretionary voting. In approving this portion of the proposal, the Commission notes that Rule 13.3(b) is consistent with the approach taken under the rules of other national securities exchanges or national securities association, and for Exchange Members who are not also members of another national securities exchange or association prohibits broker discretionary voting on any matter, consistent with investor protection and the public interest.

The Commission believes that proposed Rule 13.3(c) is consistent with Section 6(b)(10)¹⁵ of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule.

The Commission believes that proposed Rule 13.3(c) is consistent with

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 11.

¹⁵ 15 U.S.C. 78f(b)(10).

Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which enacted Section 6(b)(10), reflects the principle that “final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.”¹⁶ The proposed rule change will make the Exchange compliant with the new requirements of Section 6(b)(10) by specifically prohibiting broker-dealers, who are not beneficial owners of a security, from voting uninstructed shares in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the member receives voting instructions from the beneficial owner of the shares.¹⁷

The Commission also believes that proposed Rule 13.3(c) is consistent with Section 6(b)(5)¹⁸ of the Act, which provides, among other things, that the rules of the Exchange must be designed to 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, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the rule assures that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by a broker that has no such economic interest, which should enhance corporate governance and accountability to shareholders.¹⁹ Based on the above,

the Commission finds that the Exchange’s proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also believes that Proposed Rule 13.3(a), (d), and Interpretations and Policies .01 are consistent with Section 6(b)(5) of the Act²⁰ in that they are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission notes that the proposed changes will further align Rule 13.3 with FINRA Rule 2251, which should reduce regulatory confusion amongst Members that are also members of FINRA, and as the Exchange notes, may also reduce regulatory duplication should the proposed rule become a Common Rule under the 17d-2 Agreement. Finally, we note that the changes to Proposed Rule 13(a), (d), and Interpretations and Policies .01 will also further investor protection and the public interest by setting forth proxy voting requirements as to beneficial owner accounts as well as the requirements that a Member must follow when forwarding proxy or other materials to the beneficial owners of the stock or their designated investment advisors.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,²¹ for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Commission believes that good cause exists to grant accelerated approval to the proposed changes to Rule 13.3, because the proposal will conform the Exchange rule to FINRA Rule 2251, in particular, as well as ISE Rule 421, NYSE Arca Rule 9.4 and Nasdaq Rule 2251, which were published for public comment in the **Federal Register** and approved by the Commission, and for which no comments were received.²² Further, because proposed Rule 13.3 is

substantially similar to the FINRA, ISE, NYSE Arca and Nasdaq rules, we do not believe it raises any new regulatory issues that were not previously considered with adoption of the rules for those other self-regulatory organizations.

Moreover, proposed Rule 13.3(c) will conform the Exchange’s rules to the requirements of Section 6(b)(10) of the Act. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. Therefore, the Commission believes that good cause exists to grant accelerated approval to proposed Rule 13.3(c), because it will conform the Exchange rule to the requirements of Section 6(b)(10) of the Act. Moreover, proposed Rule 13.3(c) is substantially similar to ISE Rule 421 and Nasdaq Rule 2251.²³

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,²⁴ that the proposed rule change (SR-BATS-2011-036) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25790 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

¹⁶ See S. Rep. No. 111-176, at 136 (2010).

¹⁷ The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect the Exchange to adopt coordinating rules promptly to comply with the statute.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ As the Commission stated in approving NYSE rules prohibiting broker voting in the election of

directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. See Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR-NYSE-2006-92).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

²² See *supra* notes 11.

²³ *Id.*

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65447; File No. SR-BX-2011-067]

Self-Regulatory Organizations; NASDAQ OMX BX; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Provide an Optional Functionality for a BOX Options Participant To Prevent Its Market Maker or Proprietary Broker-Dealer Orders Entered in BOX From Trading With Quotes/Orders Originating From the Same BOX Participant and Were Resting on the BOX Book

September 30, 2011.

Pursuant to Section 19(b)(1) under 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 BX (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 Exchange. The Exchange has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Chapter 5, Section 16 (Execution and Price/Time Priority) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to provide an optional functionality for a BOX Options Participant to prevent its Market Maker or proprietary broker-dealer orders entered on BOX from trading with Market Maker quotes and orders, and proprietary broker-dealer orders that originated from the same BOX Participant and were resting on the BOX Book.

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room, on the Commission's Web site at <http://www.sec.gov>, and on the Exchange's Internet Web site at <http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/>.

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 is proposing to provide a voluntary function for a BOX Options Participant to prevent its Market Maker or proprietary broker-dealer orders entered on BOX from trading with quotes or orders that originated from the same such BOX Options Participant and were resting on the BOX Book. Under the proposal, a BOX Options Participant entering Market Maker quotes or orders, or proprietary broker-dealer orders under its specific BOX Options Participant identifier ("Firm ID") may voluntarily direct that its Market Maker or proprietary broker-dealer orders entered on BOX not execute against Market Maker quotes or orders, or proprietary broker-dealer orders resting on the BOX Book that were entered under the same Firm ID.⁴

If requested in writing by a BOX Options Participant, BOX will execute such incoming order against eligible trading interest of other market participants, in price/time priority, up to the point where the incoming Market Maker or proprietary broker-dealer order would interact with a resting Market Maker quote or order, or proprietary broker-dealer order originating from the same Firm ID and thereupon immediately cancel any remaining portion of the incoming Market Maker or proprietary broker-dealer order back

⁴ Please note that this functionality prevents Market Maker quotes and orders and proprietary orders entered under the same Firm ID from executing against each other except where a Market Maker quote is entered and there is already an order on the BOX Book, in this instance, the trade would execute. BOX Market Makers may simultaneously update all of their quotes in multiple series in a class at the same time ("bulk quote"). BOX is not enabling this Options Participant Trade Prevention functionality for a Market Maker's incoming quotes so as to avoid the cancellation of numerous, automatically submitted Market Maker bulk quotes.

to its entering party. The direction from an Options Participant shall be effective at the beginning of the trading session following the written confirmation to the Participant of the BOX Market Operations Center's ("MOC") receipt of the Participant's written direction, and until the Participant receives MOC's written confirmation of the Participant's written direction to discontinue the effectiveness of the exception for such Participant. The MOC will act on all Participant directions received to enact or discontinue the Participant match trade prevention exception no later than the beginning of the trading session on the second day following MOC's receipt of the Participant direction. The MOC will, however, turn this functionality on or off for a Participant only once per day in response to a Participant's direction.

This functionality is designed to assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell proprietary trading interest from the same firm. Additionally, BOX notes that offering this trade prevention functionality may streamline certain regulatory functions for the Exchange by reducing false positive results that may occur on wash trading surveillance reports when quotes or orders are executed under the same Firm ID. The proposed functionality applies to Market Maker quotes and orders, and proprietary broker-dealer orders and cannot be used for Public Customer orders. This functionality does not prevent any Market Maker quote or order, or any proprietary broker-dealer order from executing against any Public Customer order. Accordingly, Public Customer orders will continue to be processed in price/time priority and will not be affected by this functionality. For these reasons, BOX believes this functionality offers its Options Participants enhanced order processing functionality that may prevent potentially undesirable executions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,⁵ in general, and Section 6(b)(5) of the Act,⁶ in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

facilitating transactions in securities, 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, the Exchange believes this proposed rule change is appropriate and reasonable because the functionality will assist BOX Options Participants in reducing execution fees resulting from the potential interaction of executable proprietary buy and sell trading interest from the same firm. Additionally, the Exchange believes that offering this trade prevention functionality may streamline certain regulatory functions by reducing false positive results that may occur on wash trading surveillance reports when quotes or orders are executed under the same Firm ID. Further, the Exchange notes that similar functionality has previously been approved for BATS Options trading system, and exists on the Exchange's equities trading system.⁷ Finally, the Exchange believes the proposed rule change will benefit BOX Options Participants, will allow BOX to remain competitive with other exchanges, and that implementation should not be delayed.

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

This proposed rule change is effective upon filing pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act⁸ and Rule 19b-4(f)(6) thereunder.⁹ The Exchange asserts that the proposed rule

⁷ See Securities Exchange Act Release Nos. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR-BATS-2009-031) and 60246 (July 6, 2009), 74 FR 34057 (July 14, 2009) (SR-BX-2009-031).

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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 notes that the Exchange satisfied this five-day pre-filing requirement.

change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2011-067 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-2011-067. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2011-067 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65458; File No. SR-NYSEArca-2011-54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of the WisdomTree Dreyfus Australia & New Zealand Debt Fund Under NYSE Arca Equities Rule 8.600

September 30, 2011.

I. Introduction

On August 3, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the WisdomTree Dreyfus Australia & New Zealand Debt Fund ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on August 24, 2011.³ The Commission received no comments

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65160 (August 18, 2011), 76 FR 52998 ("Notice").

on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the WisdomTree Trust ("Trust"), which was established as a Delaware statutory trust and is registered with the Commission as an investment company. The Fund is currently known as the "WisdomTree Dreyfus New Zealand Dollar Fund" and is an actively managed exchange-traded fund.⁴ On April 14, 2011, the WisdomTree Dreyfus New Zealand Dollar Fund filed a supplement to its registration statement pursuant to Rule 497 under the Securities Act of 1933.⁵ As stated in the Supplement, the WisdomTree Dreyfus New Zealand Dollar Fund, effective on or after August 26, 2011, will change its investment objective and strategy and will be renamed the "WisdomTree Dreyfus Australia & New Zealand Debt Fund." The WisdomTree Dreyfus New Zealand Dollar Fund's new name, investment objective, and investment strategies are not reflected in the May 2008 Order and are described below. Shareholders who wish to remain in the Fund do not need to take any action; shareholders who do not wish to remain invested in the Fund may sell their Shares at any time.⁶

WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund.⁷ The Dreyfus Corporation serves as sub-adviser for the Fund ("Sub-Adviser").⁸ The Bank of New

York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.⁹ The Exchange states that, while the Adviser is not affiliated with any broker-dealer, the Sub-Adviser is affiliated with multiple broker-dealers. As a result, the Sub-Adviser has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.¹⁰ In addition, the Sub-Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund's portfolio.

WisdomTree Dreyfus Australia & New Zealand Debt Fund

The Fund's new investment objective will be to seek a high level of total returns consisting of both income and capital appreciation, and its investment strategies will be changed as described herein. Under normal circumstances, the Fund will invest at least 80% of its net assets in Fixed Income Securities denominated in Australian or New Zealand dollars and may invest up to 20% of its assets in Fixed Income Securities denominated in U.S. dollars.¹¹ "Fixed Income Securities"

include bonds, notes, or other debt obligations, such as government or corporate bonds, denominated in Australian or New Zealand dollars, including issues denominated in Australian or New Zealand dollars that are issued by "supranational issuers," such as the International Bank for Reconstruction and Development and the International Finance Corporation, as well as development agencies supported by other national governments or other regional development banks. The Fund may also invest in Money Market Securities and derivative instruments and other investments, as described below.

The Fund intends to focus its investments on "Sovereign Debt," which means Fixed Income Securities issued by governments, government agencies and government-sponsored enterprises in Australia and New Zealand that are denominated in either Australian or New Zealand dollars. This includes inflation-linked bonds designed to provide protection against increases in general inflation rates. The Fund may invest in corporate debt of companies organized in Australia or New Zealand or that have significant economic ties to Australia or New Zealand. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in corporate bonds with less than \$200 million par amount outstanding if (i) The Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Fixed Income Securities denominated in Australian or New Zealand dollars, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

The Fund's investments generally will be allocated among the countries according to relative economic size and market depth. As a larger country with greater market depth, it is anticipated that Australian issuers would comprise a larger percentage of the portfolio than

⁴ The Commission previously approved the listing and trading of shares of the WisdomTree Dreyfus New Zealand Dollar Fund on May 8, 2008 ("May 2008 Order"). See Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of twelve actively-managed funds of the WisdomTree Trust on the Exchange). In the May 2008 Order, the Commission also approved the WisdomTree Australian Dollar Fund for Exchange listing and trading; however, the shares of such fund has not commenced trading.

⁵ See Form 497, Supplement to Registration Statement ("Supplement") on Form N-1A for the Trust ("Registration Statement"), dated April 14, 2011 (File Nos. 333-132380 and 811-21864).

⁶ The Adviser represents that the Supplement was sent to shareholders of the Fund to notify them of the planned change. The Supplement and additional information are posted on the Fund's Web site at <http://www.wisdomtree.com>.

⁷ WisdomTree Investments, Inc. is the parent company of WisdomTree Asset Management.

⁸ The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

⁹ The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812-13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

¹⁰ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) The Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

¹¹ The term "under normal market circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

New Zealand issuers. The Fund will invest in both investment grade and non-investment grade securities. Securities rated investment grade generally are considered to be of higher credit quality and subject to lower default risk. Although non-investment grade securities may offer the potential for higher yields, they generally are subject to a higher potential risk of loss. The Fund expects to have 75% or more of its assets invested in investment grade bonds, though this percentage may change in accordance with market conditions and/or debt ratings assigned to countries and issuers.

Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality.¹²

The Fund will attempt to limit interest rate risk by maintaining an aggregate portfolio duration of between two and eight years under normal market conditions, but the Fund's actual portfolio duration may be longer or shorter depending upon market conditions. The Fund may also invest in short-term Money Market Securities (as defined below) denominated in the currencies of countries in which the Fund invests.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers and will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government, or any non-U.S. government, or their respective agencies

and instrumentalities or government-sponsored enterprises).

The Fund intends to qualify each year as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended. In addition to satisfying the RIC diversification requirements, no portfolio security held by the Fund (other than U.S. government securities and/or non-U.S. government securities) will represent more than 30% of the weight of the Fund's portfolio, and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund may treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, as applicable.

Money Market Securities

Assets not invested in Fixed Income Securities generally will be invested in Money Market Securities to help manage cash flows in and out of the Fund, such as in connection with the payment of dividends or expenses, to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. Money Market Securities include short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by short-term U.S. government securities or non-U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade, except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to Money Market Securities rated investment grade.¹³

Derivative Instruments and Other Investments

As part of its investment strategy, the Fund may use derivative instruments, such as listed futures contracts,¹⁴

forward currency contracts, non-deliverable forward currency contracts, currency and interest rate swaps, currency options, options on futures contracts, swap agreements, and credit-linked notes.¹⁵ The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. Money Market Securities. Under normal circumstances, the Fund will invest no more than 20% of the value of the Fund's net assets in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures, forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will set aside liquid assets to cover open positions with respect to such transactions.

The Fund may engage in foreign currency transactions and invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to "lock in" the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

The Fund may enter into swap agreements, including interest rate swaps and currency swaps (e.g., Australian dollar vs. U.S. dollar), and may buy or sell put and call options on foreign currencies, either on exchanges or in the over-the-counter market. The

United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions ("IOSCO") Multilateral Memorandum of Understanding ("MMOU"), which is a multi-party information sharing arrangement among major financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

¹⁵ The Fund's investments in credit-linked notes will be limited to notes providing exposure to Fixed Income Securities denominated in Australian or New Zealand dollars. The Fund's overall investment in credit-linked notes will not exceed 25% of the Fund's assets. See Notice, *supra* note 3, at n.16.

¹² In determining whether a security is of "comparable quality," the Adviser or Sub-Adviser will consider, for example, current information about the credit quality of the issuer and whether or not the issuer of the security has issued other rated securities.

¹³ See *id.*

¹⁴ The listed futures contracts in which the Fund will invest may be listed on exchanges in the U.S. or in London, Hong Kong, or Singapore. Each of the

Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks and may enter into reverse repurchase agreements. In addition, the Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds). The Fund may invest up to an aggregate amount of 15% of its net assets in (a) illiquid securities and (b) Rule 144A securities. The Exchange represents that the Fund will not invest in non-U.S. equity securities.

Additional information regarding the Trust, Fund, Shares, the Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice, the Registration Statement, and the Supplement, as applicable.¹⁶

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the

maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be updated and widely disseminated at least every 15 seconds during the Core Trading Session on the Exchange.²⁰ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund that will form the basis for the Fund's calculation of the net asset value ("NAV") at the end of the business day.²¹ The NAV of the Fund's Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (generally 4 p.m. Eastern time). In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day and end-of-day prices are readily available through major market data providers and broker-dealers for the Fixed Income Securities, Money Market Securities, and derivative instruments held by the Fund. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV, and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that

the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²² In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²³ The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.²⁴ The Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.²⁵ The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must

²² See NYSE Arca Equities Rule 8.600(d)(1)(B).

²³ With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

²⁴ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

²⁵ See *supra* note 10 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

¹⁶ See Notice, Registration Statement, and Supplement, *supra* notes 3 and 5, respectively.

¹⁷ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁸ 17 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁰ During hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

²¹ The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund and the characteristics of such assets.

implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.²⁶

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading and other information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A-3 under the Act,²⁷ as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not invest in non-U.S. equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(7) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSEArca-2011-54) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25830 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65457; File No. SR-NYSEAmex-2011-63]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Equities Rule 17(c)(2)(B) To Make Permanent the Pilot Program That Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the NYSE Amex Equities Rule 17(c)(2)(A)(ii) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

I. Introduction

On August 18, 2011, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility

of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Amex Equities Rule 17(c)(2)(B) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the **Federal Register** on August 26, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Arca Securities is a broker-dealer that is an NYSE Amex member organization,⁴ and, among other things, is permitted to provide to members of the NYSE and NYSE Arca optional routing services to other market centers.⁵ On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of equity orders that Arca Securities routes in its capacity as a facility of NYSE and NYSE Arca on a pilot basis ending September 30, 2011.⁶ The Exchange now seeks permanent approval of this inbound routing pilot.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁹ which requires, among other things, that a national

³ See Securities Exchange Act Release No. 65184 (August 22, 2011), 76 FR 53511 ("Notice").

⁴ Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Arca, Inc. ("NYSE Arca"), the Exchange, and New York Stock Exchange LLC ("NYSE"). Thus, Arca Securities is an affiliate of each of these exchanges.

⁵ Arca Securities operates as a facility of NYSE and NYSE Arca that provides outbound routing from NYSE and NYSE Arca to other market centers, subject to certain conditions. See Securities Exchange Act Release Nos. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007) (SR-NYSE-2007-29); and 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

⁶ See Securities Exchange Act Release No. 64728 (June 23, 2011), 76 FR 38223 (June 29, 2011) (SR-NYSEAmex-2011-39) ("Routing Pilot Release"). See also Notice, 76 FR at 53511, n.5 and accompanying text.

⁷ See Notice.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(1).

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁶ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²⁷ See 17 CFR 240.10A-3.

securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Amex by Arca Securities from its affiliates, NYSE and NYSE Arca, on a pilot basis.¹¹ The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:¹²

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports,

alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;¹³

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.¹⁴

The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.¹⁵

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁶ Although the Commission

¹³ See Notice, 76 FR at 53512, n.8 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Amex Equities Rule 17(c)(2)(A)(ii) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Amex Equities Rule 17(c)(2). See Notice, 76 FR at 53512.

¹⁴ See NYSE Amex Equities Rule 17(c)(2). See also Notice, 76 FR at 53512.

¹⁵ See Notice, 76 FR at 53512.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving

continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹⁷ combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE Amex's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEAmex-2011-63) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25829 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

¹⁷ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Routing Pilot Release. See also *supra* note 6 and accompanying text.

¹² See Notice, 76 FR at 53512.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65456; File No. SR–NYSEArca–2011–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change Amending NYSE Arca Options Rule 6.96(b)(2) To Make Permanent the Pilot Program That Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Arca Options Rule 6.96(b)(1)(B) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

I. Introduction

On August 18, 2011, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b–4 thereunder,² a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC (“Arca Securities”) in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Arca Options Rule 6.96(b)(1)(B) to more accurately reflect the regulatory services agreement (“RSA”) between the Exchange and the Financial Industry Regulatory Authority (“FINRA”). The proposed rule change was published for comment in the **Federal Register** on August 26, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Arca Securities is a broker-dealer that is an NYSE Arca options trading permit holder (“OTP Holder”),⁴ and, among other things, is permitted to provide to members of NYSE Amex LLC (“NYSE

Amex”) optional routing services to other market centers.⁵ On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of option orders that Arca Securities routes in its capacity as a facility of NYSE Amex on a pilot basis ending September 30, 2011.⁶ The Exchange now seeks permanent approval of this inbound routing pilot.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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.

⁵ Arca Securities operates as a facility of NYSE Amex that provides outbound routing from NYSE Amex to other market centers, subject to certain conditions. See Securities Exchange Act Release Nos. 64732 (June 23, 2011), 76 FR 38240 (June 29, 2011) (SR–NYSEAmex–2011–40); and 58705 (October 1, 2008) 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63).

⁶ See Securities Exchange Act Release No. 64731 (June 23, 2011), 76 FR 38237 (June 29, 2011) (SR–NYSEArca–2011–39) (“Routing Pilot Release”). See also Notice, 76 FR at 53515, n.5 and accompanying text.

⁷ See Notice.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(1).

¹⁰ 15 U.S.C. 78f(b)(5).

Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities’s affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Arca by Arca Securities from its affiliate, NYSE Amex, on a pilot basis.¹¹ The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:¹²

- First, the Exchange will maintain an agreement pursuant to Rule 17d–2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively “Exceptions”) in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;¹³

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent

¹¹ See Routing Pilot Release. See also *supra* note 6 and accompanying text.

¹² See Notice, 76 FR at 53515.

¹³ See Notice, 76 FR at 53515, n.7 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Arca Options Rule 6.96(b)(1)(B) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange’s Chief Regulatory Officer (“CRO”). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Arca Options Rule 6.96(b). See Notice, 76 FR at 53516.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 65182 (August 22, 2011), 76 FR 53515 (“Notice”).

⁴ “OTP Holder” is defined in NYSE Arca Options Rule 1.1(q). Arca Securities is owned indirectly by NYSE Euronext (“NYSE Euronext”), which also indirectly owns three registered securities exchanges—NYSE Amex LLC (“NYSE Amex”), the Exchange, and New York Stock Exchange LLC (“NYSE”). Thus, Arca Securities is an affiliate of each of these exchanges.

Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated OTP Holders of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other OTP Holder.¹⁴ The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.¹⁵

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁶ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are

¹⁴ See NYSE Arca Options Rule 6.96(b). See also Notice, 76 FR at 53515.

¹⁵ See Notice, 76 FR at 53515.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹⁷ combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE Arca's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEArca-2011-62) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25828 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65455; File No. SR-NYSEArca-2011-61]

Self-Regulatory Organizations; NYSE Arca, Inc; Order Approving a Proposed Rule Change Amending NYSE Arca Equities Rule 7.45(c)(2) To Make Permanent the Pilot Program That Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Arca Equities Rule 7.45(c)(1)(B) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

I. Introduction

On August 18, 2011, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the existing

¹⁷ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Arca Equities Rule 7.45(c)(1)(B) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the **Federal Register** on August 26, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Arca Securities is a broker-dealer that is an NYSE Arca equity trading permit holder ("ETP Holder"),⁴ and, among other things, is permitted to provide to members of NYSE and NYSE Amex optional routing services to other market centers.⁵ On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of equity orders that Arca Securities routes in its capacity as a facility of NYSE and NYSE Amex on a pilot basis ending September 30, 2011.⁶ The Exchange now seeks permanent approval of this inbound routing pilot.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the

³ See Securities Exchange Act Release No. 65185 (August 22, 2011), 76 FR 53509 ("Notice").

⁴ "ETP Holder" is defined in NYSE Arca Equities Rule 1.1(n). Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Amex LLC ("NYSE Amex"), the Exchange, and New York Stock Exchange LLC ("NYSE"). Thus, Arca Securities is an affiliate of each of these exchanges.

⁵ Arca Securities operates as a facility of NYSE and NYSE Amex that provides outbound routing from NYSE and NYSE Amex to other market centers, subject to certain conditions. See Securities Exchange Act Release Nos. 58705 (October 1, 2008) 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63); and 55590 (April 5, 2007) 72 FR 18707 (April 13, 2007) (SR-NYSE-2007-29).

⁶ See Securities Exchange Act Release No. 64730 (June 23, 2011), 76 FR 38235 (June 29, 2011) (SR-NYSEArca-2011-38) ("Routing Pilot Release"). See also Notice, 76 FR at 53510, n.5 and accompanying text.

⁷ See Notice.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's

Continued

Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Arca by Arca Securities from its affiliates, NYSE and NYSE Amex, on a pilot basis.¹¹ The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:¹²

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for

impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(1).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Routing Pilot Release. See also *supra* note 6 and accompanying text.

¹² See Notice, 76 FR at 53510.

Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;¹³

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ETP Holders of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ETP Holder.¹⁴ The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.¹⁵

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive

¹³ See Notice, 76 FR at 53510, n.8 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Arca Equities Rule 7.45(c)(1)(B) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Arca Equities Rule 7.45(c). See Notice, 76 FR at 53510.

¹⁴ See NYSE Arca Equities Rule 7.45(c). See also Notice, 76 FR at 53510.

¹⁵ See Notice, 76 FR at 53510.

advantage.¹⁶ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹⁷ combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE Arca's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEArca-2011-61) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy.

Secretary.

[FR Doc. 2011-25827 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

¹⁶ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

¹⁷ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65454; File No. SR-CBOE-2011-090]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Inactivity Fee on the CBOE Stock Exchange Fees Schedule

September 30, 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 28, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Inactivity Fee on the CBOE Stock Exchange (“CBSX”) Fees Schedule. The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

CBSX imposes an inactivity fee of \$5,000 per month on any CBSX Trading

Permit Holder that trades less than an average of 100,000 shares per day over a calendar month period. CBSX imposes this fee because CBSX may only issue a finite number of Trading Permits, and when permits are occupied by users that do not engage in meaningful trading on CBSX, this could occur at the expense of a potential permit holder that might be willing to add meaningful liquidity to the CBSX marketplace.

CBSX proposes to delay the imposition of the Inactivity Fee on a CBSX Trading Permit Holder until the calendar month following the first full calendar month after the effective date of the Trading Permit. For example, if the effective date of a Trading Permit is August 15, then the Exchange may not impose the Inactivity Fee on the holder of that permit until October, since September is the first full calendar month after the Trading Permit’s effective date. Under this proposal, all new CBSX Trading Permit Holders will have at least one calendar month to connect to CBSX before they may be assessed the Inactivity Fee.³ CBSX believes this grace period is appropriate because it takes approximately one month for new CBSX Trading Permit Holders to establish connectivity to CBSX before they may begin effecting transactions on CBSX. This proposal will accommodate new CBSX Trading Permit Holders during this connectivity phase in which they may be unable to trade at sufficient levels to avoid incurring the Inactivity Fee.

CBSX also proposes to provide a CBSX Trading Permit Holder that incurs the Inactivity Fee with an opportunity to have the fee withdrawn. If a CBSX Trading Permit Holder incurs the Inactivity Fee for a calendar month period but trades at least an average of 200,000 shares per day (equal to the minimum trading level for the month plus the minimum trading level for the previous month for which the fee was incurred) over the following calendar month period, then CBSX will rescind the fee for the previous calendar month period. For example, if a CBSX Trading Permit Holder trades an average of 75,000 shares per day in August and the Exchange imposes the \$5,000 Inactivity Fee on the holder, but the holder then trades an average of 250,000 shares per day in September, CBSX will rescind the Inactivity Fee for August. CBSX believes this provision is appropriate because it allows CBSX Trading Permit Holders to not be penalized for a single lower-volume month if they are able to

“make up” for the volume during the following month.

The proposed rule change will take effect on October 1, 2011.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and furthers the objectives of Section 6(b)(4)⁵ of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBSX Trading Permit Holders and other persons using CBSX facilities.

The proposal to delay the imposition of the Inactivity Fee is reasonable because it provides new CBSX Trading Permit Holders with sufficient time to connect to CBSX without incurring the Inactivity Fee, during which time they are not yet able to engage in meaningful trading on CBSX. Additionally, this proposal is equitable and not unfairly discriminatory because it applies to all new CBSX Trading Permit Holders and provides each of them with at least one calendar month to connect to CBSX before being subject to the Inactivity Fee.⁶

The proposal to provide a CBSX Trading Permit Holder that incurs the Inactivity Fee with an opportunity to have the fee withdrawn is certainly reasonable because it creates a circumstance in which a CBSX Trading Permit Holder can avoid paying a fee. Further, this proposal is equitable and not unfairly discriminatory because it provides this opportunity to all CBSX Trading Permit Holders that incur the Inactivity Fee.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See e-mail from Jeff Dritz, Attorney, CBOE, to Steve Kuan, Special Counsel, Division of Trading and Markets, Commission, on September 30, 2011.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4).

⁶ See Note 3, *supra*.

other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act⁷ and subparagraph (f)(2) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2011-090 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2011-090. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and

copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2011-090 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25826 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65453; File No. SR-NYSE-2011-45]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending NYSE Rule 17(c)(2)(B) To Make Permanent the Pilot Program That Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Rule 17(c)(2)(A)(ii) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

I. Introduction

On August 18, 2011, New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Rule 17(c)(2)(A)(ii) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Federal Register on August 26, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Arca Securities is a broker-dealer that is an NYSE member,⁴ and, among other things, is permitted to provide to members of NYSE Amex and NYSE Arca optional routing services to other market centers.⁵ On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of equity orders that Arca Securities routes in its capacity as a facility of NYSE Amex and NYSE Arca on a pilot basis ending September 30, 2011.⁶ The Exchange now seeks permanent approval of this inbound routing pilot.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section

³ See Securities Exchange Act Release No. 65183 (August 22, 2011), 76 FR 53513 ("Notice").

⁴ Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Amex LLC ("NYSE Amex"), the Exchange, and NYSE Arca, Inc. ("NYSE Arca"). Thus, Arca Securities is an affiliate of each of these exchanges.

⁵ Arca Securities operates as a facility of NYSE Amex and NYSE Arca that provides outbound routing from NYSE Amex and NYSE Arca to other market centers, subject to certain conditions. See Securities Exchange Act Release Nos. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR-Amex-2008-63); and 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

⁶ See Securities Exchange Act Release No. 64729 (June 23, 2011), 76 FR 38232 (June 29, 2011) (SR-NYSE-2011-24) ("Routing Pilot Release"). See also Notice, 76 FR at 53513, n.5 and accompanying text.

⁷ See Notice.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(1).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f)(2).

6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Arca by Arca Securities from its affiliates, NYSE Amex and NYSE Arca, on a pilot basis.¹¹ The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:¹²

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange

quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;¹³

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated member organizations of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other member organization.¹⁴ The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.¹⁵

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁶ Although the Commission

¹³ See Notice, 76 FR at 53514, n.8 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Rule 17(c)(2)(A)(ii) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Rule 17(c)(2). See Notice, 76 FR at 53514.

¹⁴ See NYSE Rule 17(c)(2). See also Notice, 76 FR at 53514.

¹⁵ See Notice, 76 FR at 53514.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014

continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹⁷ combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSE-2011-45) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25825 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65452; File No. SR-C2-2011-023]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend C2 Rule 8.2 Concerning the Market-Maker Registration Cost for SPXPM

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

(January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

¹⁷ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See Routing Pilot Release. See also *supra* note 6 and accompanying text.

¹² See Notice, 76 FR at 53514.

“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2011, the C2 Options Exchange, Incorporated (“Exchange” or “C2”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to amend C2 rules relating to the Market-Maker registration cost for P.M.-settled S&P 500 Index options (SPXPM). The text of the proposed rule change is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule change is to amend C2 Rule 8.2 to establish Market-Maker registration costs for SPXPM options before trading commences in that options class.⁵ The Exchange proposes to amend Rule 8.2(d) to specifically reference SPXPM options as

having a registration cost of 1.0. The Exchange notes that the new registration cost for SPXPM options will be the initial registration cost because this options class is not currently trading. Thus, to trade SPXPM, a C2 Market-Maker will be required to obtain a dedicated Market-Maker permit. Pursuant to the C2 fee schedule, a Market-Maker permit costs \$5,000 per month (additionally the Exchange anticipates adopting an SPXPM Tier Appointment cost in the near future).

Among other reasons, the Exchange believes that the registration cost change for SPXPM is reasonable in light of the fact that it is a new product and the registration cost is comparable to the 1.0 appointment cost for A.M.-settled S&P 500 Index options traded on the Chicago Board Options Exchange, Incorporated (“CBOE”) under CBOE Rule 8.2(c)(iii).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act⁶ requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Among other reasons, the Exchange believes that the registration cost change for SPXPM is reasonable in light of the fact that it is a new product and the registration cost is comparable to the 1.0 appointment cost for A.M.-settled S&P 500 Index options traded on the CBOE under CBOE Rule 8.2(c)(iii).

B. Self-Regulatory Organization’s Statement on Burden on Competition

C2 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 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 rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁷ and Rule 19b-4(f)(6) thereunder.⁸

The Exchange has requested that the Commission waive the 30-day operative delay period. Waiving the operative delay will enable the Exchange to impose the market-maker registration cost for SPXPM options before the commencement of trading in that options class. Because C2’s proposal for a 1.0 registration cost for SPXPM is comparable to the existing 1.0 registration cost for the similar S&P 500 index option traded on CBOE, C2’s proposal is consistent with CBOE’s current rule and does not raise any new or novel issues. Accordingly, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.⁹

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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 this requirement.

⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 34-65256 (September 2, 2011), 76 FR 55969 (September 9, 2011) (SR-C2-2011-008).

⁶ 15 U.S.C. 78f(b)(5).

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-C2-2011-023 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-C2-2011-023. 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 C2. 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-C2-2011-023 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25823 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65451; File No. SR-NYSEAmex-2011-64]

Self-Regulatory Organizations; NYSE Amex LLC; Order Approving a Proposed Rule Change Amending NYSE Amex Options Rule 993NY(b)(2) To Make Permanent the Pilot Program that Permits the Exchange To Accept Inbound Orders Routed by Archipelago Securities LLC in Its Capacity as a Facility of Affiliated Exchanges and To Clarify the Text of NYSE Amex Options Rule 993NY(b)(1)(B) to More Accurately Reflect the Regulatory Services Agreement Between the Exchange and the Financial Industry Regulatory Authority

September 30, 2011.

I. Introduction

On August 18, 2011, NYSE Amex LLC ("NYSE Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to make permanent the existing pilot program that permits the Exchange to accept inbound orders routed by Archipelago Securities LLC ("Arca Securities") in its capacity as a facility of an affiliated exchange (with the attendant obligations and conditions), and to clarify the text of NYSE Amex Options Rule 993NY(b)(2) to more accurately reflect the regulatory services agreement ("RSA") between the Exchange and the Financial Industry Regulatory Authority ("FINRA"). The proposed rule change was published for comment in the **Federal Register** on August 26, 2011.³ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

Arca Securities is a broker-dealer that is an NYSE Amex trading permit holder

("ATP Holder"),⁴ and, among other things, is permitted to provide to members of NYSE Arca optional routing services to other market centers.⁵ On June 16, 2011, the Exchange filed an immediately effective proposed rule change to, among other things, permit the Exchange to receive inbound routes of option orders that Arca Securities routes in its capacity as a facility of NYSE Arca on a pilot basis ending September 30, 2011.⁶ The Exchange now seeks permanent approval of this inbound routing pilot.⁷

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,⁹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in

⁴ "ATP Holder" is defined in NYSE Amex Options Rule 900.2NY(5). Arca Securities is owned indirectly by NYSE Euronext ("NYSE Euronext"), which also indirectly owns three registered securities exchanges—NYSE Arca, Inc. ("NYSE Arca"), the Exchange, and New York Stock Exchange LLC ("NYSE"). Thus, Arca Securities is an affiliate of each of these exchanges.

⁵ Arca Securities operates as a facility of NYSE Arca that provides outbound routing from NYSE Arca to other market centers, subject to certain conditions. See Securities Exchange Act Release No. 52497 (September 22, 2005), 70 FR 56949, 56952-56953 (September 29, 2005) (SR-PCX-2005-90).

⁶ See Securities Exchange Act Release No. 64732 (June 23, 2011), 76 FR 38240 (June 29, 2011) (SR-NYSEAmex-2011-40) ("Routing Pilot Release"). See also Notice, 76 FR at 53517, n.5 and accompanying text.

⁷ See Notice.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(1).

¹⁰ 15 U.S.C. 78f(b)(5).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65181 (August 22, 2011), 76 FR 53516 ("Notice").

regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; 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. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to Arca Securities's affiliation with the Exchange to permit the Exchange to accept orders routed inbound to NYSE Amex by Arca Securities from its affiliates, NYSE and NYSE Arca, on a pilot basis.¹¹ The Exchange now seeks to make this pilot permanent, and to more accurately reflect in its rule text its RSA with FINRA. Specifically, the Exchange states it is in compliance with the following obligations and conditions:¹²

- First, the Exchange will maintain an agreement pursuant to Rule 17d-2 under the Exchange Act with FINRA to relieve the Exchange of regulatory responsibilities for Arca Securities with respect to rules that are common rules between the Exchange and FINRA, and maintain an RSA with FINRA to perform regulatory responsibilities for Arca Securities for unique Exchange rules.

- Second, the RSA will require the Exchange to provide FINRA with information, in an easily accessible manner, regarding all exception reports, alerts, complaints, trading errors, cancellations, investigations, and enforcement matters (collectively "Exceptions") in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules and of which the Exchange becomes aware, and shall require that FINRA provide a report, at least quarterly, to the Exchange quantifying all Exceptions in which Arca Securities is identified as a participant that has potentially violated Exchange or Commission Rules;¹³

¹¹ See Routing Pilot Release. See also *supra* note 6 and accompanying text.

¹² See Notice, 76 FR at 53517.

¹³ See Notice, 76 FR at 53517, n.7 and accompanying text. The Exchange proposed to modify this provision, as set forth in NYSE Amex Options Rule 993NY(b)(1)(B) to more accurately reflect its RSA with FINRA and specify that the quarterly report of Exceptions shall be provided to

- Third, the Exchange, on behalf of its parent, NYSE Euronext, will establish and maintain procedures and internal controls reasonably designed to prevent Arca Securities from receiving any benefit, taking any action or engaging in any activity based on non-public information regarding planned changes to Exchange systems, obtained as a result of its affiliation with the Exchange, until such information is available generally to similarly situated ATP Holders of the Exchange in connection with the provision of inbound order routing to the Exchange; and

- Fourth, the Exchange may furnish to Arca Securities the same information on the same terms that the Exchange makes available in the normal course of business to any other ATP Holder.¹⁴ The Exchange believes that by meeting the above-listed conditions it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to Arca Securities, and has demonstrated that Arca Securities cannot use any information it may have because of its affiliation with the Exchange to its advantage.¹⁵

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹⁶ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed

the Exchange's Chief Regulatory Officer ("CRO"). The Exchange states that upon approval of this change, it will continue to comply with the obligations and conditions as set forth in NYSE Amex Options Rule 993NY(b). See Notice, 76 FR at 53517.

¹⁴ See NYSE Amex Options Rule 993NY(b). See also Notice, 76 FR at 53517.

¹⁵ See Notice, 76 FR at 53517.

¹⁶ See, e.g., Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 8, 2008) (SR-Amex-2008-62) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR-ISE-2009-85) (order approving the purchase by ISE Holdings of an ownership interest in DirectEdge Holdings LLC); and 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR-NYSE-2008-120) (order approving a joint venture between NYSE and BIDS Holdings L.P.).

below, the Commission believes that it is consistent with the Act to permit Arca Securities to provide inbound routing to the Exchange on a permanent basis instead of a pilot basis, subject to the other conditions described above.

The Exchange has proposed four ongoing conditions applicable to Arca Securities's routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹⁷ combined with FINRA's monitoring of Arca Securities's compliance with the Exchange's rules and quarterly reporting to NYSE Amex's CRO, will help to protect the independence of the Exchange's regulatory responsibilities with respect to Arca Securities.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEAmex-2011-64) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25822 Filed 10-5-11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65444; File No. SR-CHX-2011-27

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate Certain References to the Exchange Acting as the Designated Examining Authority

September 30, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),¹ and Rule 19b-4² thereunder, notice is hereby given that on September 22, 2011, the Chicago Stock Exchange, Inc. ("CHX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

¹⁷ This oversight will be accomplished through the Regulatory Contract between the Exchange and FINRA and a 17d-2 Agreement.

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change as described in Items I and II below, which Items have been prepared by the CHX. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder. 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

CHX proposes to amend its rules to eliminate certain references to the Exchange acting as the Designated Examining Authority. The text of this proposed rule change is available on the Exchange’s Web site at (<http://www.chx.com>) and in the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule changes 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 is proposing to delete certain references in its rules to its status as the Designated Examining Authority (“DEA”).⁵ In the impacted rules, the DEA references generally act to limit the scope and applicability of those rules to firms for which the Exchange acts as the DEA. While this limitation may be appropriate in some contexts, for example the Rules in Article 7 regarding Financial Responsibility and Reporting Requirements, the Exchange no longer believes that these provisions are appropriate in certain other contexts.⁶

The Exchange is therefore submitting this rule proposal to delete certain of those references and make appropriate changes to the remaining provisions.⁷

In Article 6, Rule 5(a), (Supervision of Registered Persons and Branch and Resident Offices), the Exchange proposes to delete the limiting reference to Participants Firms for which the Exchange acts as the DEA. The Exchange proposes that the provisions of Rule 5(a) will apply equally to all Participant Firms.

In Article 17 (Institutional Brokers), Rule 1 (Registration and Appointment) and in Interpretation and Policy .01 of Article 17, Rule 3 (Responsibilities), the Exchange proposes to delete the requirement that Participant Firms seeking to register as an Institutional Broker [sic] must have the Exchange act as the DEA. The Exchange does not believe that it is necessary that the Exchange examine a Participant Firm for its compliance with applicable financial responsibility rules in order that it qualify for status as an Institutional Broker.⁸ The Exchange notes that it conducts comprehensive daily surveillance of Institutional Broker trading activity on the CHX and conducts examinations for supervisory and trading-related issues of all CHX-registered Institutional Brokers, irrespective of whether it acts as the DEA. The Exchange also administers a qualification examination for all individuals acting as an Institutional Broker Representative (“IBR”). Only an approved IBR may handle and accept orders from customers of the Institutional Broker firm. Given this oversight structure, the requirement that the CHX act as the DEA for Institutional Brokers in all cases appears superfluous and unnecessarily restrictive.

³A to notify the Exchange prior to opening a Joint Back Office arrangement. Similarly, Article 7, Rule 9 requires firms for which the CHX is the DEA to file reports of short positions carried by the firm.

⁷Certain existing rules regarding the qualification and examination of individuals associated with a Participant firm contain references to the CHX acting as DEA. The Exchange is proposing to delete those references as part of a separate rule filing making additional changes to those provisions. Current Article 8, Rule 13 (Advertising and Promotion) also contains similar references and the Exchange plans on eliminating those in a subsequent proposal to conform our rules with those of the Financial Industry Regulatory Agency (“FINRA”) in order to make them “common” for purposes of our agreement with FINRA for the allocation of regulatory responsibility of common rules for dual members.

⁸The elimination of this requirement does not imply that an Institutional Broker firm will not be examined for compliance with financial responsibility rules. It simply means that another SRO will perform the examination function for those rules.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act in general,⁹ and furthers [sic] the objectives of Section 6(b)(5) in particular,¹⁰ in that it is [sic] designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. The proposed changes will expand the reach of the Exchange rules in circumstances where it is appropriate and fair to do so, and will eliminate outdated limitations of certain provisions to a subset of Exchange Participants. The broad application of Exchange rules to all Participants should result in the fair and evenhanded application of such rules to Participant firms generally.

B. Self-Regulatory Organization’s Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6)¹² thereunder, the Exchange has designated this proposal as one that effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Rule 19b-4(f)(6)¹³ requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ *Id.*

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Although not a defined term in our rules, the DEA is the Self-Regulatory Organization (“SRO”) with the responsibility for examining a member for compliance with applicable financial responsibility rules pursuant to Exchange Act Rule 17d-1. 17 CFR 240.17d-1.

⁶ For example, Participants for which the Exchange is the DEA are required by Article 7, Rule

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Under Rule 19b-4(f)(6) of the Act,¹⁴ a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Commission is waiving the 30-day operative period for this filing so that it may become effective and operative upon filing.¹⁵ The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest as the waiver will allow the Exchange to implement the change right away. The proposed rule change eliminates references to DEA which limit the applicability of some rules to firms for which the CHX serves as DEA. These rules will now apply to all member firms.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form; (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-CHX-2011-27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CHX-2011-27. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CHX-2011-27 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-65459; File No. SR-FINRA-2011-053]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change to Amend Certain Trade Reporting and Compliance Rules

September 30, 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 22, 2011, the 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 amend FINRA Rule 6730 regarding reporting a transaction in a TRACE-Eligible Security, other than a transaction in an Asset-Backed Security, on a non-business day, and reporting size (volume), commission and settlement, in order for FINRA to consolidate all TRACE-Eligible Securities transaction processing and data management on a single technology platform, the Multi Product Platform ("MPP").

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, 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, TRACE-Eligible Securities that are Asset-Backed Securities are processed on FINRA's enhanced technology platform, MPP.³ FINRA proposes certain amendments to the reporting requirements of Rule 6730 of the Trade Reporting and Compliance Engine (TRACE) rules that will permit FINRA to migrate all other TRACE-Eligible Securities to MPP. The proposed amendments are substantially similar to requirements that currently apply to transactions in Asset-Backed Securities, and will simplify reporting a

¹⁴ *Id.*

¹⁵ For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See also 17 CFR 200.30-3(a)(59).

¹⁶ 17 CFR 200.30-3(a)(12).

¹⁷ 15 U.S.C. 78s(b)(1).

²⁷ 17 CFR 240.19b-4.

³ "TRACE-Eligible Security" and "Asset-Backed Security" are defined in, respectively, Rule 6710(a) and Rule 6710(m).

transaction executed on a holiday or a weekend, the size of a transaction, commission, if charged, and settlement.

FINRA believes that the proposed consolidation of all TRACE-Eligible Securities on MPP will improve TRACE reporting and provide several benefits to broker-dealers. First, the MPP program incorporates more current industry standards, conventions and terms, and the proposed amendments to Rule 6730 to incorporate those standards will clarify and simplify the reporting requirements, and reduce reporting errors and costs. For example, when quoting, trading and recording positions in books and records, generally, the size (volume) of a transaction or a position is stated as the total par or principal value, which is how size (volume) of a TRACE transaction would be reported on MPP.⁴ The proposed amendments should reduce the incidences of data “translations” made by a broker-dealer when transaction data is both recorded in internal firm systems and reported to TRACE, and therefore should reduce operational complexities and reporting errors and fees, improve compliance, and reduce system-related costs. Second, MPP will provide broker-dealers a wider range of options for reporting, most notably providing support for the Financial Information eXchange (“FIX”) protocol. Third, MPP provides enhanced functionality for the management of TRACE data. Broker-dealers will be able to access TRACE-Eligible Securities data with greater ease and more quickly, including obtaining real-time intra-day data changes or additions. Fourth, standardizing most of the reporting requirements for TRACE-Eligible Securities and consolidating all TRACE-Eligible Securities on a single improved platform will allow broker-dealers to maintain one interface for all TRACE reporting, which should permit broker-dealers to reduce the operational complexity of reporting, improve the accuracy overall of their TRACE reporting, and eliminate costs associated with maintaining multiple technology platforms.

The proposed amendments to Rule 6730 regarding reporting a transaction executed on a holiday or a weekend, the size (volume) of a transaction, commission, if charged, and settlement are discussed below. In addition, the proposed rule change includes minor administrative, technical and clarifying changes.

⁴ Similarly, the proposed change in Rule 6730 regarding settlement, which would require reporting of the actual date of settlement and delete the use of modifiers that are required currently in many instances, may simplify reporting settlement.

TRACE-Eligible Securities Transactions Executed on a Non-Business Day

Currently, as set forth in Rule 6730(a)(1)(D) and Rule 6730(a)(2)(B), transactions in TRACE-Eligible Securities, except Asset-Backed Securities, that are executed on a weekend, holiday or other day when the TRACE system is not open must be reported the next business day (T + 1), designated “as/of,” and are subject to two unique requirements. First, the date of execution (“Trade Date”) reported to TRACE is not the actual date the trade was executed; instead, a member must report as the Trade Date the day (*i.e.*, T + 1) that the report must be timely submitted. Second, the execution time reported must be “12:01:00 a.m. Eastern Time” (“00:01:00”), instead of the actual Time of Execution.⁵ The two requirements were established at the inception of TRACE because, at that time, the TRACE system did not recognize any day on which the TRACE system is closed as a valid Trade Date, and the two requirements allow FINRA to distinguish transactions in TRACE-Eligible Securities executed on non-business days from all other reported transactions.

FINRA has enhanced the TRACE system to recognize, for all types of TRACE-Eligible Securities, any calendar date as a valid Trade Date.⁶ Accordingly, FINRA proposes to amend Rule 6730(a)(1)(D) and Rule 6730(a)(2)(B) to delete in both provisions the two unique requirements, which are no longer necessary, and to require members to report transactions executed on non-business days in the same manner that transactions executed after or before TRACE System Hours on business days are reported currently.⁷ FINRA also proposes to combine Rule 6730(a)(1)(B) and Rule 6730(a)(1)(D) as renumbered amended Rule 6730(a)(1)(D), and delete current Rule 6730(a)(1)(B). In addition, FINRA proposes to reorganize the reporting requirements in Rule 6730(a)(1)(A) through Rule 6730(a)(1)(C) in

⁵ “Time of Execution” is defined in Rule 6710(d). Also, when the reporting method used includes a “special price memo” field, the member must enter the actual date of execution and Time of Execution in such field.

⁶ Previously, FINRA modified the TRACE system to recognize any calendar date as a valid Trade Date, but only as to transactions in Asset-Backed Securities. (See Securities Exchange Act Release No. 64364 (April 28, 2011), 76 FR 25385 (May 4, 2011) (order approving File No. SR-FINRA-2011-012).) The rule changes became effective on May 16, 2011. (See *Regulatory Notice* 11-20 (May 2011).)

⁷ “TRACE System Hours” is defined in Rule 6710(t).

chronological order and to incorporate minor technical changes.⁸

Size (Volume), Commission and Settlement Terms

FINRA also proposes amendments to the technical requirements for reporting the size (volume) of a transaction, the commission, if any, and the settlement of transactions in TRACE-Eligible Securities, other than Asset-Backed Securities.

Currently, FINRA requires members to report the size (volume) of a transaction in a TRACE-Eligible Security, other than an Asset-Backed Security, by reporting the number of bonds.⁹ For example, a sale of corporate bonds or Agency Debt Securities having a par or principal value of \$10,000 is reported as a sale of 10 bonds.¹⁰ FINRA proposes to amend Rule 6730(c)(2) and Rule 6730(d)(2) to require a member to report the size of such transactions using the total par value or principal value traded, rather than the number of bonds.¹¹

FINRA proposes a similar change to the reporting of commissions. Under current Rule 6730(c)(11) and Rule 6730(d)(1), in those cases where a commission is charged in a transaction in a TRACE-Eligible Security, the commission must be reported “stated in points per bond (e.g., for corporate bonds, 1 point equals \$10.00 per bond).”¹² FINRA proposes to amend Rule 6730(c)(11) and Rule 6730(d)(1) to require members to report the total dollar amount of the commission, rather than the points per bond.¹³

FINRA also proposes to simplify the requirements for reporting the settlement of a TRACE-Eligible Security transaction. Currently, as provided in Rule 6730(d)(4)(B)(i), if a transaction,

⁸ The reporting requirements now set forth in Rule 6730(a)(1)(C) will be set forth in Rule 6730(a)(1)(A), and Rule 6730(a)(1)(A) will be renumbered as Rule 6730(a)(1)(B), except the requirement relating to transactions executed less than 15 minutes before the TRACE System closes will be set forth separately as Rule 6730(a)(1)(C).

⁹ See Rule 6730(c)(2) and Rule 6730(d)(2).

¹⁰ “Agency Debt Security” is defined in Rule 6710(l).

¹¹ Previously, FINRA adopted similar provisions for reporting the size (volume) of transactions in Asset-Backed Securities that do not amortize. (See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (order approving File No. SR-FINRA-2009-065).) The rule changes became effective on May 16, 2011. (See *Regulatory Notice* 11-20 (May 2011).)

¹² Rule 6730(d)(1).

¹³ Previously, FINRA adopted similar provisions for reporting a commission in a transaction in an Asset-Backed Security. (See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (order approving File No. SR-FINRA-2009-065).) The rule changes became effective on May 16, 2011. (See *Regulatory Notice* 11-20 (May 2011).)

other than a transaction in an Asset-Backed Security, will not settle on T + 3, a member must report the settlement using one of three modifiers.¹⁴ To streamline the requirements regarding settlement, new Rule 6730(c)(12) will require a member simply to report the date of settlement.¹⁵ In addition, FINRA proposes to delete Rule 6730(d)(4)(B), which sets forth the three settlement modifiers that will no longer be used in TRACE reporting, and references to such modifiers in Rule 6730(d)(4)(C). FINRA also will renumber Rule 6730(d)(4)(C), Rule 6730(d)(4)(D) and Rule 6730(d)(4)(E) accordingly.¹⁶

Finally, FINRA proposes minor technical amendments to Rule 6730(a) through (d), including amendments to Rule 6730(b)(2) and Rule 6730(c)(7) to delete redundant or unnecessary text and Rule 6730(d)(2) to clarify existing text.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 180 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁷ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will facilitate more timely and accurate reporting of the terms of transactions in TRACE-Eligible Securities for the protection of

¹⁴ Current Rule 6730(c)(12) will be renumbered as Rule 6730(c)(13). If a trade will not settle on T + 3, the three modifiers that are used to indicate the day the transaction will be settled are “.c” (date of execution), “.nd” (T + 1), or “.sNN” (settlement on a date other than the date of execution, T + 1 or T + 3).

¹⁵ Previously, FINRA adopted a similar requirement in connection with transactions in Asset-Backed Securities. (See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010) (order approving File No. SR-FINRA-2009-065) and Securities Exchange Act Release No. 64364 (April 28, 2011), 76 FR 25385 (May 4, 2011) (order approving File No. SR-FINRA-2011-012)). The rule changes in both rule filings became effective on May 16, 2011. (See *Regulatory Notice* 11-20 (May 2011).)

¹⁶ Rule 6730(d)(4)(C), Rule 6730(d)(4)(D) and Rule 6730(d)(4)(E) will be renumbered, respectively, as Rule 6730(d)(4)(B), Rule 6730(d)(4)(C) and Rule 6730(d)(4)(D).

¹⁷ 15 U.S.C. 78o-3(b)(6).

investors and in furtherance of the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 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 shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2011-053 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-2011-053. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

[rules/sro.shtml](#)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-FINRA-2011-053 and should be submitted on or before October 27, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Elizabeth M. Murphy,
Secretary.

[FR Doc. 2011-25861 Filed 10-5-11; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12815 and #12816]

Texas Disaster Number TX-00381

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA-4029-DR), dated 09/09/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 11/08/2011.

EIDL Loan Application Deadline Date: 06/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

¹⁸ 17 CFR 200.30-3(a)(12).

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Anderson, Caldwell, Fayette, Henderson, Hill, Rusk.

Contiguous Counties: (Economic Injury Loans Only):

Texas: Bosque, Ellis, Gonzales, Guadalupe, Johnson, Kaufman, McLennan, Nacogdoches, Navarro, Shelby.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25914 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12866 and #12867]

District of Columbia Disaster #DC-00003

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance only for the District of Columbia (FEMA-4036-DR), dated 09/28/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 09/01/2011.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 11/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the

President's major disaster declaration on 09/28/2011, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: District of Columbia.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
<i>For Economic Injury:</i>	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128668 and for economic injury is 128678.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25921 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12848 and #12849]

Texas Disaster Number TX-00382

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance only for the State of Texas (FEMA-4029-DR), dated 09/21/2011.

Incident: Wildfires.

Incident Period: 08/30/2011 and continuing.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 11/21/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/21/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 09/21/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Colorado, Leon, Walker.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25931 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12858 and #12859]

New York Disaster Number NY-00113

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance only for the State of New York (FEMA-4031-DR), dated 09/23/2011.

Incident: Remnants of Tropical Storm Lee.

Incident Period: 09/07/2011 through 09/11/2011.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 11/22/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Chemung, Orange.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25924 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12805 and #12806]

Virginia Disaster Number VA-00038

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance only for the State of Virginia (FEMA-4024-DR), dated 09/03/2011.

Incident: Hurricane Irene.

Incident Period: 08/26/2011 through 08/28/2011.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 11/02/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/05/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Virginia, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Amelia, Brunswick, Greensville, Hanover, Lunenburg, Northampton, Nottoway, Alexandria City, Powhatan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25920 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12862 and #12863]

California Disaster #CA-00176

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 09/29/2011.

Incident: Canyon Fire.

Incident Period: 09/04/2011 through 09/11/2011.

Effective Date: 09/29/2011.

Physical Loan Application Deadline Date: 11/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kern.

Contiguous Counties:

California: Inyo, Kings, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, Tulare, Ventura.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.000
Homeowners without Credit Available Elsewhere	2.500
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 128625 and for economic injury is 128630.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008.)

Dated: September 29, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011-25919 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12864 and #12865]

Delaware Disaster #DE-00009

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Delaware dated 09/29/2011.

Incident: Hurricane Irene.

Incident Period: 08/27/2011 through 08/28/2011.

Effective Date: 09/29/2011.

Physical Loan Application Deadline Date: 11/28/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 06/29/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: New Castle.

Contiguous Counties:

Delaware: Kent.
Maryland: Cecil, Kent.
New Jersey: Gloucester, Salem.
Pennsylvania: Chester, Delaware.
The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners With Credit Available Elsewhere	5.000
Homeowners Without Credit Available Elsewhere	2.500

	Percent
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12864 8 and for economic injury is 12865 0.

The States which received an EIDL Declaration # are Delaware, Maryland, New Jersey, Pennsylvania.
(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: September 29, 2011.

Karen G. Mills,
Administrator.

[FR Doc. 2011-25917 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12768 and #12769]

Puerto Rico Disaster Number PR-00014

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA-4017-DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 through 08/24/2011.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 10/26/2011.

EIDL Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration

for the Commonwealth of Puerto Rico, dated 08/27/2011 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Municipalities: (Physical Damage and Economic Injury Loans): Adjuntas, Ciales, Guaynabo.

Contiguous Municipalities: (Economic Injury Loans Only): Puerto Rico: Arecibo, Florida, Guayanilla, Lares, Yauco.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25909 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12770 and #12771]

Puerto Rico Disaster Number PR-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance only for the Commonwealth of Puerto Rico (FEMA-4017-DR), dated 08/27/2011.

Incident: Hurricane Irene.

Incident Period: 08/21/2011 through 08/24/2011.

Effective Date: 09/28/2011.

Physical Loan Application Deadline Date: 10/26/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 05/28/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Puerto Rico, dated 08/27/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Municipalities: Loiza, Penuelas, San Juan.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2011-25933 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

National Women's Business Council

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

DATES: The meeting will be held on Monday, October 17, 2011 from approximately 8:30 a.m. to 12 p.m., and from 1:30 p.m. to 4 p.m. EST.

ADDRESSES: The meeting will be held at the Marriott Marquis Atlanta, 265 Peachtree Center Avenue, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to receive and discuss: Current and prospective research that the NWBC is undertaking; discussion of policy recommendations to be made in the 2011 annual report to the President, Congress and the U.S. Small Business Administration; the introduction of one new member to the NWBC; and other NWBC related business. The afternoon session will invite attendees to participate in roundtable discussions regarding issues facing women entrepreneurs and business owners.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must either e-mail their interest to info@nwbc.gov or call the main office number at 202-205-3850.

For more information, please visit our Web site at <http://www.nwbc.gov>.

Dan S. Jones,

SBA Committee Management Officer.

[FR Doc. 2011-25903 Filed 10-5-11; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 7637]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV-2013) Visa Program

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: This public notice provides information on how to apply for the DV-2013 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c), and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

Instructions for the 2013 Diversity Immigrant Visa Program (DV-2013)

The Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101-649) amended INA 203 and provides for a class of immigrants known as "diversity immigrants." Sections 201(e) and 203(c) of the INA provide a maximum of 55,000 Diversity visas (DV) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random drawing chooses selectees for DVs. The visas are distributed among six geographic regions, with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries that have sent more than 50,000 immigrants to the United States during the past five years. Within each region, no single country may receive more than seven percent of the available DVs in any one year.

For DV-2013, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants each to the United States in the previous five years:

Bangladesh, Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, The Philippines, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR, and Taiwan are eligible. Bangladeshi natives are excluded from DV-2013, while Polish and South Sudanese natives are included.

Diversity Visa Registration Period

Entries for the DV-2013 program must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT-4), Tuesday, October 4, 2011, and noon, Eastern Daylight Time (EDT) (GMT-4), Saturday, November 5, 2011. Applicants may access the electronic DV entry form (E-DV) at <http://www.dvlottery.state.gov> during the registration period. Paper entries are not accepted. Applicants should not wait until the last week of the registration period to enter. Heavy demand may result in Web site delays. No entries will be accepted after noon, EDT, on November 5, 2011.

Requirements for Entry

To register for the DV-2013 program, you must be a native of one of the listed countries. See the "List of Countries by Region Whose Natives Qualify" below. In most cases, this means the country in which you were born. However, there are two other ways you may be able to qualify. First, if you were born in a country whose natives are ineligible but your spouse was born in a country whose natives are eligible, you can claim your spouse's country of birth, provided both you and your spouse are listed on the selected entry, are issued visas, and enter the United States simultaneously. Second, if you were born in a country whose natives are ineligible, but neither of your parents was born there or resided there at the time of your birth, you may claim nativity in one of your parents' country of birth, if it is a country whose natives qualify for the DV-2013 program.

To enter the DV program, you must meet either the program's education or work experience requirements. You must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR, two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's *O*Net OnLine* database at <http://>

www.onetonline.org/ will be used to determine qualifying work experience. For more information about qualifying work experience, see Frequently Asked Question #13 below. If you cannot meet either of these requirements, you should not submit an entry to the DV program.

Procedures for Submitting an Entry to DV-2013

The Department of State will only accept completed E-DV entry forms submitted electronically at <http://www.dvlottery.state.gov> during the registration period between noon, Eastern Daylight Time (EDT) (GMT-4), Tuesday, October 4, 2011, and noon, Eastern Daylight Time (EDT) (GMT-4) Saturday, November 5, 2011.

We will disqualify ALL entries for an individual if more than ONE entry is received for that individual, regardless of who submitted the entries. You may prepare and submit your own entry, or have someone submit the entry for you. A successfully registered entry will result in the display of a confirmation screen containing your name and a unique confirmation number. You should print this confirmation screen for your records and keep this information until at least June 30, 2013. You will be able to check the status of your DV-2013 entry by returning to the Web site and entering your unique confirmation number and personal information. Paper entries are not accepted.

You must submit all required photographs. If you do not, your entry will be disqualified. Submit recent photographs electronically with the E-DV entry form of: you; your spouse; each unmarried child under 21 years of age at the time of your electronic entry, including all natural children as well as all legally-adopted children and stepchildren, even if a child no longer resides with you or you do not intend for a child to immigrate under the DV program. You do not need to submit a photo for a child who is already a U.S. citizen or Legal Permanent Resident.

We will not accept group or family photographs; you must include a separate photograph for each family member. Failure to submit the required photographs for your spouse and each child listed will result in an incomplete entry to the E-DV system. We will not accept the entry and you will have to resubmit another entry. If you fail to submit the correct photograph of each individual, your application, along with those of all of your derivatives, will be disqualified at the time of the visa interview.

A digital photograph (image) of you, your spouse, and each child must be

submitted online with the E–DV entry form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification and visa refusal for cases in which the photographs are not recent, have been manipulated, or fail to meet the specifications explained below.

Instructions for Submitting a Digital Photograph (Image)

The image file must adhere to the following compositional specifications and technical specifications, and can be produced by taking a new digital image or using a digital scanner to scan a submitted photograph. Entrants may test their photos for suitability through the photo validator link on the E–DV Web site before submitting their entries. The photo validator provides additional technical advice on photo composition, along with examples of acceptable and unacceptable photos.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified: The person being photographed must directly face the camera; the person's head should not be tilted up, down, or to the side; the head height or facial region size (measured from the top of the head, including the hair, to the bottom of the chin) must be between 50 percent and 69 percent of the image's total height. The eye height (measured from the bottom of the image to the level of the eyes) should be between 56 percent and 69 percent of the image's height; the photograph should be taken with the person in front of a neutral, light-colored background; dark or patterned backgrounds are not acceptable; the photograph must be in focus; photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted; photographs of applicants wearing head coverings or hats are only acceptable if the head covering is worn for religious beliefs, and even then, the head covering may not obscure any portion of the face of the applicant. We will not accept photographs of applicants with tribal or other headgear not specifically religious in nature; we will not accept photographs of military, airline, or other personnel wearing hats.

Color photographs in 24-bit color depth are required. Photographs may be downloaded from a camera to a computer file, or scanned to a computer file. If you are using a scanner, the

settings must be for True Color or 24-bit color mode. Color photographs must be scanned at this setting for the requirements of the DV program. See the additional scanning requirements below.

Technical Specifications

The submitted digital photograph must conform to the following specifications or the system will automatically reject the E–DV entry form and notify the sender.

When taking a new digital image: The image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of 240 KB; the minimum acceptable image resolution and dimensions are 600 pixels (width) × 600 pixels (height). Image pixel dimensions must be in a square aspect ratio (meaning the height must be equal to the width). The image color depth must be 24-bit color. [Note: Color photographs are required. Black and white, monochrome images (2-bit color depth), 8-bit color, or 8-bit grayscale will not be accepted.]

Before a photographic print is scanned, it must meet the compositional specifications listed above. If the photographic print meets the print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be at least 300 dots per inch (dpi); the image file format in JPEG format; the maximum image file size must be 240 KB; the image resolution 600 by 600 pixels; the image color depth 24-bit color. [Note that black and white, monochrome, or grayscale images will not be accepted.]

Information Required for the Electronic Entry

There is only one way to enter the DV–2013 program. You must submit the DS–5501, the Electronic Diversity Visa Entry Form (E–DV entry form), which is accessible only online at <http://www.dvlottery.state.gov>. Failure to complete the form in its entirety will disqualify your entry. To ensure that the form is completed accurately, the Department of State strongly encourages applicants to complete the application without the assistance of “Visa Consultants,” “Visa Agents,” or other individuals who offer to submit the forms on behalf of applicants.

Those who submit E–DV entries will be asked to include the following information on the E–DV entry form:

1. *Full Name*—Last/Family Name, First Name, Middle Name.
2. *Date of Birth*—Day, Month, Year.
3. *Gender*—Male or Female.

4. *City Where You Were Born.*

5. *Country Where You Were Born*—The name of the country should be the name currently in use for the place where you were born.

6. *Country of Eligibility or Chargeability for the DV Program*—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible for the DV program, please review the instructions to see if there is another option for country of chargeability available for you. For additional information on chargeability, please review “Frequently Asked Question #1” of these instructions below.

7. *Entry Photograph(s)*—See the technical information on photograph specifications. Make sure you include photographs of your spouse and all your children, if applicable. See Frequently Asked Question #3 below.

8. *Mailing Address*—In Care of, Address Line 1, Address Line 2, City/Town, District/Country/Province/State, Postal Code/Zip Code, and Country.

9. *Country Where You Live Today.*

10. *Phone Number* (optional).

11. *E-mail Address*—Provide an e-mail address to which you have direct access rather than using someone else's address or a standard company address. Notifications to those selected in the DV program are not sent by e-mail. Official notifications of selection will be made through Entrant Status Check (ESC), available from May 1, 2012, on the E–DV Web site <http://www.dvlottery.state.gov>. E-mail or mail notifications about your E–DV selection are not legitimate. You may receive follow-up e-mail communication from the Department of State informing you to review ESC for new information about your application.

12. *What is the highest level of education you have achieved, as of today?* You must indicate which one of the following represents your own highest level of educational achievement: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master's degree, (9) Some doctorate level courses, and (10) Doctorate degree.

13. *Marital Status*—Unmarried, married, divorced, widowed, legally separated.

14. *Number of Children*: Entries must include the name, date, and place of birth of your spouse and all natural children, as well as all legally adopted children and stepchildren who are unmarried and under the age of 21 on

the date of your electronic entry (do not include children who are already U.S. citizens or Legal Permanent Residents), even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older are not eligible derivatives for a DV; however, they may submit their own electronic DV entries. Additionally, U.S. law protects children from "aging out" in certain circumstances. If your electronic DV entry is submitted before your unmarried child turns 21, and the child turns 21 before visa issuance, he/she might be protected from aging out by the Child Status Protection Act and be treated as though he/she were under 21 for visa-processing purposes. If you fail to list all eligible children, your application, along with all of your dependents, will be disqualified at the time of the visa interview. See Frequently Asked Question #11 below.

15. *Spouse Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph. Failure to list your spouse will result in disqualification of the principal applicant, and refusal of all visa applications in the case at the time of the visa interview.

16. *Children Information*—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph. Include all children declared in question #14 above.

Selection of Applicants

The Department of State will use computer software to randomly select individuals from among all qualified entries. Starting May 1, 2012, entrants may enter their DV-2013 entry confirmation number into the Entrant Status Check (ESC) available at <http://www.dvlottery.state.gov> to find out whether their entries were selected or not. The notification information provided on the site will provide further instructions for selectees, including fee information. Those selected in the random drawing are not notified by e-mail. You must logon to <http://www.dvlottery.state.gov> and enter your confirmation number into the ESC to receive information regarding your entry. Applicants must go to <http://www.dvlottery.state.gov> to confirm their selection status and to receive further instructions. U.S. embassies and consulates will not be able to provide a list of successful entrants. Successful entrants' spouses and unmarried children under age 21 also may apply for Diversity Visas to accompany or follow-to-join the principal applicant.

DV-2013 visas will be issued between October 1, 2012, and September 30, 2013. Selectees who provide information requested in the notification instructions will be informed of their visa interview appointment through the Entrant Status Check on the E-DV Web site four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month, visas will be issued to those applicants who are ready for issuance during that month, visa-number availability permitting. Applicants can compare their rank order number to the cut-off number shown for each region under the DV section of the Visa Bulletin (http://www.travel.state.gov/visa/bulletin/bulletin_1360.html). Once all of the 50,000 DVs have been issued, the program will end. Visa numbers could be exhausted before September 30, 2013, since the number of selected entries is more than 50,000. Selected applicants who wish to receive visas must act promptly.

Processing of entries and issuance of DVs to successful individuals and their eligible family members must occur by midnight, Eastern Daylight Time (EDT) on September 30, 2013. Under no circumstances can DVs be issued or adjustments approved after this date, nor can family members obtain DVs to follow-to-join the principal applicant in the United States after this date.

In order to receive a DV to immigrate to the United States, those chosen in the random drawing must meet ALL eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing for natives of some countries listed in this notice, including, but not limited to, countries identified as state sponsors of terrorism.

Important Notice

No fee is charged to enter the annual DV program. The U.S. government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV entries do so without the authority or consent of the U.S. government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the entrant's discretion.

A qualified electronic entry submitted directly by an applicant has an equal chance of being randomly selected as does a qualified electronic entry received from an outside intermediary on behalf of the applicant. However, receipt of more than one entry per person will disqualify the person from

registration, regardless of the source of the entry.

Frequently Asked Questions About E-DV Registration

1. *What do the terms "Eligibility," "Native," and "Chargeability" mean? Are there any situations in which persons who were not born in a qualifying country may apply?*

Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. "Native" ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. For immigration purposes, "native" can also mean someone who is entitled to be "charged" to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act. For example, if you were born in a country that is not eligible for this year's DV program, you may claim chargeability to the country where your derivative spouse was born, but you will not be issued a DV-1 unless your spouse is also eligible for and issued a DV-2 (derivative visa), and both of you must enter the United States together. In a similar manner, a minor dependent child can be "charged" to a parent's country of birth.

Finally, if you were born in a country not eligible to participate in this year's DV program, you can be "charged" to the country of birth of either of your parents as long as neither parent was a resident of the ineligible country at the time of the your birth. In general, you are not considered a resident of a country in which you were neither born nor legally naturalized if you only visited the country, studied in the country temporarily, or were stationed temporarily in the country for business or professional reasons on behalf of a company or government from a country other than the country in which you were born. If you claim alternate chargeability, you must indicate such information on the E-DV electronic online entry form, in question #6. Please be aware that listing an incorrect country of eligibility or chargeability (*i.e.*, one to which you cannot establish a valid claim) will disqualify your entry in most situations.

2. *What are the procedures for this Diversity Visa registration?*

The ESC page available on the E-DV Web site <http://www.dvlottery.state.gov> will be the sole means by which you will be notified of your selection, or that

you were not selected. The Department will not mail you official notification letters, but will instead include instructions on how to follow up on your selection and pursue a DV visa application on your confirmation page. You will also be informed of your DV visa interview appointment date through the ESC page. The Department of State will not send anyone letters by mail informing them of their interview appointment.

The ESC page will be available for DV-2013 beginning May 1, 2012. If you applied for the previous year's DV-2012 program, you may check the status of your entry until June 30, 2012. All other requirements for DV-2013 remain the same.

3. Are signatures and photographs required for each family member, or only for the principal entrant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photographs of you, your spouse, and all children under 21 years of age (who are neither U.S. citizens nor Legal Permanent Residents) are required. Family or group photographs are not accepted. Please refer to information on the photograph requirements located in this notice.

4. Why do natives of certain countries not qualify for the diversity program?

DVs are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the United States. The law states that no DVs shall be provided for natives of "high admission" countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the period of the previous five years. Each year, U.S. Citizenship and Immigration Services (USCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives will be ineligible for the annual diversity program. Because there is a separate determination made before each annual E-DV entry period, the list of countries whose natives are not eligible may change from one year to the next.

5. What is the numerical limit for DV-2013?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central

American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV-1999, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated DVs will be made available for use under the NACARA program. The actual reduction of the limit by up to 5,000 DVs began with DV-2000 and is likely to remain in effect through the DV-2013 program.

6. What are the regional diversity visa (dv) limits for DV-2013?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When will entries for the DV-2013 program be accepted?

The DV-2013 entry period will run through the registration period listed above. Each year millions of people apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful individuals. Holding the entry period from October 4, 2011, until November 5, 2011, will ensure that selectees are notified in a timely manner, and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance. You are strongly encouraged to enter early in the registration period, since excessive demand at the end of the registration period may slow the system down. We will accept no entries after noon EDT Saturday, November 5, 2011.

8. May persons who are in the United States apply for the program?

Yes, you may submit an entry while in the United States or in any another country.

9. Is each applicant limited to only one entry during the annual E-DV registration period?

Yes, the law allows only one entry by or for each person during each registration period. Individuals for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals who submit multiple entries during the registration period. Those submitting more than one entry will be disqualified, and an electronic record will be permanently maintained by the Department of State. Individuals may

apply for the program each year during the regular registration period.

10. May a husband and a wife each submit a separate entry?

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either is selected, the other is entitled to derivative status.

11. What family members must I include on my E-DV entry?

On your entry, you must list your spouse (husband or wife), and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (*i.e.* there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. You must list all your children who are unmarried and under 21 years of age at the time of your initial electronic DV entry, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age at the time of your electronic entry even if they no longer reside with you, or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question #10 above.

12. Must I submit my own entry, or may someone act on my behalf?

You may prepare and submit your own entry, or have someone submit the entry for you. Regardless of whether an entry is submitted by the individual directly, or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person and the entrant remains responsible for ensuring that

information in the entry is correct and complete. All entrants, including those not selected, will be able to check the status of their entry through the official DV Web site. Entrants should keep their own confirmation page information until at least June 30, 2013, so they may independently check the status of their entry.

13. What are the requirements for education or work experience?

The law and regulations require that every entrant must have at least a high school education or its equivalent or have, within the past five years, two years of work experience in an occupation requiring at least two years' training or experience. A "high school education or equivalent" is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Only formal courses of study meet this requirement; correspondence programs or equivalency certificates (such as the G.E.D.) are not acceptable. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview.

What Occupations qualify for the Diversity Visa Program? To determine eligibility based on work experience, definitions from the Department of Labor's (DOL) O*Net Online Database <http://www.onetonline.org/> will be used. The O*Net Online Database groups job experience into five "job zones." While many occupations are listed on the DOL Web site, only certain specified occupations qualify for the Diversity Visa Program. To qualify for a Diversity Visa on the basis of your work experience, you must have, within the past five years, two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

How Do I Find the Qualifying Occupations on the Department of Labor Web site? Qualifying DV Occupations are shown on the Department of Labor O*Net Online Database. Follow these steps to find out if your occupation qualifies: Select "Find Occupations" and then select a specific "Job Family." For example, select Architecture and Engineering and click "GO." Then click on the link for the specific Occupation. Following the same example, click Aerospace Engineers. After selecting a specific Occupation link, select the tab "Job

Zone" to find out the designated Job Zone number and Specific Vocational Preparation (SVP) rating range.

14. How will successful entrants be selected?

The Department will individually number all entries received from each region. After the end of the registration period, a computer program will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered; the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. Beginning May 1, 2012, selected entrants will be able to receive further instructions at <http://www.dvlottery.state.gov/>. The Kentucky Consular Center (KCC) will continue to process the case until those selected to be visa applicants are instructed to appear for visa interviews at a U.S. consular office, or until those qualifying to change status in the United States apply at a domestic USCIS office.

Important Note: Notifications to those randomly selected will not include information about your application. Should you receive an e-mail or mail notification that mentions the status of your E-DV selection, be aware that the message is not legitimate. You may receive a follow-up e-mail communication from the Department of State informing you to review ESC for new information about your application. We will *not* ask you to send money by mail or by services such as Western Union, in any e-mail generated by the Department of State.

15. May selectees adjust their status with USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected individuals who are physically present in the United States may apply to the USCIS for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2013, since on that date registrations for the DV-2013 program expire. No visa numbers for the DV-2013 program will be available after midnight on September 30, 2013, under any circumstances.

16. Will entrants who are not selected be informed?

All entrants, including those not selected, may check the status of their entry through the E-DV Web site and find out if their entry was or was not

selected. Entrants should print and keep their own confirmation page information from the time of their entry until at least June 30, 2013. (Status information for the previous DV program, DV-2012, is available online until June 30, 2012.)

17. How many individuals will be selected?

There are 50,000 DV visas available for DV-2013, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Department of State to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews for the DV-2013 program will begin in October 2012. The Kentucky Consular Center will notify selected applicants via the ESC on the E-DV Program Web site, <http://www.dvlottery.state.gov/>, four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Selectees will receive e-mail communications from the Department of State alerting them that a visa appointment has been scheduled after they have responded to the notification instructions on the ESC. Such e-mails will direct selectees to check their interview appointment details on ESC and will not contain information on the actual appointment date and time. Each month visas will be issued to those applicants who are ready for issuance during that month, visa number availability permitting. Once all of the 50,000 DV visas have been issued, the program for the year will end. Thus, visa numbers could be exhausted before September 30, 2013. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Department of State's computer software program does not automatically guarantee that you will receive a visa. You must qualify for the visa as well.

18. Is There a minimum age for applicants to apply for the E-DV program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are there any fees for the E–DV program?

There is no fee for submitting an E–DV program entry. DV applicants must pay all required visa fees at the time of visa application directly to the consular cashier at the embassy or consulate. Details of required diversity visa and immigration visa application fees will be included on the ESC.

20. Do DV applicants receive waivers of any grounds of visa ineligibility or receive special processing for a waiver application?

Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground of visa ineligibility aside from those ordinarily provided in the Act, nor is there special processing for waiver requests. Some general waiver provisions for individuals with close relatives who are U.S. Citizens or Lawful Permanent Resident aliens may be available to DV applicants as well, but the time constraints in the DV program will make it difficult for applicants to benefit from such provisions.

21. May persons who are already registered for an immigrant visa in another category apply for the DV program?

Yes, such persons may apply for the DV program.

22. How long do applicants who are selected remain entitled to apply for visas in the DV category?

Persons selected in the DV–2013 program are entitled to apply for visa issuance only during fiscal year 2013, from October 1, 2012, through September 30, 2013. Applicants must obtain the DV visa or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas by September 30, 2013 (the end of the fiscal year.) Also, spouses and children who derive status from a DV–2013 registration can only obtain visas in the DV category between October 1, 2012, and September 30, 2013. Applicants who apply overseas will receive an appointment notification through the ESC Web site, from the Department of State four to six weeks before the scheduled appointment.

23. If an E–DV selectee dies, what happens to the DV case?

The death of an individual selected in the DV program will result in the

automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV visa for that entry.

24. When will E–DV online be available?

Online entry will be available during the registration period beginning at noon EDT (GMT–4) on October 4, 2011, and ending at noon EDT (GMT–4) on November 5, 2011.

25. Will I be able to download and save the E–DV entry form to a Microsoft Word Program (or other suitable program) and then fill it out?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more “universal” than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while online.

26. If I don't have access to a scanner, can I send photographs to my relative in the United States to scan the photographs, save the photographs to a diskette, and then mail the diskette back to me to apply?

Yes, as long as the photograph meets the photograph requirements in the instructions and the photograph is electronically submitted with, and at the same time as, the E–DV online entry is submitted. The applicants must already have the scanned photograph file when they submit the entry online. The photograph cannot be submitted separately from the online application. Only one online entry can be submitted per person. Multiple submissions will disqualify the entry for that person for DV–2013. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

27. Can I save the form online so that I can fill out part and then come back later and complete the remainder?

No. The E–DV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to permit up to sixty (60) minutes between the form's download and when the entry is received at the E–DV Web site. If more than sixty minutes elapse and the entry has not been electronically received, the information already received is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry.

The DV–2013 instructions explain clearly and completely what information is required to fill in the form. Thus you can be fully prepared, making sure you have all of the information needed before you start completing the form online.

28. If the submitted digital images do not conform to the specifications, the procedures state that the system will automatically reject the E–DV entry form and notify the sender. Does this mean I will be able re-submit my entry?

Yes. Since the entry was automatically rejected, it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent, because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable given the nature of the Internet. If the problem can be fixed by the applicant, and the Form Part One or Two is resent within sixty (60) minutes, there is no problem. Otherwise, the applicant will have to restart the submission process. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

29. Will the electronic confirmation notice that the completed E–DV entry form has been received through the online system be sent immediately after submission?

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV Web site immediately. However, how long it takes the response to reach the sender is unpredictable because of the nature of the Internet. If many minutes have elapsed since pressing the ‘Submit’ button, there is no harm in pressing the ‘Submit’ button a second time. The E–DV system will not be confused by a situation where the ‘Submit’ button is hit a second time, because you received no confirmation response. You can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent. However, once you receive a confirmation notice, do not resubmit your information.

30. *How will I know if the notification of selection that I have received is authentic? How can I confirm that I have in fact been chosen in the random DV selection?*

Keep and print your confirmation page until at least June 30, 2013. You will need your confirmation number to access information through the ESC available on the E-DV Web site <http://www.dvlottery.state.gov/>. The ESC will be the sole means by which DV-2013 entrants are notified of their selection, provided instructions on how to proceed with their application, and notified of their immigrant visa interview appointment date and time.

Status information will be available from May 1, 2012. If you lose your confirmation information, you will not be able to check your DV entry status, and we will not resend the confirmation page information to you. Only the randomly selected individuals will be given additional instructions on how to pursue their DV visa application. You may verify non-selection through entering your confirmation number on the ESC, but you will receive no further instructions. We will NOT forward the confirmation page information to you. U.S. Embassies and Consulates will NOT provide a list of those selected to continue the visa process.

Randomly selected entrants will receive notification instructions for the DV visa application process on the selectee confirmation page available through ESC on the E-DV Web site <http://www.dvlottery.state.gov/>. The instructions note that selected applicants will pay all diversity and immigrant visa fees in person only at the U.S. Embassy or Consulate at the time of the visa application. The consular cashier immediately gives the visa applicant a U.S. government receipt for payment. Selected applicants applying for an immigrant visa at a U.S. Embassy or Consulate should never send money for DV fees through the mail, Western Union, or any other delivery service. Selected applicants who are already present in the United States, and who file for adjustment of status, will receive separate instructions on how to mail DV fees to a U.S. bank.

The E-DV entries are submitted on the Internet, on the official U.S. government E-DV Web site at <http://www.dvlottery.state.gov/>. The Department of State will not send notification letters to the selected applicants. The U.S. government has never sent e-mails to notify individuals they have been selected, and there are no plans to use e-mail for this purpose for the DV-2013 program. Selectees will

only receive e-mail communications from the Department alerting them to perform an ESC. Such e-mails will direct selectees to check their interview appointment details on ESC and will not contain information on the actual appointment date and time.

The Department of State's Bureau of Consular Affairs advises the public that only Internet sites including the ".gov" domain suffix are official government Web sites. Many other non-governmental Web sites (e.g., using the suffixes ".com" or ".org" or ".net") provide immigration and visa related information and services. Regardless of the content of non-governmental Web sites, the Department of State does not endorse, recommend, or sponsor any information or material shown at these other Web sites.

Some Web sites may try to mislead customers and members of the public into thinking they are official Web sites and may contact you by e-mail to lure you to their offers. These Web sites may attempt to require you to pay for services such as forms and information about immigration procedures, which are otherwise free on the Department of State's Visa Services Web site or through U.S. embassy consular sections' Web sites. Additionally, these other Web sites may require you to pay for services you will not receive (such as fees for DV immigration applications and visas.) Also, you should be wary of sending any personal information to these Web sites that might be used for identity fraud/theft.

31. *How do I report internet fraud or unsolicited e-mail?*

If you wish to file a complaint about Internet fraud, please see the econsumer.gov Web site, hosted by the Federal Trade Commission, in cooperation with consumer protection agencies from 17 nations (<http://www.econsumer.gov/english/>). You may also report fraud to the Federal Bureau of Investigation (FBI) *Internet Crime Complaint Center*. To file a complaint about unsolicited e-mail, contact the *Department of Justice Contact Us page*.

32. *If I am successful in obtaining a visa through the DV program, will the U.S. government assist with my airfare to the United States, provide assistance to locate housing and employment, provide healthcare, or provide any subsidies until I am fully settled?*

No. Applicants who obtain a DV visa are not provided any type of assistance such as airfare, housing assistance, or subsidies. If you are selected to apply for a DV visa, you will be required, to provide evidence that you will not

become a public charge in the United States. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support (Form I-134) from a relative or friend residing in the United States, and/or an offer of employment from an employer in the United States.

List of Countries By Region Whose Natives Are Eligible for DV-2013

The lists below show the countries whose natives are eligible for DV-2013, grouped by geographic region. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for the DV-2013 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. The countries whose natives are not eligible for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration or "high admission" countries) are noted after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the
Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria

Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
South Sudan
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Persons born in the Gaza Strip are chargeable to Egypt.

Asia

Afghanistan
Bahrain
Bhutan
Brunei
Burma
Cambodia
East Timor
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
United Arab Emirates
Yemen

Natives of the following Asian countries are not eligible for this year's diversity program: Bangladesh, China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. Hong Kong S.A.R. and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below. Persons born in the areas administered prior to June 1967 by Israel, Jordan and Syria are chargeable, respectively, to Israel, Jordan and Syria.

Europe

Albania
Andorra

Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kosovo
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macedonia, the Former Yugoslav Republic
Macau Special Administrative Region
Malta
Moldova
Monaco
Montenegro
Netherlands (including components and dependent areas overseas)
Northern Ireland
Norway
Poland
Portugal (including components and dependent areas overseas)
Romania
Russia
San Marino
Serbia
Slovakia
Slovenia
Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

Natives of Great Britain are not eligible for this year's diversity program. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, and Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern

Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

North America

The Bahamas

In North America, natives of Canada and Mexico are not eligible for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)

Fiji

Kiribati

Marshall Islands

Micronesia, Federated States of Nauru

New Zealand (including components and dependent areas overseas)

Palau

Papua New Guinea

Samoa

Solomon Islands

Tonga

Tuvalu

Vanuatu

South America, Central America, and the Caribbean

Antigua and Barbuda

Argentina

Barbados

Belize

Bolivia

Chile

Costa Rica

Cuba

Dominica

Grenada

Guyana

Honduras

Nicaragua

Panama

Paraguay

Saint Kitts and Nevis

Saint Lucia

Saint Vincent and the Grenadines

Suriname

Trinidad and Tobago

Uruguay

Venezuela

Countries in this region whose natives are not eligible for this year's diversity program:

Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, and Peru.

Dated: September 28, 2011.

Michael D. Kirby,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2011-25900 Filed 10-5-11; 8:45 am]

BILLING CODE 4710-06-P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at September 15, 2011, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on September 15, 2011, in Milford, New York, the Commission convened a public hearing, at which it took the following actions: (1) Approved settlements involving two water resources projects; (2) approved or tabled the applications of certain water resources projects, including two involving diversions of water into the Susquehanna River Basin and one involving a diversion of water out of the Susquehanna River Basin; and (3) rescinded approval for one water resources project.

DATES: September 15, 2011.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102-2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, telephone: (717) 238-0423, ext. 306; fax: (717) 238-2436; e-mail: rcairo@srbc.net; or Stephanie L. Richardson, Secretary to the Commission, telephone: (717) 238-0423, ext. 304; fax: (717) 238-2436; e-mail: srichardson@srbc.net. Regular mail inquiries may be sent to the above address. See also Commission Web site at <http://www.srbc.net>.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related actions on projects identified in the summary above and the listings below, the following items were also presented or acted on at the business meeting: (1) Presentation of the Commission's Maurice K. Goddard Award for Excellence by a Water Management Professional to Dr. Willard Harman, Director of the SUNY Oneonta Biological Field Station in Cooperstown, New York; (2) a report on expansion of the SRBC Remote Water Quality Monitoring Network in New York State; (3) a report on hydrologic conditions in the Susquehanna River Basin, including a review of the August-September 2011 flood events caused by Tropical Storms Irene and Lee; (4) extension of the comment period to November 10, 2011, for the proposed rules that appeared in 76 FR 41154-41157, July 13, 2011; (5) a preliminary introduction to dockets; (6) adoption of a FY-2012 capital budget for the acquisition of a new headquarters building for the Commission, including authority to

execute an agreement of sale and related documents; (7) adoption of a resolution recognizing the Delaware River Basin Commission on the occasion of its 50th Anniversary; and (8) ratification of grants/contracts. The Commission also heard counsel's report on legal matters affecting the Commission. The Commission convened a public hearing and took the following specific actions:

Public Hearing—Compliance Matter

The Commission approved settlements in lieu of civil penalties for the following projects:

1. Energy Corporation of America; Coldstream Affiliates #1MH and Whitetail #1-5MH; Goshen and Girard Townships, Clearfield County, Pa.—\$17,500.
2. Keister Miller Investments, LLC; West Branch Susquehanna River; Mahaffey Borough, Clearfield County, Pa.—\$1,000.

Public Hearing—Rescission of Project Approval

The Commission rescinded approval for the following project:

1. Project Sponsor and Facility: Lake Meade Municipal Authority (Docket No. 19911102), Reading Township, Adams County, Pa.

Public Hearing—Projects Approved

The Commission approved the following projects not involving diversions:

1. Project Sponsor and Facility: Borough of Ephrata. Project Facility: Ephrata Area Joint Authority, Ephrata Borough, Lancaster County, Pa. Groundwater withdrawal of up to 1.210 mgd from Well 1.
2. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Athens Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.440 mgd (Docket No. 20080906).
3. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Terry Township, Bradford County, Pa. Modification to increase surface water withdrawal by an additional 0.441 mgd, for a total of 1.440 mgd (Docket No. 20090605).
4. Project Sponsor and Facility: EXCO Resources (PA), LLC (Pine Creek), Porter Township, Lycoming County, Pa. Surface water withdrawal of up to 1.000 mgd.
5. Project Sponsor: Hazelton Creek Properties, LLC. Project Facility: Hazelton Mine Reclamation, Hazelton City, Luzerne County, Pa. Modification to increase consumptive water use

approval by 0.145 mgd, for a total of 0.200 mgd (Docket No. 20110307).

6. Project Sponsor and Facility: J-W Operating Company (Sterling Run), Lumber Township, Cameron County, Pa. Modification to conditions of the surface water withdrawal approval (Docket No. 20090330).

7. Project Sponsor and Facility: M&P Energy Services Inc. (Susquehanna River), Briar Creek Borough, Columbia County, Pa. Surface water withdrawal of up to 0.999 mgd.

8. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the surface water withdrawal and consumptive water use approvals (Docket No. 20010801).

9. Project Sponsor: Milton Regional Sewer Authority. Project Facility: Wastewater Treatment Plant, Milton Borough and West Chillisquaque Township, Northumberland County, Pa. Withdrawal of treated wastewater effluent of up to 0.100 mgd.

10. Project Sponsor and Facility: Pennsylvania General Energy Company, L.L.C. (West Branch Susquehanna River), Pine Creek Township, Clinton County, Pa. Surface water withdrawal of up to 0.400 mgd.

11. Project Sponsor and Facility: Seneca Resources Corporation (Marsh Creek), Delmar Township, Tioga County, Pa. Surface water withdrawal of up to 0.499 mgd.

12. Project Sponsor and Facility: Southwestern Energy Production Company, Herrick Township, Bradford County, Pa. Groundwater withdrawal of up to 0.101 mgd from the Fields Supply Well.

13. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the surface water withdrawal approval (Docket No. 20090628).

14. Project Sponsor: Susquehanna Gas Field Services, LLC. Project Facility: Meshoppen Pizza Well, Meshoppen Borough, Wyoming County, Pa. Modification to project features and conditions of the groundwater withdrawal approval (Docket No. 20100612).

15. Project Sponsor and Facility: William C. Wingo (Wingo Ponds), Ulysses Township, Potter County, Pa. Surface water withdrawal of up to 0.099 mgd.

16. Project Sponsor and Facility: XTO Energy, Inc. (West Branch Susquehanna River), Chapman Township, Clinton

County, Pa. Surface water withdrawal of up to 2.000 mgd.

Public Hearing—Projects Approved Involving Diversions

The Commission approved the following projects involving diversions:

1. Project Sponsor: Mayor and City Council of Baltimore. Project Facility: Maryland Water Supply System, Halls Cross Roads District, Harford County, Md. Modification to conditions of the diversion approval (Docket No. 20010801).

2. Project Sponsor: SWEPI, LP. Project Facility: Pennsylvania American Water Company—Warren District, Warren City, Warren County, Pa. Into-basin diversion of up to 3.000 mgd from the Ohio River Basin.

3. Project Sponsor: EQT Production Company. Project Facility: Frano Freshwater Impoundment, Washington Township, Jefferson County, Pa. Into-basin diversion of up to 0.482 mgd from the Ohio River Basin.

Public Hearing—Project Withdrawn

The following project application was withdrawn by the project sponsor:

1. Project Sponsor: Graymont (PA), Inc. Project Facility: Pleasant Gap Facility, Spring Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.660 mgd from Well I-5 (McJunkin Well Field).

Public Hearing—Projects Tabled

The following projects were tabled by the Commission:

1. Project Sponsor: Anadarko E&P Company LP. Project Facility: Sprout State Forest—Council Run, Snow Shoe Township, Centre County, Pa. Application for groundwater withdrawal of up to 0.715 mgd from Well PW-11.

2. Project Sponsor and Facility: Stanley S. Karp Sr. (Tunkhannock Creek), Nicholson Township, Wyoming County, Pa. Application for surface water withdrawal of up to 0.510 mgd.

Authority: Pub. L. 91-575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: September 28, 2011.

Thomas W. Beau duy,

Deputy Executive Director.

[FR Doc. 2011-25772 Filed 10-5-11; 8:45 am]

BILLING CODE 7040-01-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2001-9561; FMCSA-2003-15268; FMCSA-2005-21711; FMCSA-2005-21254; FMCSA-2007-26653; FMCSA-2007-27897; FMCSA-2007-28695; FMCSA-2009-0086; FMCSA-2009-0154]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective October 24, 2011. Comments must be received on or before November 7, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA-2001-9561; FMCSA-2003-15268; FMCSA-2005-21711; FMCSA-2005-21254; FMCSA-2007-26653; FMCSA-2007-27897; FMCSA-2007-28695; FMCSA-2009-0086; FMCSA-2009-0154, using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1-202-493-2251.

Instructions: Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to <http://www.regulations.gov>, including any

personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to <http://www.regulations.gov> at any time or Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://www.edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

FOR FURTHER INFORMATION CONTACT:

Elaine M. Papp, Chief, Medical Programs, 202-366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 27 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 27 applications for renewal on their merits and decided to extend each

exemption for a renewable two-year period. They are:

Calvin D. Atwood.
 Gregory W. Babington.
 Andrew B. Clayton.
 William P. Doolittle.
 Steve E. Duran.
 Michael M. Edleston.
 Kenneth J. Fisk.
 Jonathan M. Gentry.
 Benny D. Hatton, Jr.
 Robert W. Healey, Jr.
 Nathaniel H. Herbert, Jr.
 Thomas W. Markham.
 Raul Martinez.
 Christian E. Merseth.
 Stuart T. Miller.
 Robert A. Miller.
 Kevin L. Moody.
 Terry W. Moore.
 Charles W. Mullenix.
 Robert M. Pickett II
 Donald F. Plouf.
 John N. Poland.
 Billy D. Robertson.
 Gerry L. Rogers.
 Gary W. Wolff.
 John C. Young.
 George R. Zenor.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application

for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 27 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (66 FR 30502; 66 FR 41654; 68 FR 37197; 68 FR 44837; 68 FR 48989; 70 FR 30999; 70 FR 41811; 70 FR 42615; 70 FR 46567; 70 FR 48797; 70 FR 61493; 72 FR 8417; 72 FR 36099; 72 FR 39879; 72 FR 40359; 72 FR 40360; 72 FR 46261; 72 FR 52421; 72 FR 54971; 72 FR 54972; 74 FR 19267; 74 FR 28094; 74 FR 43223; 74 FR 34074; 74 FR 37295; 74 FR 41971; 74 FR 48343; 74 FR 49069). Each of these 27 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by November 7, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 27 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience,

and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 27, 2011.

Larry W. Minor,

Associate Administrator of Policy.

[FR Doc. 2011-25847 Filed 10-5-11; 8:45 am]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Federal Transit Administration

Environmental Impact Statement for Implementation of Passenger Rail Service Between Tucson, AZ and Phoenix, AZ

AGENCY: Federal Railroad Administration (FRA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement (EIS).

SUMMARY: The FRA and FTA are issuing this Notice of Intent (NOI) to advise other agencies and the public that they will jointly prepare an EIS to study the implementation of passenger rail service between Tucson, Arizona and Phoenix, Arizona and to serve communities in between the two metropolitan areas (the proposed action).

The FRA, FTA, and Arizona Department of Transportation (ADOT) will use a tiered process, as described in the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) at 40 CFR 1502.20 and 1508.28 (NEPA) and FTA's environmental procedures at 23 CFR 771.111(g) and 774.7. This EIS is the first planning-level tier of the two-tiered environmental review process for the proposed action.

FRA and FTA are issuing this Notice to alert interested parties, to solicit public and agency input on the scope of

the Tier 1 EIS, provide information on the nature of the proposed project, including the purpose and need for the proposed action, possible alternatives to be considered in the preparation of the Tier 1 EIS, potentially significant impacts to the natural and built environment of those alternatives, and invite public participation in the EIS process.

The Tier 1 EIS will be prepared in accordance with the National Environmental Policy Act (NEPA), the CEQ regulations implementing NEPA, the FRA's Procedures for Considering Environmental Impacts as set forth in 64 FR 28545 dated May 26, 1999 (Environmental Procedures), and FTA's Environmental Impact and Related Procedures, in 23 CFR part 771. The EIS will also address Section 106 of the National Historic Preservation Act, Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 U.S.C. 303) and other applicable Federal and state laws and regulations to the extent relevant for a planning-level Tier-1 document. In addition, the Tier 1 study will incorporate the alternatives analyses process required by Federal transit law (49 U.S.C. 5309) and regulation (49 CFR part 611) for a project proposed for New Starts funding.

Environmental Review Process: The FRA and FTA will use a tiered process, as provided for in 40 CFR 1508.28 and in accordance with FRA guidance, in the completion of the environmental review of the proposed action. "Tiering" is a staged environmental review process applied to environmental reviews for complex projects. The Tier 1 EIS will address broad corridor-level issues and alternatives. Subsequent tiers will analyze site-specific component projects and alternatives based on the decisions made in Tier 1.

Tier 1: The Tier 1 assessment will result in a NEPA document with the appropriate level of detail for corridor-level decisions and will address broad overall issues of concern, including but not limited to:

- Confirming the purpose and need for the proposed action.
- Confirming the study area appropriate to assess reasonable alternatives.
- Developing evaluation criteria to identify alternatives that meet the purpose and need of the proposed action and those that do not.
- Identifying the range of reasonable alternatives to be considered, including the no action alternative, consistent with the current and planned use of the corridor and the existing services within and adjacent to the study area.

- Identifying the general alignment(s) of the reasonable alternatives.

- Identifying right-of-way requirements for the reasonable alternatives.

- Identifying the infrastructure and equipment investment requirements for the reasonable alternatives.

- Specifying the future no-build alternative that reflects already planned highway and transit developments in the study area expected to be in place by the project design year.

- Specifying the New Starts baseline alternative that addresses the proposed action's purpose and need to the maximum extent possible without a new transit fixed guideway.

- Identifying the operational changes required for the reasonable alternatives.

- Describing and evaluating the potential environmental impacts and mitigation associated with the proposed alternatives in the level of detail appropriate for a Tier 1 EIS.

- Establishing the timing and sequencing of independent actions to implement the proposed action.

- Evaluating the transit alternatives under the New Starts criteria specified in 49 U.S.C. 5309 and 49 CFR part 611. The transit alternatives may be subsets of the full build alternatives that provide intercity rail service.

- Identifying the Locally Preferred Alternative (LPA), FTA's planning level alternative for the New Starts program, through an Alternatives Analysis process.

Tier 2: The Tier 2 assessments will not be included in this study but will be identified as future actions to address components of the planning level alternative selected at the conclusion of the Tier 1 EIS.

This Tier 1 EIS preparation will include initial planning level elements of a Service Development Plan; present corridor route alternatives; and provide conceptual engineering designs of track, ancillary facilities, stations, and other major design features to a level sufficient to allow for meaningful understanding and comparison of alternatives. The Tier 1 EIS will provide programmatic assessment of environmental effects associated with the construction, operation, and maintenance components of the proposed action. The Tier 1 EIS will evaluate a range of reasonable corridor-level alternatives to include the "Baseline Conditions" and "No Action" Alternatives. Build alternatives may occur along existing rail line(s) or may be on a new alignment. The EIS will provide for: (1) An FTA-compliant Alternatives Analysis and (2) an FTA-

compliant Tier 1 Environmental Impact Statement.

DATES: Public Scoping meetings will be held on the following dates, locations, and times:

October 11, 2011 in the Burton Barr Central Library, 1221 N. Central Avenue, Phoenix, AZ, from 3 p.m. to 7 p.m.;

October 13, 2011 in the Pima Community College, Northwest Campus, 7600 North Shannon Road, Tucson, AZ, from 3 p.m. to 7 p.m.; and

October 19, 2011 in the Central Arizona College, Signal Peak Campus, 8470 N. Overfield Road, Coolidge, AZ from 3 p.m. to 7.

The buildings used for the meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in the meetings should contact Kristin Bornstein at KDA Creative, telephone (602) 368-9644, five days prior to the meeting.

To ensure all significant issues are identified and considered, the public will be invited to comment on the proposed action. Comments by members of the public on the scope of the Tier 1 EIS, including the proposed action's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations will be accepted at the public scoping meetings. Those attending the public scoping meetings will be asked to register at the meeting location. At the meeting, comments may also be submitted in written form, or orally one-on-one to a stenographer. Interested parties may also submit their comments in writing or via email to the persons identified below, on or before November 4, 2011.

For Further Information Regarding the Scoping Meetings, Please Contact:

Ms. Kristin Bornstein, KDA Creative, 4545 E. Shea Blvd., Suite 210, Phoenix, AZ 85028, telephone (602) 368-9644, e-mail Kristin@kdacreative.com.

Information and documents regarding the environmental review process will also be made available through appropriate means, including the project Web site: <http://www.azdot.gov/intercityrail>.

For Further Information About the Project Contact:

Ms. Andrea Martin, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 20, Washington, DC 20590, telephone (202) 493-6201; Ms. Amy Zaref, telephone (202) 641-8050 or Mr. Alex Smith, Federal Transit Administration Region 9, 201 Mission St., Suite 1650, San

Francisco, CA 94105, telephone (415) 744-3133.

SUPPLEMENTARY INFORMATION:

I. Description of Project Area

The study area is located within the Sun Corridor region, an area defined by the limits of three contiguous Arizona counties: Maricopa, Pinal, and Pima. In 2011, the area is characterized by urban densities at the northern and southern limits of the study area (Phoenix Metropolitan Area in Maricopa County and Tucson Metropolitan Area in Pima County, respectively) and smaller, rural communities located between these urban centers (primarily located in Pinal County). Historic rapid employment and population growth throughout the region is well-documented. In general, the growing regional, intercity, and commuter travel demand generated by the historic growth has been accommodated by an automobile-dominated surface transportation network anchored by Interstate 10—the primary contiguous high capacity facility in the region. Additional surface transportation facilities include rural state routes such as State Route 79, and local roadway networks serving the cities and communities in the study area. There are no public transportation services that directly connect the Phoenix and Tucson urban centers. Mobility between these cities is predominantly served by private automobile; additionally, commercial air service and private bus/shuttle services are available.

II. Identification for Project Need

In March 2010 the ADOT completed the Statewide Transportation Planning Framework study. This study concluded that Arizona cannot address future congestion by continuing to rely almost exclusively on roadways to move people. High capacity services such as rail offer an efficient and attractive form of transportation to move people and the Tier 1 EIS will investigate passenger rail as a viable transportation solution.

Existing and future travel patterns, existing transit services, travel times, and population growth in the study area all demonstrate an existing as well as an evolving mobility need. The mobility need clearly indicates five study area markets where demand exists or will exist in the reasonably foreseeable future:

(1) Intercity mobility between the Tucson and Phoenix Metropolitan Areas.

(2) Commuter mobility between Phoenix and nearby suburban communities within Maricopa County.

(3) Commuter mobility between Tucson and nearby suburban communities within Pima County.

(4) Commuter mobility between activity centers in Pinal County and the Phoenix Metropolitan Area.

(5) Commuter mobility between activity centers in Pinal County and the Tucson Metropolitan Area.

Current travel conditions are represented by the following:

Travel demand in the Sun Corridor historically has been significant. Over 51,000 daily trips occurred on two north-south roads, Interstate 10 (I-10) and State Route 79 (SR 79) in 2008. Twenty-two percent of the daily vehicle traffic on these roads completed a commute-type trip, *i.e.*, departing from and returning to the same location.

From 2006 to 2008, daily inter-county commute trips within the three counties exceeded 75,000. Daily commute trips from Maricopa to Pima numbered 2,980, and commute trips in the reverse direction numbered 2,260. The commute from Pinal County to Maricopa County represented about 68 percent of all inter-county commute trips (51,625), with the second most desired trip (13,265) being in the reverse direction, between Maricopa and Pinal counties, representing about 18 percent of all inter-county commute trips. By 2050, as Pinal County's employment grows significantly, these latter figures are expected to increase accordingly.

In 2011, the only modes of surface transportation available for travel between Phoenix and Tucson and the area in between are private auto or common carrier (bus); with the majority of commuter, regional, and intercity travel using I-10 and SR 79. Despite recent widening of sections of I-10 in the study area, the interstate still experiences well-documented increasing durations of severe congestion and failed operation.

Need for Intercity Mobility

The 2050 projected travel demand in the Sun Corridor is expected to have a substantial adverse effect on the Sun Corridor's surface transportation network. A comparison of 2010 travel times with those modeled by ADOT's statewide travel demand model for 2050 indicates peak-period travel times would increase by over 100 percent for most trips, resulting in lost time and productivity. For example, the duration of a trip from Phoenix to Tucson—which now takes approximately 95 minutes—would increase to nearly 5½ hours by 2050, assuming drivers are willing to travel that long to cover the distance between the two urban areas. This also assumes I-10 has been

widened to as many as ten lanes during this period, indicating the need for parallel transportation options along the I-10 corridor. Further, the continued and growing demand to use I-10 as the primary intercity and commuter route in the corridor will contribute to growing congestion, reduced capacity, and reduced dependability on the facility.

In lieu of increasing capacity through continued highway widening, rail would facilitate mobility within existing and future travel markets by providing additional transportation capacity using an additional dependable travel mode.

Need for Commuter Mobility

By 2050, the employment and population makeup of the Sun Corridor will be substantially different than it is in 2011, and as a result, the Sun Corridor is projected to become one of the expansive urban areas across the United States that will account for the majority of the country's future growth. In 2050, while the Phoenix and Tucson areas will continue as major population and employment centers, the area between Phoenix and Tucson will experience tremendous population and employment growth, creating a singular urbanized corridor in the three counties. With a projected population nearing 12 million people by 2050, the urbanized corridor will be characterized by dense employment and population centers in and around Phoenix and Tucson and similar population and employment centers in western Pinal County, generally along high-capacity transportation corridors.

Statewide, Arizona's population is projected to more than double in the next 40 years, from 6.4 million to 16 million, with most development resulting from growth occurring within the Sun Corridor region. Forecasted population change in the Sun Corridor is summarized below. Between the years 2009 and 2050:

- Maricopa County population is projected to increase by 90 percent from 4,023,000 to 7,622,700.

- Pima County population is projected to increase by 96 percent from 1,018,000 to 1,990,300.

- Pinal County population is projected to increase by 494 percent from 356,000 to 2,113,000—the highest growth rate of any identified megapolitan region in the nation.

Employment growth projections for the same three-county area in the next 40 years are even more dramatic. From 2009 to 2050:

- Maricopa County employment is projected to increase by 132 percent.

- Pima County population is projected to increase by 87 percent.

- Pinal County employment is projected to increase by 850 percent.

The substantial new population and employment in Pinal County between the existing major urban areas will be distinguished by its focus on high-density activity centers in accordance with the region's long-range planning objectives. The redistribution of employment and population towards the center of the Sun Corridor will add to existing commuter and intercity mobility needs in the region. Within the planning horizon, commuter mobility to activity centers in Pinal County from Maricopa and Pima Counties will make up a substantial portion of the overall region's mobility needs. Further, the overall increase in travel demand within the corridor will further burden an already capacity-deficient system.

III. Alternatives To Be Considered

This study will satisfy the requirements of NEPA as well as FTA requirements for an Alternative Analysis that will permit consideration for New Starts funding. Under the New Starts Program, alternatives for consideration in the Alternatives Analysis process will include:

- A No-build alternative (also known as no-action: future condition in the study area implementing only currently approved transportation plans),
- A Baseline alternative (future condition in the study area without the proposed high-capacity guideway improvements and implementing only transportation systems management [TSM] type improvements), and
- Build alternatives to address the need of passenger rail service between Tucson, Arizona and Phoenix, Arizona.

A range of conceptual alignments by segment, alternative endpoints, and modes/technologies that have been identified in previous plans and studies have been proposed to constitute the potential build alternatives. However, alignment concepts specific to this study area will be further defined during scoping and the alternatives development process. Definition of compatible local transit systems to serve as a complement to the Build network would be part of alternatives development. Build alternatives will need to address the need for both intercity mobility and commuter mobility, and could potentially include the pairing of any combination of alignments and endpoints to define an overall alternative. Each alternative as defined would have independent utility to serve the mobility needs in the corridor as defined by the project need (See Section II).

IV. Probable Effects

The FRA, FTA, and ADOT will evaluate direct, indirect and cumulative changes to the social, economic, and physical environment—including land use and socioeconomic conditions, ecology, water resources, historic and archaeological resources, visual character and aesthetics, contaminated and hazardous materials, transportation, air quality, noise and vibration, and environmental justice. The analysis will be undertaken consistent with the National Environmental Policy Act, Council on Environmental Quality regulations defined previously, Section 106 of the National Historic Preservation Act, the Endangered Species Act, Clean Air Act, Clean Water Act, FRA's Environmental Procedures, FTA regulations, ADOT guidance, and Section 4(f) of the Department of Transportation Act of 1966, along with other applicable Federal and state regulations in the level of detail appropriate for a Tier 1 EIS.

V. Scoping Process

FRA, FTA, and ADOT invite all interested individuals, organizations, Native American groups, and Federal, state, and local agencies to comment on the scope of the Tier 1 EIS. Comments are invited from all interested agencies and the public to ensure the full range of issues related to the Tier 1 EIS are addressed and all significant issues are identified. In particular, FRA, FTA, and ADOT are interested in identifying areas of environmental concern where there might be a potential for significant impacts. Public agencies with jurisdiction are requested to advise FRA, FTA, and ADOT of the applicable permit and environmental review requirements of each agency, and the scope and content of the environmental information that is germane to the agency's statutory responsibilities in connection with the proposed action. Public agencies are requested to advise FRA, FTA, and ADOT if they anticipate taking a major action in connection with the proposed action and if they wish to cooperate in the preparation of the Tier 1 EIS.

Comments are encouraged on specific social, economic, or environmental issues to be evaluated, and on reasonable alternatives that may be less costly, more cost-effective, or have fewer environmental or community impacts while achieving similar transportation objectives.

ADOT will be leading the outreach activities during the public scoping process, beginning with the scoping meetings identified under **DATES** above.

Following the public scoping process, public outreach activities will include meetings with the regional Corridor Support Teams established for the study, as well as meetings with interested parties or small groups. Those wishing to participate in one of the Corridor Support Teams may do so by registering on the project Web site at <http://www.azdot.gov/intercityrail>.

The scoping meetings described in this notice will also be the subject of additional public notification including periodic updates to the project Web site to reflect the project's status. In addition, newsletters will be circulated to a broad constituency to ensure people are informed about the proposed action. Additional opportunities for public participation will be announced through mailings, notices, advertisements, and press releases.

VI. FTA New Starts Process

Federal transit law requires that the transit alternatives proposed for New Starts funding undergo an evaluation separate from the NEPA evaluation. The New Starts evaluation considers national criteria that are used to compare projects across the nation competing for New Starts funding. These criteria include: Cost, cost-effectiveness, transit system user benefits, economic development effects, operating efficiencies, environmental benefits, transit-supportive land use patterns served by the project, the financial plan for building the project, the financial plan for operating the resulting transit system, and the size of the state or local financial commitment to the project. FTA provides detailed guidance on how to perform this analysis and oversees its execution closely.

VII. Paperwork Reduction Act

The Paperwork Reduction Act seeks, in part, to minimize the cost to the taxpayer of the creation, collection, maintenance, use, dissemination, and disposition of information. Consistent with this goal and with principles of economy and efficiency in government, it is the policy of FRA and FTA to limit insofar as possible distribution of complete printed sets of environmental documents. Accordingly, unless a specific written request for a complete printed set of environmental documents is received by the close of the scoping process by the Contact identified under **ADDRESSES**, the FRA, FTA, and ADOT will distribute only the executive summary and a Compact Disc (CD) of the complete environmental document. A complete printed set of the environmental document will be

available for review at ADOT's offices and select repositories; an electronic copy of the complete environmental document will also be available on the project Web site: <http://www.azdot.gov/intercityrail>.

Issued in Washington, DC on October 3, 2011.

Mark E. Yachmetz,

Associate Administrator for Railroad Policy and Development, Federal Railroad Administration.

Leslie T. Rogers,

Regional Administrator, Federal Transit Administration Region 9.

[FR Doc. 2011-25885 Filed 10-5-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket FTA-2011-0054; Docket FTA-2011-0055]

Title VI; Proposed Circular, Environmental Justice; Proposed Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice; correction.

SUMMARY: This notice corrects the date for the Detroit public information session and corrects the sponsorship of the FTA information sessions, as published in the September 29, 2011, **Federal Register** Notices titled "*Title VI; Proposed Circular*" and "*Environmental Justice; Proposed Circular*."

FOR FURTHER INFORMATION CONTACT: For program questions, Amber Ontiveros, Office of Civil Rights, Federal Transit Administration, 1200 New Jersey Ave., SE., Washington, DC 20590, phone: (202) 366-4018, fax: (202) 366-3809, or e-mail, Amber.Ontiveros@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366-4011, or e-mail, Bonnie.Graves@dot.gov.

SUPPLEMENTARY INFORMATION: This notice corrects the date for the Detroit public information session and corrects the sponsorship of the FTA information sessions, as published in the September 29, 2011, **Federal Register** Notices titled "*Title VI; Proposed Circular*" (76 FR 60593) and "*Environmental Justice; Proposed Circular*" (76 FR 60590).

Corrections

The Detroit public information session will not be held on November 9, 2011. The new date is Thursday, November 3, 2011. Please visit FTA's Web site at <http://www.fta.dot.gov> for

information regarding the exact location. The time is the same: 6 p.m.–9 p.m.

FTA is the sole sponsor of the scheduled information sessions.

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

Peter Rogoff,

Administrator.

[FR Doc. 2011-25878 Filed 10-5-11; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA 2011-0147]

Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Request for Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the information collection and its expected burden. A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on December 22, 2010 (75 FR 80542).

DATES: Submit comments to the Office of Management and Budget (OMB) on or before November 7, 2011.

FOR FURTHER INFORMATION CONTACT: Walter Culbreath and Stephanie Purnell, Office of the Chief Information Officer (NPO 400), National Highway Traffic Safety Administration, W51-204, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-1566.

SUPPLEMENTARY INFORMATION: *Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Form No.: None.

Type of Review: New information request.

Respondents: State and local agencies, general public and stake holders, safety organizations and advocate groups.

Estimated Number of Respondents: 113,582.

Estimated Time per Response: Range from 10–120 minutes.

Total Estimated Annual Burden Hours: 20,204.

Frequency of Collection: Generally, on an annual basis.

Abstract: NHTSA develops, promotes and implements effective educational, engineering, and enforcement programs toward ending preventable tragedies and reducing economic costs associated with vehicle use and highway travel. Executive Order 12862 mandates that agencies survey their customers to identify the kind and quality of services they want and their level of satisfaction with existing services. Other requirements include the Governmental Performance and Results Act (GPRA) of 1993 which promotes a new focus on results, service quality, and customer satisfaction. As NHTSA continuously works to ensure that its programs are effective and meet its customer's needs, NHTSA seeks to obtain OMB approval of a generic clearance to collect qualitative feedback from its customers on NHTSA service delivery. Surveys will be undertaken to understand customer needs, satisfaction with products and services, perspectives on highway safety problems, forecast safety trends and achieve the agency's goals. This feedback will provide insight into customer or stakeholder perception, provide an early warning of issues with products or services, and focus attention on areas of communication in operations that might improve the delivery of products or services.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), Attention: Desk Officer for Department of Transportation, National Highway Traffic Safety Administration, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Docket Library, Room 10102, Washington, DC 20503, or by e-mail at oir_submission@omb.eop.gov, or fax: 202-395-5806.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information

technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this notice.

Issued in Washington, DC, on September 29, 2011.

Walter Bohorfoush,

Director, Office of Systems Integration.

[FR Doc. 2011-25775 Filed 10-5-11; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. NOR 42129; Docket No. FD 35517]

American Chemistry Council, The Chlorine Institute, Inc., the Fertilizer Institute, and PPG Industries, Inc. v. Alabama Gulf Coast Railway and RailAmerica, Inc.; CF Industries, Inc. v. Indiana & Ohio Railway, the Point Comfort and Northern Railway, and the Michigan Shore Railroad—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by CF Industries, Inc. (CF) on May 17, 2011, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). CF requests that the Board declare invalid and unenforceable certain tariffs addressing the movement of Toxic-by-Inhalation Hazardous materials and Poison-by-Inhalation Hazardous materials (TIH/PIH) issued by 3 subsidiaries of RailAmerica, Inc. (RailAmerica): The Indiana & Ohio Railway Company, the Point Comfort and Northern Railway Company and the Michigan Shore Railroad, Inc. (collectively, the RailAmerica railroads). This proceeding will also develop the record with respect to a complaint filed by another shipper and several trade associations in Docket No. NOR 42129, which raises similar issues regarding the handling of TIH/PIH by another RailAmerica subsidiary.¹ The Board seeks public comment on the issues raised in both cases.

DATES: Any person who wishes to participate in this proceeding as a party of record (POR) must file, no later than October 17, 2011, a notice of intent to

participate. Discovery will close on November 29, 2011. Opening evidence and argument from all PORs is due on January 13, 2012. Reply evidence and argument from all PORs is due on February 27, 2012. Rebuttal evidence and argument from all PORs is due on March 13, 2012.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic version), referring Docket No. FD 35517, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, 1 copy of each filing in this proceeding must be sent (and may be sent by e-mail if service by e-mail is acceptable to the recipient) to each of the following (1) Patrick E. Groomes, Fulbright & Jaworski, L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004-2623, pgroomes@fulbright.com (representing CF); (2) Louis E. Gitomer, Law Offices of Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204, Lou@lgrailaw.com (representing the RailAmerica railroads and the defendants in Docket No. NOR 42129); (3) Paul M. Donovan, LaRoe, Winn, Moerman & Donovan, 1250 Connecticut Avenue, NW., Suite 200, Washington, DC 20036, paul.donovan@laroelaw.com (representing the complainants in Docket No. NOR 42129); (4) Jeffrey O. Moreno, Thompson Hine LLP, 1920 N Street, NW., Washington, DC 20036, jeff.moreno@thompsonhine.com (representing TFI); and (5) any other person designated as a POR on the service-list notice (as explained in the Board's decision served on September 30, 2011, in Docket Nos. FD 35517 and NOR 42129²).

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245-0359.

Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

² The service-list notice will be issued as soon after October 17, 2011, as practicable.

SUPPLEMENTARY INFORMATION: CF and the NOR 42129 complainants challenge certain requirements for rail transportation of TIH/PIH promulgated by RailAmerica and several of its railroad subsidiaries. Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this docket to invite broad public comment on the issues raised in Docket Nos. FD 35517 and NOR 42129. Any person seeking to comment on CF's petition in Docket No. FD 35517 or the complaint in Docket No. NOR 42129 may submit written comments to the Board (pursuant to the schedule and procedures set forth in this notice) regarding the reasonableness of the challenged TIH/PIH transportation requirements. For further information, please see the Board's decision served on September 30, 2011, in Docket Nos. FD 35517 and NOR 42129.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: September 28, 2011.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Jeffrey Herzig,
Clearance Clerk.

[FR Doc. 2011-25848 Filed 10-5-11; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request; Renewal With Changes to a Currently Approved Collection; the Registration of Money Services Business (MSB), FinCEN Report 107, To Incorporate Changes to the MSB Definitions and Add Provisions for Prepaid Access

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Registration of Money Services Business, FinCEN Form 107. The form will be used by dealers in foreign exchange; check cashers; issuers, sellers, and redeemers of traveler's checks and money orders; providers of prepaid access; and money transmitters to register with the

¹ In Docket No. NOR 42129, the complainants are American Chemistry Council, The Chlorine Institute, Inc., The Fertilizer Institute (TFI), and PPG Industries, Inc. (collectively, the NOR 42129 complainants), and the defendants are Alabama Gulf Coast Railway LLC and RailAmerica (collectively, the NOR 42129 defendants).

Department of the Treasury as required by statute. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before December 5, 2011.

ADDRESSES: Written comments should be submitted to: Office of Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183. *Attention:* PRA Comments—MSB Registration—Form 107. Comments also may be submitted by electronic mail to the following *Internet address:* regcomments@fincen.gov, again with a caption, in the body of the text, “*Attention:* PRA Comments—MSB Registration—Form 107.”

Inspection of comments: Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Vienna, VA. Persons wishing to inspect the comments submitted must request an appointment with the Disclosure Officer by telephoning (703) 905-5034 (Not a toll free call).

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory helpline at (800) 949-2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

Title: Registration of Money Services Business.

OMB Number: 1506-0013.

Form Number: FinCEN Form 107.

Abstract: The statute generally referred to as the “Bank Secrecy Act,” (“BSA”) Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311-5330) appear at 31 CFR chapter X. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

Under 31 U.S.C. 5330 and its implementing regulations, money services businesses must register with the Department of the Treasury, maintain a list of their agents, and renew their registration every two years. Currently, money services businesses register by filing FinCEN Form 107, which is being revised to incorporate changes to the MSB definitions¹ and provide for prepaid access program²

information. The information collected on the form is required to comply with 31 U.S.C. 5330 and its implementing regulations. The information will be used to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from being used by those engaging in money laundering, terrorist financing and other illicit financial crimes. The collection of information is mandatory.

Current Actions: The current FinCEN Form 107 and instructions are being revised to update the information collection tool as follows:

Part I adds Item 1e, RMSB Registration number for all but initial registrations.

Part II expands Item 3 into separate fields to record last name/entity, adds a check box to indicate “if entity,” adds first name and middle initial boxes. In Item 6, adds AKA to the DBA entry, adds a box to indicate a foreign country, adds a box to indicate the type of taxpayer identification number (TIN), adds a space for recording a Web site (URL) address if available, and adds spaces to identify the name and phone number of the compliance contact person for the MSB.

Part III repeats the same name entry expansion, TIN and TIN type as in part II. E-mail address and Web site info is added and removes ID information box 23 on the current form.

Part IV adds a check box to indicate foreign locations, adds to the MSB services provided check boxes to indicate seller of prepaid access and provider of prepaid access, and updates the existing terminology to match the new MSB definitions. Added to part IV is an entry to list financial services being provided that are in addition to those already indicated. Added in part IV are a series of information boxes regarding prepaid access that are to be completed if the registrant is a provider of prepaid access. This revision adds the name of the prepaid program, the IIN/BIN (first six numbers), the name of the processor, and compliance point of contact to include the phone number and provides a check box to indicate if the listed program is useable internationally. This revision updates part IV to clarify reporting the number of U.S. agents providing MSB services.

Part V, Primary Transaction Account for MSB Activities, adds depository institution routing number, depository institution IBAN if foreign, country code, type of financial institution (depository institution, non-depository or foreign) in addition to existing information.

Parts VI and VII change the name to add, respectively, address and signature of the Agent for Service of Process.

Type of Review: Renewal with change of a currently approved collection report.

Affected public: Individuals, business or other for-profit institutions, and not-for-profit institutions.

Frequency: Every two years.³

Estimated Burden: Reporting average of 30 minutes per response; recordkeeping average of 30 minutes per response.

Estimated number of respondents: 44,300.

Estimated Total Annual Burden Hours: 22,150 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (OMB) control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

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; (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information; (f) whether it is a business practice for providers of prepaid access to contract with more than one payment processor and if so, please explain why and how many; and (g) any other aspect of the revised form and instructions.

Dated: September 26, 2011.


Nicholas Colucci,
*Acting Director, Financial Crimes
Enforcement Network.*

BILLING CODE 4810-02-P

¹ See 76 FR 43585, dated July 21, 2011.

² See 76 FR 45403, dated July 29, 2011.

³ Per 31 CFR 1022.380(b)(2).

<p>FinCEN Report 107 BSA E-File Only</p>	<p>Bank Secrecy Act Registration of Money Services Business</p> <p>Please type or print. Always complete entire report. See instructions for items marked with an asterisk (*).</p>	 OMB No.1506-0013		
Part I Filing Information				
1 Indicate the type of filing by checking a, b, or d below (Check only one). If filing a <u>correction</u> , check "c" and either a, b, or d. a <input type="checkbox"/> Initial registration b <input type="checkbox"/> Renewal c <input type="checkbox"/> Correct/amend a prior report d <input type="checkbox"/> Re-registration e Enter RMSB registration number if 1b, 1c, or 1d is checked _____				
2 If you checked item 1d please indicate the reason(s). Check all that apply. a <input type="checkbox"/> Re-registered under state law b <input type="checkbox"/> More than 10 percent transfer of equity interest c <input type="checkbox"/> More than 50 percent increase in agents				
Part II Registrant Information				
*3 Individual's last name, or entity's legal name		a <input type="checkbox"/> If entity	*4 First name	*5 Middle initial
6 Alternate name, e.g., AKA - individual or DBA - entity		*7 Address		*8 City
*10 ZIP/Postal Code		*11 Country code	*12 TIN	*13 TIN type a <input type="checkbox"/> SSN/TIN b <input type="checkbox"/> EIN c <input type="checkbox"/> Foreign
15 Telephone number		15 a Ext.	14 Date of birth MM / DD / YYYY	
16 E-mail address (if available)				
17 Website address (URL) (if available)				
18 Name of compliance contact person for this registered MSB		19 Compliance telephone number (if different than item 15)		19 a Ext.
Part III Owner or Controlling Person				
20 Individual's last name, or entity's legal name		a <input type="checkbox"/> Entity	21 First name	22 Middle initial
23 Address		24 City		25 State
28 TIN		29 TIN type a <input type="checkbox"/> SSN/TIN b <input type="checkbox"/> EIN c <input type="checkbox"/> Foreign		26 ZIP/Postal Code
32 Website address (URL) (if available)		30 Date of birth MM / DD / YYYY		27 Country code
		33 Telephone number		33 a Ext.
Part IV Money Services and Product Information				
34 U.S. States and/or territories where the registrant, its agents or branches are physically located and/or providing MSB services. Check box a, b, or c as appropriate (<u>Check only one</u>) and do not check individual state/territory boxes. If box a, b, or c does not apply, check as many state/territory boxes as necessary. If services are also provided in foreign locations (non-US and US Territories) check box d. a <input type="checkbox"/> All States & Territories b <input type="checkbox"/> All States c <input type="checkbox"/> All Territories d <input type="checkbox"/> Foreign locations				
<input type="checkbox"/> Alabama (AL)	<input type="checkbox"/> Georgia (GA)	<input type="checkbox"/> Maryland (MD)	<input type="checkbox"/> New York (NY)	<input type="checkbox"/> South Dakota (SD)
<input type="checkbox"/> Alaska (AK)	<input type="checkbox"/> Guam (GU)	<input type="checkbox"/> Massachusetts (MA)	<input type="checkbox"/> North Carolina (NC)	<input type="checkbox"/> Tennessee (TN)
<input type="checkbox"/> American Samoa (AS)	<input type="checkbox"/> Hawaii (HI)	<input type="checkbox"/> Michigan (MI)	<input type="checkbox"/> North Dakota (ND)	<input type="checkbox"/> Texas (TX)
<input type="checkbox"/> Arizona (AZ)	<input type="checkbox"/> Idaho (ID)	<input type="checkbox"/> Minnesota (MN)	<input type="checkbox"/> N. Mariana Isls. (MP)	<input type="checkbox"/> Utah (UT)
<input type="checkbox"/> Arkansas (AR)	<input type="checkbox"/> Illinois (IL)	<input type="checkbox"/> Mississippi (MS)	<input type="checkbox"/> Ohio (OH)	<input type="checkbox"/> Vermont (VT)
<input type="checkbox"/> California (CA)	<input type="checkbox"/> Indiana (IN)	<input type="checkbox"/> Missouri (MO)	<input type="checkbox"/> Oklahoma (OK)	<input type="checkbox"/> Virgin Islands (VI)
<input type="checkbox"/> Colorado (CO)	<input type="checkbox"/> Iowa (IA)	<input type="checkbox"/> Montana (MT)	<input type="checkbox"/> Oregon (OR)	<input type="checkbox"/> Virginia (VA)
<input type="checkbox"/> Connecticut (CT)	<input type="checkbox"/> Kansas (KS)	<input type="checkbox"/> Nebraska (NE)	<input type="checkbox"/> Palau (PW)	<input type="checkbox"/> Washington (WA)
<input type="checkbox"/> Delaware (DE)	<input type="checkbox"/> Kentucky (KY)	<input type="checkbox"/> Nevada (NV)	<input type="checkbox"/> Pennsylvania (PA)	<input type="checkbox"/> West Virginia (WV)
<input type="checkbox"/> District of Columbia (DC)	<input type="checkbox"/> Louisiana (LA)	<input type="checkbox"/> New Hampshire (NH)	<input type="checkbox"/> Puerto Rico (PR)	<input type="checkbox"/> Wisconsin (WI)
<input type="checkbox"/> FS of Micronesia (FM)	<input type="checkbox"/> Maine (ME)	<input type="checkbox"/> New Jersey (NJ)	<input type="checkbox"/> Rhode Island (RI)	<input type="checkbox"/> Wyoming (WY)
<input type="checkbox"/> Florida (FL)	<input type="checkbox"/> Marshall Islands (MH)	<input type="checkbox"/> New Mexico (NM)	<input type="checkbox"/> South Carolina (SC)	

Part IV (continued)		2
35 Enter the number of US branches of the registrant. Reminder: do not separately register each branch. See instructions for an explanation of the term "branch".		
36 Money services business activities of the registrant in the US. Check as many as apply. See instructions for an explanation of the terms. a <input type="checkbox"/> Issuer of traveler's checks d <input type="checkbox"/> Seller of money orders g <input type="checkbox"/> Check casher (including traveler's and money orders) b <input type="checkbox"/> Seller of traveler's checks e <input type="checkbox"/> Dealer in foreign exchange h <input type="checkbox"/> Seller of prepaid access c <input type="checkbox"/> Issuer of money orders f <input type="checkbox"/> Money transmitter i <input type="checkbox"/> Provider of prepaid access		
37 If you are providing financial services <u>in addition</u> to those checked in item 36 please briefly describe.		
If item "36i" is checked, provide the following information (items 38 to 43) to identify each prepaid program for which the registrant is the provider of prepaid access (Information for up to 999 programs may be entered).		
38 Name of prepaid program	39 IIN (BIN) of this program (First six digits mandatory)	40 Name of processor
41 Name of compliance contact person for this program	42 Contact phone number	42a Ext.
43 Is this prepaid program useable internationally? Yes <input type="checkbox"/> No <input type="checkbox"/>		
44 Is any part of the registrant's US money services business an informal value transfer system? See the explanation of "money transmitter" in the instructions. a <input type="checkbox"/> Yes b <input type="checkbox"/> No		
45 Is any part of the registrant's US money services business conducted from a vehicle? a <input type="checkbox"/> Yes b <input type="checkbox"/> No		
46 Enter the number of US agents authorized to conduct each money services business activity. Do not include US branches, or persons who are solely employees. See instructions for an explanation of the term "agent".		
a Number of US agents selling traveler's checks	d Number of US agents conducting money transmission	
b Number of US agents selling money orders	e Number of US agents engaged in check cashing (including traveler's checks and money orders)	
c Number of US agents involved as a dealer in foreign exchange	f Number of US agents selling prepaid access	
Part V Primary Transaction Account for MSB Activities		
NOTE: See instructions for an explanation of the term "transaction account". The registrant's primary transaction account is the account that has the greatest annual dollar amount of money services business activity. In items 47 through 56 enter information about the registrant's primary transaction account for money services business activities.		
47 Name of financial institution where the primary transaction account is held		48 Depository financial institution routing number
49 Primary account number	50 Depository financial institution IBAN (if foreign)	
51 Address	52 City	53 State | 54 ZIP/Postal Code
55 Country code	56 Type of financial institution where the primary transaction account is held (NOTE: If box "a" is checked, items 48 and 49 are required. If box "c" is checked, item 50 is required). a <input type="checkbox"/> Depository institution b <input type="checkbox"/> Non-depository institution c <input type="checkbox"/> Foreign	
Part VI Location of Supporting Documentation/Address of Agent for Service of Process		
If the supporting documentation is kept at the location reported in Part II check here <input type="checkbox"/> and continue to Part VII. If not, complete the information here in Part VI. If the MSB is located outside of the United States, enter the information of the U.S. agent for service of legal process.		
57 Address		
58 City	59 State	60 ZIP/Postal Code | 61 Country code
Part VII Authorized Signature/Signature of Agent for Service of Process		
I am authorized to file this form on behalf of the money services business listed in Part II. I declare that the information provided is true, correct and complete. I understand that the money services business listed in Part II is subject to the Bank Secrecy Act and its implementing regulations. The money services business listed in Part II maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder. The signature of the owner, controlling person, authorized corporate officer, or U.S. agent for service of legal process is mandatory.		
62 Signature	63 Print name	
64 Title	65 Date of signature MM / DD / YYYY	

General Information

Who Must Register

Generally money services businesses (MSBs) must register with the Department of the Treasury, using this report, FinCEN 107, Registration of Money Services Business. However, not all MSBs are required to register. For example, if you are an MSB solely because you are an agent of another MSB, you are not required to register. The discussion below will help you determine whether or not you are an MSB that is required to register. For more information visit http://www.fincen.gov/financial_institutions/msb/.

The term money services business includes:

1. Dealer in foreign exchange who transacts in an amount greater than \$1,000 for any one customer on any day, whether or not for same day delivery.
2. Check casher who accepts checks or other monetary instruments in return for currency or a combination of currency and other monetary instruments for any one customer on any day.
3. Issuer or seller of traveler's checks who issues or sells more than \$1,000 in traveler's checks or money orders for any one customer on any day. "Issuer" is defined or determined by virtue of the amount at which its monetary instruments or traveler's checks are sold, as opposed to the amounts at which they are issued. For example, the amount of the sale includes the face value of the monetary instruments plus any fees.
4. Provider of prepaid access who agrees to be the provider with respect to a prepaid access program or is determined to have primary oversight and control over the prepaid access program and serves as the principal conduit for access to information from its fellow program participants. Considerations for a provider determination include whether a party organizes the program; sets the terms and conditions of the prepaid program and determines that the terms have not been exceeded; determines the other businesses that will participate in the prepaid program, which may include the issuing bank the payment processor, or the distributor; controls or directs the appropriate party to initiate, freeze, or terminate prepaid access; and engages in activity that demonstrates oversight and control of the prepaid program.
5. Money transmitter.
6. U.S. Postal Service.
7. Seller of prepaid access.

The following are not required to register:

1. A business that is an MSB solely because it serves as an agent of another MSB. For example, a supermarket corporation that sells money orders for an issuer of money orders is not required to register. This is true even if the supermarket corporation serves as an agent for two or more

MSBs. However, an MSB that serves as an agent of another MSB and engages in MSB activities on its own behalf must register. For example, a supermarket corporation must register if, in addition to acting as an agent of the money order issuer, it provides check cashing or currency exchange services on its own behalf in an amount greater than \$1,000 for any one person on any day.

2. The United States Postal Service, any agency of the United States, of any state, or of any political subdivision of any state.

3. A seller of prepaid access is any person that receives funds or the value of funds in exchange for an initial loading or subsequent loading of prepaid access, unless that person only sells prepaid access offered under a prepaid program that cannot be used before verification of customer identification and has implemented policies and procedures reasonably adapted to prevent the sale of more than \$10,000 of any type of prepaid access.

For the regulatory definition of "money services business" see 31 CFR 1010.100 (ff).

The following terms are used in the form and instructions to describe a money services business:

1. An "agent" is a separate business entity from the issuer that the issuer authorizes, through written agreement or otherwise, to sell its instruments or, in the case of funds transmission, to sell its send and receive transfer services. A person who is solely an employee of the MSB is not an agent of that MSB. A branch is not a separate business entity and is therefore not an agent.

2. A "branch" is an owned location of either an issuer or agent at which financial services are sold. An MSB should not separately register each of its branches. A mobile operation owned by an MSB is a branch of that MSB. The MSB's headquarters is not a branch. If the MSB has only one location, that location is not a branch.

3. A "check casher" is a person that accepts checks (as defined in the Uniform Commercial Code), or monetary instruments (as defined at § 1010.100(dd)(1)(ii), (iii), (iv), and (v)) in return for currency or a combination of currency and other monetary instruments or other instruments, in an amount greater than \$1,000 for any person on any day in one or more transactions.

4. A "dealer in foreign exchange" is a person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same day delivery.

5. "Informal value transfer system." See explanation of the term money transmitter.

6. An "issuer" is the business that is ultimately responsible for payment of money orders or travelers checks as the drawer of such instruments, or a money transmitter that has the obligation to guarantee payment of a money transfer.

7. A “money transmitter” is (A) a person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or (B) Any other person engaged in the transfer of funds.

An “informal value transfer system” is a kind of money transmitter. An informal value transfer system includes any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

8. A “person” is an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

9. A “seller” is a business that issuers or providers authorize, through written agreement or otherwise, to sell their instruments, services, or products or their send and receive transfer services.

10. A “transaction account” is a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such terms include demand deposits, negotiable order of withdrawal accounts, savings deposit subject to automatic transfers, and share draft accounts. See 12 USC 461(b)(1)(c).

Where and When to Register

Where to Register:

Go to the BSA E-Filing Home Page; <http://bsae filing.fincen.treas.gov/main.html> and if not registered click on “Become a BSA E-File” button to establish and set up your account. If you are already registered, log into your account.

When to Register:

Initial registration: File the report within 180 days after the date the business is established.

Renewal: Each MSB must renew its registration every two years, on or before December 31. See 31 CFR 1022.380(b)(2). For example, if an MSB registered on October 15, 2003, it must file a renewal by December 31, 2004, and then every 24 months thereafter (on or before December 31, 2006, then December 31, 2008, etc.). **Renewals must be submitted on a new**

FinCEN Report 107. Photocopies of previously submitted forms/reports or facsimiles will not be accepted for renewal purposes

Special Actions:

Correct/amend a prior report: Log in to the BSA E-File website, and complete all Parts of a new FinCEN report 107.

Re-registration: Refile a new registration report when one of the following events occurs:

1. a change in ownership requiring re-registration under state registration law;
2. more than 10 percent of voting power or equity interest is transferred (except certain publicly-traded companies) or;
3. the number of agents increases by more than 50 percent.

The Financial Crimes Enforcement Network (FinCEN) will immediately send a confirmation message of receipt of filing upon submission. An acknowledgment that the registration has been accepted, processed, and recorded will be available on the E-Filing System status page in approximately two business days. The listing will be published on FinCEN's official MSB registration list (URL TBD) in approximately two weeks. If you have general questions about MSB regulatory requirements, please contact FinCEN's Regulatory Helpline at 800-949-2732, Option 1. If you have electronic filing questions, please contact the BSA E-Filing Help Desk at 866-346-9478, Option 1.

General Instructions

NOTE: All items on FinCEN Report 107 should be completed fully and accurately. Items marked with an asterisk (*) must be completed for the registration to be accepted, processed, and recorded.

1. This report is available on the FinCEN's BSA E-Filing web site at <http://bsaeifiling.fincen.treas.gov/main.html>.

2. Unless there is a specific instruction to the contrary, leave blank any items that do not apply or for which information is not available.

3. Complete the report by providing as much information as possible.

4. Do not include supporting documents with this report.

5. Enter all dates in MM / DD / YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, *i.e.*, 01, 02, etc.

6. List all U.S. telephone numbers with area code first and then the seven-digit phone number, using the format (XXX) XXX-XXXX.

7. Always enter an individual's name as last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.

8. Enter identifying numbers starting from left to right. Do not include spaces, dashes, or other punctuation. Identifying numbers include social security number (SSN), employer identification number (EIN), individual taxpayer identification number (ITIN), alien registration number, driver's license/state identification, foreign national identification, and passport number.

9. Enter all Post Office ZIP Codes from left to right with at least the first five numbers, or with all nine (ZIP + 4) if known.

10. Addresses: Enter the US permanent street address, city, two-letter state or territory abbreviation used by the U.S. Postal Service and ZIP Code (ZIP+4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual, also enter any apartment number, suite number, or road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number.

If the address of the individual or entity in PART II or III is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known.

Specific Instructions

Part I Filing Information

See "When to Register" in the General Information part of these instructions.

Item 1-- Check either box a, b, or d (only one) for the type of filing. If this report corrects an earlier filing, check box "c" and either box a, b, or d. Complete "1e" if a registration number has been provided by a US Federal or State Government Agency.

Item 2-- If you checked box 1d, please indicate the reason by checking boxes a, b, or c (check all that apply).

Part II Registrant Information

Enter information for the US State or Territory operating location.

Items *3, *4, and 5-- Individual's last name, or entity's legal name, First name, and Middle initial. If a sole proprietorship, enter the last name of the proprietor in item *3, followed by the first name and middle initial in items *4 and 5, respectively. If an entity, enter the full legal name of the registrant money services business as it is shown on the charter or other document creating the entity in item *3 and check the "If entity" box in the upper right hand corner. Leave items *4 and 5 blank. For example, enter "Good Hope Enterprises, Inc." when the money services business is Good Hope Enterprises, Inc.

Item 6-- Alternate name, e.g., AKA - individual or DBA - entity. If applicable, enter any alternate name of the registrant, such as a separate Doing Business As name. For example, if

Good Hope Enterprises, Inc., is doing business as "Joe's Check Cashing" enter in item 6, "Joe's Check Cashing."

Items *7, *8, *9, *10, and *11-- Address. Enter the permanent address of the registrant that is being registered. If the permanent address is not located in the United States, enter the country code in item *11 and as much of the information in items *9 and *10 as possible. Country codes can be found in the BSA e-filing drop-down list.

Item *12-- TIN (Tax Identification Number). If the registrant is an entity enter its employer identification number (EIN). If the registrant is an individual and a U. S. Citizen or an alien with a social security number, enter his/her SSN. If the registrant is an individual who is an alien and has an individual taxpayer identification number, enter his/her ITIN.

Item *13-- TIN type. Indicate what type of identification number was entered into item *12, SSN/ITIN or EIN. If the entity does not have a SSN, ITIN or EIN and is located outside of the United States, indicate that the entity is foreign. If foreign is checked, *12 maybe left blank.

Item 14-- Date of Birth. Indicate the date of birth of the individual or sole proprietor registrant identified in item *3. If item *3 is an entity leave blank.

Item 15-- Telephone number. Enter the telephone number of the MSB listed in item 3, including any extension where applicable.

Item 16-- E-mail address (If available). If the MSB has an e-mail address please enter it here. An e-mail address may be used to contact the MSB should questions arise regarding its registration.

Item 17-- Website address (URL) (If available). If the MSB has a website please enter the URL here. The website may be used to confirm any details of the registration that are unclear or incomplete.

Item 18-- Name of compliance contact person for this registered MSB. Enter name "if entity" is checked or if different individual listed in item 3.

Item 19-- Compliance telephone number (If different than item 15).

Item 19a-- Extension (if applicable).

Part III Owner or Controlling Person

General: Any person who owns or controls an MSB, or is an authorized agent in the United States, is responsible for registering the MSB. Only one registration report is required for any business in any registration period.

If more than one person owns or controls the business, they may enter into an agreement designating one of them to register the business. The designated owner or controlling person

must complete Part III and provide the requested information. In addition, that person must sign and date the form as indicated in Part VII. Failure by the designated person to register the business does not relieve any other person who owns or controls the business of the liability for failure to register the business.

An "Owner or Controlling Person" includes the following:

<i>Registrant Business</i>	<i>Owner or Controlling Person</i>
Sole Proprietorship.....	the individual who owns the business
Partnership.....	a general partner
Trust.....	a trustee
Corporation.....	the largest single shareholder

If two or more persons own equal numbers of shares of a corporation, those persons may enter into an agreement as explained above that one of those persons may register the business. If the owner or controlling person is a corporation, a duly authorized officer of the owner-corporation may execute the form on behalf of the owner-corporation.

Items 20 to 33--Enter the applicable information for the owner or controlling person. The individual's home address and phone number should not be used, unless a business address and phone number are unavailable.

Items 23, 24, 25, 26, and 27-- Address. Enter the permanent address of the owner or controlling person. If the permanent address is not located in the United States, enter the country code in item 27 and as much of the information in items 25 and 26 as possible. Country codes can be found in the BSA e-filing drop-down list.

Item 28--TIN. If the owner or controlling person is an entity enter its employer identification number (EIN). If the owner or controlling person is an individual and a U. S. Citizen or an alien with a social security number, enter his/her SSN. If the owner or controlling person is an individual who is an alien and has an individual taxpayer identification number, enter his/her ITIN.

Item 29-- TIN type. Indicate what type of identification number was entered into item 28, SSN/ITIN or EIN. If the entity does not have a SSN, ITIN or EIN and is located outside of the United States, indicate that the entity is foreign. If foreign is checked, 26 maybe left blank.

Item 30-- Date of Birth. Indicate the date of birth of the individual or sole proprietor registrant identified in Item 20. If item 20 is an entity leave blank.

Item 31-- E-mail address (If available). If the individual or entity listed in item 20 has an e-mail address please enter it here. An e-mail address may be used should questions arise regarding this registration.

Item 32-- Website address (URL) (If available). If the individual or entity listed in item 20 has a website please enter the URL here. The website may be used to confirm any details of the registration that are unclear or incomplete.

Item 33 and 33a-- Telephone number and Extension (if any). Enter the telephone number of the individual or entity listed in item 20, including any extension where applicable.

Part IV Money Services and Product Information

Item 34 --States and/or territories where the registrant, its agents or branches are physically located and/or providing MSB services. Check box "a" for All States and Territories, "b" for All States, or "c" for All Territories (Check only one) as appropriate, and **do not** check any individual state or territory boxes. If box a, b, or c **does not apply**, check as many state or territory boxes as necessary. If a service is offered on tribal lands, mark the box for the state, territory or district in which the tribal lands are located. If services are also provided in foreign locations, check box "d."

Item 35 --Enter the number of branches of the registrant. Enter the number of branches of the money services business at which one or more MSB activities are offered. If there are no branches, enter zero. See the General Information for an explanation of the term "branch."

Item 36 --MSB activities of the registrant. Items 36a through 36i are MSB activities. Check the box of each MSB activity conducted by the registrant at its branches. See the General Information for an explanation of the terms "issuer," "seller," "dealer in foreign exchange," "check casher," "provider of prepaid access," "seller of prepaid access," and "money transmitter." If the MSB activity is not listed here, check box "z Other" and enter a brief description in the space provided.

Item 36i-- A Provider of prepaid access is required to "identify each prepaid program for which it is the provider of prepaid access." What constitutes a separate prepaid program is left to the business judgment of the provider of prepaid access; however the information required in items 37 - 42 is illustrative of the factors that should be considered. Items 37 to 42 may be repeated up to 999 times. For example, where programs have separate names, different issuing banks or Issuer Identification Numbers (IIN), or where one program can be used internationally and another not, the programs should be identified separately.

Item 37-- If you are providing financial services in addition to those checked in item 34 please briefly describe.

Item 38-- Prepaid Access Program Identification. If item 36i (Provider of Prepaid Access) is checked, the Provider must "identify each prepaid program for which the registrant is the provider of prepaid access. . . ." Item 38 allows space to identify the name(s) of the program(s) for which the registrant is a provider. A "program" for item 38 may be ascertained by the services offered or geographical areas served or by some other manner determined by the provider.

Item 39-- IIN/ BIN. List the Issuer Identification Number ("IIN") or the bank identification number ("BIN), if any (First six digits are mandatory).

Item 40-- Name of processor. Provide the name of the processor for the particular prepaid access program.

Items 41, 42, and 42a-- Name and telephone number of compliance contact person for this program. (Complete only if different than PART II items 18, 19, and 19a) Provide the name and telephone number of a person with knowledge of the program and who can be a meaningful contact for law enforcement. Such a person may be one with day-to-day knowledge of the program.

Item 43--Is this program useable internationally? A program may be useable internationally if funds or the value of funds are accessible, by any means, outside of the United States. Accordingly, if for example, the program allows for ATM usage or point of sale transactions in countries outside of the United States, it is useable internationally.

Item 44 --Informal value transfer system. If any part of the registrant's money services business is an informal value transfer system, check yes. An informal value transfer system is a kind of money transmitter. See the General Information explanation of the term "money transmitter."

Item 45 --Mobile operation. If any part of the registrant's money services business is conducted as a mobile operation, check yes. A mobile operation is one based in a vehicle. For example, a check cashing service offered from a truck is a mobile operation. For purposes of item 35, each mobile operation should be counted as a separate branch.

Item 46 --Number of agents. Enter the number of agents that the registrant has authorized to sell or distribute its MSB services. Do not count the MSB headquarters, branches or any person who is solely an employee of the MSB. A bank is not an agent for this purpose. See the General Information for an explanation of the term "agent."

Part V Primary Transaction Account for MSB Activities

Items 47, 48 and 49--Name of the financial institution where the primary transaction account is held, routing number and account number. Enter the name of the bank or other financial institution where the registrant has its primary transaction account. Provide the routing number (the digits on the lower left side of a check) and the account number (the digits centered on the bottom of a check) for the primary transaction account. See the General Information for an explanation of the term "transaction account."

Item 50--Depository financial institution IBAN (international bank account number, if foreign). If the transaction account is maintained at a financial institution located outside of the United States (Item 55 is other than US), enter the accounts international bank account number.

Items 51 to 54--Enter the address for the financial institution where the transaction account is maintained.

Item 55—Country code. If the permanent address is not located in the United States, enter the country code in item 55. Country codes can be found in the BSA e-filing drop-down list.

Item 56—Type of financial institution where the primary transaction account is held.

Check box “a” if the primary account is held at a bank, thrift or credit union, or check box “b” if the primary account is held at a financial institution other than a bank. In addition to box “a” or “b,” check box “c” if the depository institution or non-depository institution is located outside of the United States. For example, box “a” and box “c” may be checked if the primary transaction account is held at a bank located outside of the United States.

Part VI Location of Supporting Documentation/ Address of Agent for Service of Process Designation of Agent for Service of Process

A foreign located MSB is required by 31 CFR 1022.380(2) to “designate the name and address of a person who resides in the United States and is authorized, and has agreed, to be an agent to accept service of legal process” Designation of such an agent is accomplished by entering the agent’s information in Part VI, Location of Supporting Documentation/Address of Agent for Service of Process, and having the agent sign the document on behalf of the MSB in Part VII, Authorized Signature/Signature of Agent for Service of Process.

The agent is required to hold the supporting documentation and agent list described in Part VI at the listed location on behalf of the foreign located MSB.

The agent signing on behalf of the foreign located MSB in Part VII certifies as follows: “I am authorized to file this form on behalf of the money services business listed in Part II. I declare that the information provided is true, correct and complete. I understand that the money services business listed in Part II is subject to the Bank Secrecy Act and its implementing regulations. The money services business listed in Part II maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder.”

General: The U.S. located registrant or the foreign located registrant’s U.S. agent for service of legal process must retain for five (5) years certain information at a location within the United States. That information includes:

Documents supporting the MSB’s existence may include:

1. A copy of the registration form.
2. Annual estimate of the volume of the registrant’s business in the coming year.
3. The following information regarding ownership or control of the business: the name and address of any shareholder holding more than 5% of the registrant’s stock, any general partner, any trustee, and/or any director or officer of the business.
4. An agent list.

If the registrant has agents it must prepare and maintain a list of its agents. That agent list must be updated annually and retained by the business at the location in the United States reported on this registration form in Part II or Part VI. The agent list **should not** be filed with this registration form.

The agent list must include:

- a. Each agent's name,
- b. Each agent's address,
- c. Each agent's telephone number,
- d. The type of service(s) provided by each agent on behalf of the registrant,
- e. A listing of the months in the immediately preceding 12 months in which the gross transaction amount of each agent with respect to financial products/services issued by the registrant exceeds \$100,000,
- f. The name and address of any depository institution at which each agent maintains a transaction account for the money services business activities conducted by the agent on behalf of the registrant,
- g. The year in which each agent first became an agent of the registrant, and
- h. The number of branches or subagents of each agent.

Items 57 to 61--If the supporting documentation is retained at a location other than the U.S. address listed in Part II, enter the location information in items 56 through 60. If the registrant is a foreign located MSB, enter the location of the registrant's U.S. agent for service of legal process, where the supporting documentation must be maintained.

Part VII Authorized Signature/Signature of Agent for Service of Process

Items 62 to 65--The U.S. owner or controlling person listed in Part III, or, in the case of a foreign located MSB, the U.S. agent for service of legal process, must sign and date the form as indicated in Part VII. If the owner or controlling person is a corporation, a duly authorized officer of the corporation must execute the form on behalf of the corporation. Enter the date this document was signed.

Penalties for failure to comply: Any person who fails to comply with the requirements to register, keep records, and/or maintain agent lists pursuant to 31 CFR 1022.380 may be liable for civil penalties of up to \$5,000 for each violation. Failure to comply also may subject a person to criminal penalties, which may include imprisonment for up to five (5) years and criminal fines. See 18 USC 1960. **Note: This registration does not satisfy any state or local licensing or registration requirements.**

Paperwork Reduction Act Notice.

The purposes of this form are to provide an effective and consistent means for money services businesses to register with the Financial Crimes Enforcement Network, and to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. This report is required by law, pursuant to authority contained in Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR Chapter X. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States, to any State, or Tribal Government. Public reporting and recordkeeping burden for this information collection is estimated to average 45 minutes per response, and

includes time to gather and maintain data for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget Paperwork Reduction Project, Washington, DC 20503 and to the Paperwork Reduction Act; Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Privacy Act Notice.

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that, in accordance with 5 U.S.C. 552a(e), the authority to collect information on **FinCEN Report 107** is Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR Chapter X. The Department of the Treasury may use and share the information with any other department or agency of the United States, to any State, or Tribal Government, or part thereof, upon the request of the head of such department or agency, or authorized State or Tribal Government official for use in a criminal, tax, or regulatory investigation or proceeding, and to foreign governments in accordance with an agreement, or a treaty. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$5,000 per day and imprisonment of not more than five years, are provided for failure to file the form, supply information requested by the form, and for filing a false or fraudulent form. Disclosure of the social security number or taxpayer identification number is mandatory. The authority to collect is 31 CFR Chapter X. The social security number/taxpayer identification number will be used as a means to identify the individual or entity who files the report.

[FR Doc. 2011-25607 Filed 10-5-11; 8:45 am]

BILLING CODE 4810-02-C

DEPARTMENT OF VETERANS AFFAIRS

VASRD Improvement Forum—Updating Disability Criteria for the Respiratory System, Cardiovascular System, Hearing Impairment, and Ear, Nose and Throat Diseases

AGENCY: Department of Veterans Affairs.

ACTION: Notice of meeting.

SUMMARY: The Veterans Benefits Administration (VBA) and Veterans Health Administration (VHA) will co-host the Department of Veterans Affairs (VA) Schedule for Rating Disabilities (VASRD) Improvement Forum—Updating Disability Criteria for the Respiratory System, Cardiovascular System, Hearing Impairment, and Ear, Nose and Throat Diseases. The purpose of this VASRD Improvement Forum is to capture public comment and current medical science information from presentations made by subject matter experts. VA plans to use this information to update the sections of the VASRD that pertain to the following

four body systems: (1) Respiratory System (38 CFR 4.96–4.97), (2) the Cardiovascular System (38 CFR 4.100–4.104), (3) the Impairment of Auditory Acuity (38 CFR 4.85 and 4.86) and (4) Ear, Nose and Throat Diseases (38 CFR 4.87 and 4.97 currently under Schedule of Respiratory System). Specifically, diagnostic code descriptors and evaluation criteria will be discussed. Contingent upon available capacity and time, individuals wishing to make oral statements will be accommodated on a first-come, first-served basis.

DATES: The plenary session on Tuesday, October 11, 2011, will cover hearing impairment and diseases of the ear, nose and throat and auditory acuity. The plenary session on Thursday, October 13, 2011, will cover the respiratory system. The plenary session on Tuesday, October 18, 2011, will cover the cardiovascular system. All plenary sessions will be held at the VHA New York Harbor Health Care System, Manhattan Campus from 8:30 a.m.–4:30 p.m. Work group meetings for the corresponding VASRD systems will be held the day following the plenary sessions from 8:30–4:30 p.m. at the VBA New York Regional Office. The Auditory Acuity and Ear, Nose and

Throat Diseases Work Group meeting will take place on Wednesday, October 12, 2011, the Respiratory System Work Group will meet on Friday, October 14, 2011, and on Wednesday, October 19 and Thursday, October 20, 2011, the Cardiovascular Work Group will meet.

ADDRESSES: The plenary sessions will be held at the VHA New York Harbor Healthcare System, Manhattan Campus, located at 423 East 23 Street, New York, NY 10010, and the work group meetings will occur at the VBA New York Regional office located at 245 West Houston Street, New York, NY 10014.

FOR FURTHER INFORMATION CONTACT: Dr. Nick Olmos-Lau, M.D., Regulation Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Anyone wishing to attend these meetings or seeking additional information may also contact Dr. Olmos-Lau at (202) 461-9695 or Nick.Olmos-Lau@va.gov.

Dated: September 29, 2011.

John R. Gingrich,
Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2011-25780 Filed 10-5-11; 8:45 am]

BILLING CODE 8320-01-P



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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback, and Texas Fawnsfoot as Threatened or Endangered; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2011–0079; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Texas Fatmucket, Golden Orb, Smooth Pimpleback, Texas Pimpleback, and Texas Fawnsfoot 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 (Service), announce a 12-month finding on a petition to list five mussel species in Texas as threatened or endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended (Act). The five species are Texas fatmucket (*Lampsilis bracteata*), golden orb (*Quadrula aurea*), smooth pimpleback (*Q. houstonensis*), Texas pimpleback (*Q. petrina*), and Texas fawnsfoot (*Truncilla macrodon*). After review of all available scientific and commercial information, we find that listing these five mussel species is warranted. Currently, however, listing of these species is precluded by higher priority actions to amend the Federal Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add these five species to our candidate species list. We will develop a proposed rule to list these species as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period, we will address the status of the candidate taxa through our annual Candidate Notice of Review.

DATES: The finding announced in this document was made on October 6, 2011.**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS–R2–ES–2011–0079. 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, 1505 Ferguson Lane, Austin, TX 78754. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Gary Mowad, Texas State Administrator, U.S. Fish and Wildlife Service (see **ADDRESSES**); by telephone at 512–927–3557; or by facsimile at 512–927–3592. If you use a telecommunications device for the deaf (TDD), please 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

This 12-month petition finding covers five species of mussels that are grouped together because of their overlapping or proximate ranges within the river basins of central Texas. The petitions for listing these five species were parts of two multi-species petitions, dated June 18, 2007, and October 9, 2008. The other species from those petitions, including other Texas mussels, will be considered in separate petition findings.

On June 25, 2007, we received a formal petition dated June 18, 2007, from Forest Guardians (now WildEarth Guardians), requesting that we: (1) Consider all full species in our Southwest Region ranked as G1 or G1G2 by the organization NatureServe, except those that are currently listed, proposed for listing, or candidates for listing; and (2) List each species as either threatened or endangered with critical habitat. The petitioned group of species included four Texas mussels, two of which are included in this finding: the Texas fatmucket and golden orb. Two

additional mussels from eastern Texas, the Texas heelsplitter (*Potamilus amphichaenus*) and Salina mucket (*P. metnecktayi*), were also included in this petition. The petition incorporated all analyses, references, and documentation provided by NatureServe in its online database at <http://www.natureserve.org/> into the petition. Included in NatureServe was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. We sent a letter dated July 11, 2007, to Forest Guardians acknowledging receipt of the petition and stating that the petition was under review by staff in our Southwest Regional Office.

On October 15, 2008, we received a petition dated October 9, 2008, from WildEarth Guardians, requesting that the Service list as threatened or endangered and designate critical habitat for six species of freshwater mussels, including the smooth pimpleback, Texas pimpleback, and Texas fawnsfoot. Two additional mussels from the Rio Grande basin, the false spike (*Quincuncina mitchelli*) and Mexican fawnsfoot (*Truncilla congata*), were also included in this petition. In addition to other information, the petition incorporated all analyses, references, and documentation provided by NatureServe in its online database at <http://www.natureserve.org/>. In a November 26, 2008, letter to the petitioner, we acknowledged receipt of the second petition and stated that the petition for the six mussel species was under review by staff in our Southwest (Region 2) and Southeast (Region 4) Regional Offices. The southern hickorynut (*Obovaria jacksoniana*) was also included in this 2008 petition, and on March 23, 2010 (75 FR 13717), we found that the petition did not present substantial information supporting that that species may be endangered or threatened.

On December 15, 2009, we published our 90-day finding that the petitions presented substantial scientific information indicating that listing nine Texas mussels may be warranted (74 FR 66260). As a result of the finding, we initiated a status review for all nine species. This notice constitutes the 12-month finding on the June 18, 2007, petition to list the Texas fatmucket and golden orb and the October 9, 2008, petition to list the smooth pimpleback, Texas pimpleback, and Texas fawnsfoot as threatened or endangered. Our petition findings for the remaining Texas mussel species will be published at a later time.

Summary of Procedures for Determining the Listing Status of Species

Review of Status Based on 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 these findings, we discuss below information pertaining to each species in relation to the five factors provided in section 4(a)(1) of the Act. In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat has the capacity (*i.e.*, it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Evaluation of the Status of Each of the Five Mussel Species

In this finding, we first provide a description of general mussel biology. Then, for each of the five species, we describe the species, its life history, and habitat; evaluate listing factors for that species; and present our finding that the petitioned action is warranted or not for that species. We follow these descriptions, evaluations, and findings

with a discussion of the priority and progress of our listing actions.

General Mussel Biology

All five species are freshwater mussels in the family Unionidae and occur only in Texas, in portions of the Colorado, Guadalupe, Nueces-Frio, and Brazos River systems (Howells *et al.* 1996, p. 1). Adult freshwater mussels are suspension feeders, drawing in food and oxygen through their incurrent siphon (tube that draws water into the shell). They may also feed on organic particles in sediment using the large, muscular foot (an organ used to anchor the mussel in the substrate or for locomotion) (Raikow and Hamilton 2001, p. 520). Adults feed on algae, bacteria, detritus (dead organic material), microscopic animals, and dissolved organic matter (Fuller 1974, pp. 221–222; Silverman *et al.* 1997, p. 1862; Nichols and Garling 2000, pp. 874–876; Christian *et al.* 2004, p. 109). For their first several months, as they inhabit interstitial spaces (small spaces between sediment particles) within the substrate, juvenile mussels feed using cilia (fine hairs) on the foot to capture suspended as well as depositional material, such as algae and detritus (Yeager *et al.* 1994, pp. 253–259). Mussels tend to grow relatively rapidly for the first few years, and then slow appreciably at sexual maturity, when energy presumably is being diverted from growth to reproductive activities (Baird 2000, pp. 66–67).

As a group, mussels are extremely long lived, living from two to several decades (Rogers *et al.* 2001, p. 592), and possibly up to 200 years in extreme instances (Bauer 1992, p. 427). Most mussel species, including the five in this finding, have distinct forms of males and females. During reproduction, males release clouds of sperm into the water column, which females draw in through their siphons. Fertilization takes place internally, and the resulting eggs develop into specialized larvae (called glochidia) within the female gills. The females release matured glochidia individually, in small groups, or embedded in larger mucus structures called conglutinates.

The glochidia of freshwater mussels are obligate parasites (cannot live independently of their hosts) on the gills or fins of fishes (Vaughn and Taylor 1999, p. 913). Glochidia die if they fail to find a host fish, attach to a fish that has developed immunity from prior infestations, or attach to the wrong location on a host fish (Neves 1991, p. 254; Bogan 1993, p. 299). Glochidia encyst (enclose in a cyst-like structure) on the host's tissue and develop into

juvenile mussels weeks or months after attachment (Arey 1932, pp. 214–215). Mussels experience their primary opportunity for dispersal and movement within the stream as glochidia attached to a host fish (Smith 1985, p. 105). Upon release from the host, newly transformed juveniles drop to the substrate on the bottom of the stream. Those juveniles that drop in unsuitable substrates die because their immobility prevents them from relocating to more favorable habitat. Juvenile freshwater mussels burrow into interstitial substrates and grow to a larger size that is less susceptible to predation and displacement from high flow events (Yeager *et al.* 1994, p. 220). Throughout the rest of their life cycle, mussels generally remain within the same small area where they released from the host fish.

Species Information for Texas Fatmucket

Species Description

The Texas fatmucket is a large, elongated mussel that reaches a maximum length of 100 millimeters (mm) (3.94 inches (in)) (Howells 2010c, p. 2). The shell is oval to elliptical or somewhat rhomboidal and tan to greenish-yellow with numerous irregular, wavy, and broad and narrow dark brown rays, with broad rays widening noticeably as they approach the ventral (underside) margin. The nacre (inside of the shell) is white with occasional yellow or salmon coloration and iridescent posteriorly (Howells 2010c, p. 2). Females have mantle flaps (extensions of the tissue that covers the visceral mass) that often resemble minnows, including eye spots, lateral line, and fins (Howells 2010c, p. 2).

Taxonomy

The Texas fatmucket was first described in 1855 by Gould as *Unio bracteatus* and later moved to the genus *Lampsilis* by Simpson (1900, p. 543). Some forms found in headwater streams were historically split into a different species, *L. elongatus*, but they have since been determined to be ecophenotypes (individuals whose shape is determined by their environment) of *L. bracteata* (Howells 2010c, p. 5). The Texas fatmucket is recognized by the Committee on Scientific and Vernacular Names of Mollusks of the Council of Systematic Malacologists, American Malacological Union (Turgeon *et al.* 1998, p. 34), and we recognize it as a valid species.

Biology and Life History

Although there is no specific information on age and size of maturity of the Texas fatmucket, it is likely similar to a related species, the Louisiana fatmucket (*L. hydiana*), which reaches sexual maturity around 36 mm (1.4 in) (Howells 2000b, pp. 35–48; Howells 2010c, p. 3). Texas fatmucket females have been found gravid (with glochidia in the gill pouch) from July through October, although brooding may continue throughout much of the year (Howells 2010c, p. 3). Texas fatmucket females display a mantle lure to attract host fish, releasing glochidia when the lure is bitten or struck by the fish. Bluegill (*Lepomis macrochirus*) and green sunfish (*L. cyanellus*) have been successful hosts in laboratory studies (Howells 1997b, p. 257). Hosts such as these sunfishes are common, widely distributed species in Texas that occur in an array of habitat types (Hubbs *et al.* 2008, p. 45) and would not generally be expected to be a limiting factor in Texas fatmucket reproduction and distribution (Howells 2010c, p. 3).

Habitat

The Texas fatmucket occurs in moderately sized rivers in mud, sand, or gravel, or mixtures of these substrates (Howells 2010c, p. 4) and sometimes in narrow crevices between bedrock slabs (Howells 1995, p. 21). Live individuals have been found in relatively shallow water, rarely more than 1.5 meters (m) (4.9 feet (ft)) deep, and usually less. Remaining populations typically occur at sites where one or both banks are relatively low, allowing floodwaters to spread out over land and thereby reducing damage from scouring (Howells 2010c, p. 4). The species does not occur in ponds, lakes, or reservoirs, suggesting that it is intolerant of deep, low-velocity water created by artificial impoundments.

Distribution and Abundance

Historical Distribution

The Texas fatmucket historically had populations in at least 18 rivers in the upper Colorado, Guadalupe, and San Antonio River systems in the Texas Hill Country and east-central Edwards Plateau region of central Texas. In the Colorado River, it ranged from Travis County upstream approximately 320 kilometers (km) (200 miles (mi)) to Runnels County in the Colorado River. It was also found in many tributaries, including the Pedernales, Llano, San Saba, and Concho Rivers, and Jim Ned, Elm, and Onion Creeks (Howells *et al.* 1996, p. 61).

In the Guadalupe-San Antonio River basin, the Texas fatmucket occupied approximately 240 km (150 mi) of the Guadalupe River, from Gonzales County upstream to Kerr County, including the North Guadalupe River, Johnson Creek, and the Blanco River. In the San Antonio River, it ranged from its confluence with the Medina River in Bexar County upstream to the City of San Antonio, as well as in the Medina River and Cibolo Creek (Howells *et al.* 1996, p. 61; Howells 2010c, p. 6). Strecker (1931, pp. 66–68) reported Texas fatmucket from a lake in Victoria County in the lower Guadalupe River drainage (Howells 2010c, p. 6), but this is probably a misidentified Louisiana fatmucket, which occurs in lakes or impoundments. A Salado Creek record from Bell County (Strecker 1931, pp. 62–63) is also probably a misidentified Louisiana fatmucket, since the Texas fatmucket is not known to occur in the Brazos River basin or its western tributaries (Howells *et al.* 1996, p. 61; Howells 2010c, p. 6).

Current Distribution

Based on historical and current data, the Texas fatmucket has declined significantly rangewide and is now known from only nine streams in the Colorado and Guadalupe River systems in very limited numbers. All existing populations are represented by only one or two individuals and are likely not stable or recruiting (juvenile mussels joining the adult population). In the streams where the species is extant (surviving), populations are highly fragmented and restricted to short reaches with few exceptions. The Texas fatmucket has been considered a species of special concern by some malacologists for several decades (Athearn 1970, p. 28).

Colorado River System

The Texas fatmucket was historically known to occur throughout the Colorado River and numerous tributaries (Randklev *et al.* 2010c, p. 4). However, in the mainstem Colorado River, the Texas fatmucket has not been found, live or dead, in several decades despite numerous surveys (Howells 1994, p. 4; 1995, pp. 20–21, 25, 29; 1996, pp. 20, 23; 1997a, pp. 27, 31, 34–35; 1998, p. 10; 1999, p. 18; 2000a, pp. 25–27; 2002a, pp. 6–7; 2004, pp. 7, 10–11; 2005, p. 6; Johnson 2009, p. 1; Burlakova and Karatayev 2010a, p. 12), and thus is considered extirpated (eliminated from) the Colorado River mainstem. Within this system, the species is only known from sparse populations in Colorado River tributaries, including the South Concho

River, Spring Creek, Llano River (including Threadgill Creek), Pedernales River (including Live Oak Creek), Onion Creek, Jim Ned Creek, Elm Creek, and the San Saba River.

Evidence of persisting Texas fatmucket populations has been found in Spring Creek, a tributary to the Middle Concho River, which flows into the Concho River, a large tributary of the Colorado River. Historically, Spring Creek harbored Texas fatmucket in Irion and Tom Green Counties (Randklev *et al.* 2010c, p. 1). In 1993, discovery of shell material prompted additional surveys, and in 1997, one live individual was found in Irion County (Howells 1998, p. 13). Farther downstream, in Tom Green County, two live individuals were recorded in 1997, upstream of Twin Buttes Reservoir (Howells 1998, pp. 13–14), but no evidence of this population was found in 2008 (Burlakova and Karatayev 2010a, p. 12). Spring Creek was reported to have dried in 1999 and 2000, which may have eliminated the population there (Howells *et al.* 2003, p. 5).

In the Llano River, there are three areas that are currently known to contain Texas fatmucket populations. The species occurred throughout the length of the river historically (Ohio State University Museum (OSUM) 2011a, p. 1). A single shell was collected in Llano County in 1992 (Howells 1994, p. 6), and eight live individuals were found in 2011 (Burlakova and Karatayev 2011, p. 1). Individuals were small in size, indicating a potentially reproducing population. The species also persists in Mason County, where two shell fragments of recently dead Texas fatmucket were found in 1995 (Howells 1996, p. 22), and two live individuals were collected at the same site in 2009 (Burlakova and Karatayev 2010a, pp. 12–13). The species also appears to persist in Kimble County, where one live Texas fatmucket was recorded in 2009 (Burlakova and Karatayev 2010a, pp. 12–13).

In 2004, four live Texas fatmucket were recorded from Threadgill Creek, a tributary to the Llano River in Gillespie and Mason Counties (Howells 2005, pp. 6–7). This population is on private land, which limits survey access, but Howells (2009, p. 5) indicates it likely persists due to favorable land management.

Live Oak Creek, a tributary to the Pedernales River in Gillespie County, also contains a sparse Texas fatmucket population. In 2002, 11 shells were discovered, and in 2003, one live individual was recorded, confirming the species persisted in low numbers (Howells 2003, p. 10; Howells 2004, pp. 8–9). Since that time, surveys have been

conducted in Live Oak Creek on a fairly regular basis. The stream was visited in two different occasions in 2004, with only shell material found (Howells 2005, pp. 7–8), and again in 2005, when two live individuals were recorded (Burlakova and Karatayev 2010a, p. 12). The stream was surveyed in 2007 and 2008, but no evidence of the species was found (Howells 2009, p. 5). This population is presumed to be small but persisting.

Original records of speckled pocketbook (*Lampsilis streckeri*) from Onion Creek in Travis County in 1931 are now believed to have been misidentified; instead they represent records of Texas fatmucket (Howells 2010c, p. 6; Randklev *et al.* 2010c, p. 4). The stream was surveyed in 1993, and no live freshwater mussels were found (Howells 1995, p. 28). However, in 2010, several live Texas fatmucket were found during a survey near Highway 71 (Groce 2011, pers. comm.), indicating the species persists there.

Elm Creek, a tributary to the Colorado River, has been known to harbor a Texas fatmucket population since 1993, when 10 live individuals were recorded (Howells 1995, p. 21). Since that time, the population has declined, with two individuals found in 1995 (Howells 1996, pp. 19–20), and no live individuals found in 2001 or 2005 (Howells 2002a, p. 5; 2006, p. 63). In 2008, additional sites downstream of the known population were surveyed and one live individual was recorded after 15 person-hours of searching (Burlakova and Karatayev 2010a, p. 12), indicating that the species continues to persist in Elm Creek, although in very low numbers.

Texas fatmucket also persist in the San Saba River, where the species has been known to occur historically (Randklev *et al.* 2010c, p. 2; OSUM 2011a, p. 1). The river was surveyed in 1997, and three live individuals were found (Howells 1998, p. 16). In 2000 and 2004, no Texas fatmucket were found in this stretch of river (Howells 2001, p. 29; Howells 2005, pp. 8–9). One live individual was found in 2005 (Howells 2006, p. 64), and, in 2008, only one shell of a recently dead individual was found (Burlakova and Karatayev 2010a, p. 12). In 2005, the number of mussels of all species collected was about 40 percent of the 1997 numbers (Howells 2006, p. 64), indicating an overall decline in the freshwater mussel fauna. Aquatic macrophyte (aquatic plants larger than algae) abundance has increased in this river, confounding survey efforts and degrading mussel habitat (Howells 2006, p. 64).

Texas fatmucket have not been found alive in the Pedernales River since 1978 (Howells 1999, p. 16). In 1992, a thorough search of the habitat yielded no live Texas fatmuckets, with only very old dead shell material collected in the banks above the normal high water line (Howells 1994, p. 4). Because the species was documented from Blanco County by museum records (OSUM 2011a, p. 1), additional sections of the river were also surveyed in 1992, with no evidence of Texas fatmucket found, although in 1993, very old Texas fatmucket shell fragments were discovered in Pedernales Falls State Park (Howells 1995, p. 28). Mussel habitat in this area is poor, and it is unlikely the species persists there. Subsequent searches of the river in 1998 yielded only dead shell material (Howells 1999, p. 16).

The Texas fatmucket is considered extirpated from the South Concho River and Jim Ned Creek. In the South Concho River, old Texas fatmucket shell fragments were found in gravel bars in Tom Green County in 1997, but there has been no additional evidence of the species (Howells 1998, p. 12). Additionally, three live individuals were recorded from Jim Ned Creek in Brown County in 1979 (Randklev *et al.* 2010c, p. 3), but the species has not been found in this stream since then (Howells 1997a, pp. 29–30).

Guadalupe River System

While the Texas fatmucket was never widely distributed in the Guadalupe River system, the only remaining populations are in the mainstem Guadalupe River and possibly the North Fork Guadalupe River. It is presumed extirpated from the entire San Antonio River system, as well as the Blanco River and Johnson Creek.

In the mainstem Guadalupe River, Texas fatmucket historically occurred in Kerr County (OSUM 2011a, p. 1). In 1992 and 1995, surveys yielded no evidence of the species (Howells 1994, pp. 7–8; Howells 1996, p. 25), although shell fragments collected in 1993 in Guadalupe County may have been Texas fatmucket but were too weathered for an accurate determination (Howells 1995, p. 31). In 1996, two live individuals were recorded in Kerr County directly below a dam (Howells 1997a, p. 36), and in 1997, three shells were found at the same site following a flood (Howells 1998, p. 18). No Texas fatmucket or other freshwater mussels have been found at that site since, and it is unlikely that Texas fatmucket persist there (Howells 2006, p. 71). However, 20 recently dead individuals were discovered approximately 1 km (0.6 mi)

downstream in Louise Hayes Park during a drawdown (Howells 1999, pp. 18–19), and 6 live individuals were found at the same location in 2005 (Howells 2006, pp. 71–72). Surveys in 2007 and 2008 yielded no live or recently dead individuals (Burlakova and Karatayev 2010a, p. 12). It is likely that the species persists in the vicinity. There has been no other evidence of Texas fatmucket in the mainstem Guadalupe River in recent years.

In 1999, two recently dead Texas fatmucket were found in North Fork Guadalupe River (Howells 2000a, p. 27). This river was surveyed again in 2000 and 2003 at several sites, and no Texas fatmucket were found (Howells 2001, p. 31; Howells 2004, pp. 13–14).

Johnson Creek was a historical location for Texas fatmucket, but no live freshwater mussels of any species have been found in this stream for decades (Howells 1996, p. 25; Howells 1998, p. 18; Howells 2002a, p. 8). Additionally, the Blanco River has been surveyed extensively since 1992, and no evidence of Texas fatmucket has been collected, nor is suitable habitat present (Howells 1994, p. 9; Howells 1995, pp. 32–33; Howells 1996, p. 28; Johnson 2011, p. 1). The last collection of Texas fatmucket from the Blanco River occurred in the 1970s or 1980s (Howells 2005, p. 10).

Texas fatmucket have also been extirpated from the entire San Antonio River system. The mainstem San Antonio River was surveyed in 1993 and 1996, and no live or dead Texas fatmucket were found (Howells 1995, p. 35; 1997a, pp. 41–42). It was known from the Medina River, a tributary to the San Antonio River, historically (Randklev *et al.* 2010c, p. 3), but no mussels of any species have been found in this river in recent years (May 2011, pers. comm.). Additionally, although Texas fatmucket were collected from Cibolo Creek historically (OSUM 2011a, p. 1) and shell material, likely from Texas fatmucket, was found in 1993 (Howells 1995, p. 36), no live freshwater mussels have been found in Cibolo Creek since (Howells 1997a, pp. 40–41).

Summary

Based on historical and current data, the Texas fatmucket has declined significantly rangewide and has been extirpated from most of the Guadalupe River system and hundreds of miles of the Colorado River, as well as from numerous tributaries. Extant populations are represented by only a few individuals, and they are highly disjunct and restricted to short reaches. Two of the populations considered extant in recent years may now be

extirpated, and the remaining seven populations are extremely small and likely not stable. No evidence of recent recruitment has been found in any of the populations, with the possible exception of the Llano River.

Species Information for Golden Orb

Species Description

The golden orb is small, usually less than 82 mm (3.2 in), with an oval to nearly round, smooth, and unsculptured shell, except for concentric growth rings (Howells 2002b, p. 6). External shell coloration varies from yellow-brown, gold, or orangish-brown to dark brown or black, and some individuals may show faint greenish rays. Internally, the nacre is white to bluish-white (Howells 2002b, p. 6).

Taxonomy

The golden orb was originally described as *Unio aureas* by Lea in 1859 and later moved to the genus *Quadrula* in 1900 (Simpson 1900, p. 783). Graf and Cummings (2007, p. 18) have proposed moving it to the genus *Amphinaias*, but other freshwater mussel taxonomists recommend waiting for additional work to be completed on members of *Quadrula* before splitting the genus (Bogan 2011, pers. comm.). Because the golden orb can exhibit an elongated shell structure in headwater riffles, old records of *Unio bolli* in the Colorado River (Dall 1882, p. 956) are very likely elongated forms of golden orb (Howells 2010a, p. 5). The golden orb is recognized by the Committee on Scientific and Vernacular Names of Mollusks of the Council of Systematic Malacologists, American Malacological Union (Turgeon *et al.* 1998, p. 36), and we recognize it as a valid species.

Biology and Life History

There is no specific information on age, size of maturity, or host fish use for golden orb. Other species in the genus *Quadrula* successfully parasitize catfish, and it is likely golden orb do as well (Howells 2010a, p. 3). Gravid females have been found from May through August (Howells 2000b, p. 38). Mussels in the genus *Quadrula* are short-term brooders, which are species that hold fertilized eggs and glochidia for a short period, usually 3 to 6 weeks, before releasing glochidia (Gorden and Layzer 1989, p. 6; Garner *et al.* 1999, p. 277).

Habitat

The golden orb has been found almost exclusively in flowing waters in moderately sized rivers (Howells 2010a, p. 3). It has been found in only one reservoir in the lower Nueces River (Lake Corpus Christi), where wave

action may simulate flowing water conditions (Howells 2010a, p. 3). This species is found in substrates of firm mud, sand, and gravel, and it does not appear to tolerate more unstable substrates such as loose sand or silt (Howells 2002b, p. 6).

Distribution and Abundance

Historical Distribution

The golden orb is endemic (native) to nearly the entire lengths of the Guadalupe, San Antonio, and Nueces-Frio River basins in central Texas (Howells 2010a, p. 5), including the Guadalupe, Medina, San Antonio, Frio, and Nueces Rivers and Cibolo Creek. It was originally reported from four sites in the Brazos River system (Strecker 1931, p. 63), but these are almost certainly misidentified smooth pimpleback (Howells 2002b, p. 5) based on numerous mussel surveys throughout the Brazos River system since the 1970s that failed to find any golden orb. The species has not been found in studies of archaeological specimens from the Brazos River (Howells 2010a, p. 5), further indicating golden orb did not historically occur in the Brazos River system.

The golden orb has also been reported from the upper Colorado River drainage (Howells *et al.* 1996, pp. 108–109; Randklev *et al.* 2010c, p. 4), but these appear to have been misidentified Texas pimpleback (Howells 2010a, p. 5). Since no other golden orb have been reported from the Colorado River system, we do not believe it occurred in that basin.

Current Distribution

Based on historical and current data, the golden orb has declined significantly rangewide and is now known from only four streams in disjunct locations. Despite mussel surveys across the historical range, since 1995 golden orb has only been found in Lake Corpus Christi and the Guadalupe, lower San Marcos, and lower San Antonio Rivers. The species has been extirpated from the entire Nueces-Frio River basin, except at the extreme downstream end of the Nueces River, where a population persists in Lake Corpus Christi. Aside from the upper Guadalupe River, all existing populations occur in the lower portion of occupied basins in a small geographical area; only about 130 km (80 mi) separate the farthest two populations. Only four populations appear to be relatively stable and recruiting, while the remaining five populations are represented by only a few individuals.

Guadalupe River System

In the Guadalupe River system, the golden orb historically ranged throughout the length of the Guadalupe, San Antonio, and San Marcos Rivers. Currently in this basin, the species only persists in the uppermost Guadalupe River and lower San Marcos, San Antonio, and Guadalupe Rivers. The lower portion of this basin (within approximately 120 km (75 mi) of the Gulf of Mexico) harbors all four of the large, presumably reproducing populations of golden orb.

Historically known from the mainstem Guadalupe River (Howells 2002a, p. 8), the golden orb was not seen in the upper Guadalupe River in Kerr County again, despite repeated surveys (Howells 1994, pp. 7–8; 1996, p. 30; 1997a, p. 36), until 1997, when three shells were discovered (Howells 1998, p. 18). No live freshwater mussels of any species have been found in this area, just downstream of a dam, since 1997 (Howells 1999, p. 18; Howells 2006, p. 71), and it is unlikely golden orb persists there. However, upstream of this area, above the dam and impounded reach, a single recently dead individual was found in 1998 during an extended drawdown of the river to construct a footbridge in a local park (Howells 1999, pp. 18–19). In 2005, two live individuals were also found at this site (Howells 2006, pp. 71–72), showing that the species had survived the drawdown and persists at the site.

Golden orb also occurs farther downstream in the mainstem Guadalupe River, near Lake Gonzales in Gonzales County. Upstream of the reservoir, subfossil shells (very old shells that are brittle, crumbling, and with extensive erosion) were found in 1993 (Howells 1995, p. 31), but the species has not been found there since. However, below the reservoir, one recently dead individual was collected in 1995 (Howells 1996, pp. 26–27), and in 1996, 25 live golden orb were recorded at two sites in this area (Howells 1997a, pp. 37–38). Later, in 2006, three live golden orb were also found in this area (Howells 2006, pp. 85–86). A small population apparently continues to persist below Lake Gonzales.

A large golden orb population occurs farther downstream in the mainstem Guadalupe River, below Lake Wood, also in Gonzales County. Although none were found during a survey in 1995 (Howells 1996, p. 27), 36 live golden orb were found at two sites below Lake Wood in 1996 (Howells 1997a, pp. 38–40). Density estimates were calculated based on the quantitative information collected from these surveys, but they

were not considered statistically valid (Howells 1997a, p. 40) and so are not reported here. Only one live golden orb was found at this site in 2002 (Howells 2003, p. 11), but a relatively large population continues to persist; a total of around 100 live golden orb were found at three sites within 2 km (1.2 mi) of the Lake Wood Dam in 2006 (Howells 1996, pp. 87–91). Also, in 2008, 33 golden orb were recorded alive downstream of Lake Wood (Burlakova and Karatayev 2010a, p. 14). This portion of the Guadalupe River supports a relatively large population of golden orb, and it also contains one of the most abundant freshwater mussel communities in Texas (Burlakova and Karatayev 2010a, p. 14).

In 2009, a large population of golden orb was discovered farther downstream in the mainstem Guadalupe River in Victoria County, when over 100 individuals were found (Johnson 2009, p. 1). Multiple size classes were observed, including juveniles, indicating this population is reproducing and recruiting new individuals into the population. A large number of shells was collected upstream of this site in 1994 (Burlakova and Karatayev 2010c, p. 1), but no golden orb were seen alive until 2009.

The San Marcos River, a tributary to the Guadalupe River, also supports a large golden orb population near its confluence with the tailwaters (outflow) of Lake Wood Dam. Although much of the San Marcos River has been extensively surveyed, with very few freshwater mussels present of any species (Howells 1995, pp. 33–34; 1997a, p. 40; 2004, pp. 15–16, 18; 2005, p. 10), one old golden orb shell was found near the town of Staples (Howells 1998, p. 19), and a single live individual was found near the town of Luling (Howells 1999, p. 28). Downstream from these locations, a large population persists in the vicinity of Palmetto State Park in Gonzales County. In 1995, a recently dead individual was discovered downstream of the park, indicating the recent presence of the species (Howells 1996, p. 28), and, based on surveys from 2000–2006, a relatively large population was confirmed to be in the area (Howells 2001, pp. 32–33; 2006, pp. 72–73; 2006, p. 91; Burlakova and Karatayev 2010a, pp. 14–15).

Historically, golden orb were numerous in the San Antonio River in Karnes County (OSUM 2011b, p. 1), but only a single subfossil shell was found at each of two sites in Karnes County in 1996 (Howells 1997a, pp. 41–42). No live animals have been found there since, although abundant shell material

remains present (Karatayev and Burlakova 2008, p. 40).

The lower portion of the San Antonio River supports the largest known golden orb population. In 2007, 37 live golden orb were recorded near Goliad in Goliad County, both within and downstream of Goliad State Park (Howells 2009, p. 11). The following year, 285 live golden orb were found within the park and downstream surrounded by private lands (Burlakova and Karatayev 2010a, p. 15). This site represents the largest known population of golden orb.

In 2009, a single live golden orb was discovered in the lower San Antonio River south-southwest of Victoria in Victoria County (Johnson 2009, p. 1); this site has not been surveyed since. We presume golden orb may persist in this stretch of river.

The golden orb appears to have been extirpated from the Medina River. The species historically occurred in Medina and Bexar Counties (Randklev *et al.* 2010b, p. 4; OSUM 2011b, p. 1), but no live or dead mussels of any species have been found in this river in recent years (May 2011, pers. comm.).

Cibolo Creek, a tributary to the San Antonio River, was extensively surveyed in the 1990s, with only old golden orb shells collected in Wilson County (Howells 1995, pp. 35–37; 1997a, pp. 40–41). In 2006 and 2007, Burlakova and Karatayev (2010b, p. 1) surveyed this same general area and found only shell material. It is unlikely golden orb remain in Cibolo Creek.

Nueces-Frio River System

Information is limited on the occurrence of golden orb in the Nueces River. Other than a population that occurs in a reservoir on the lower Nueces River (Lake Corpus Christi), the species appears to be extirpated from the remainder of the basin.

Historically, the golden orb occurred in the Nueces River in Live Oak County (OSUM 2011b, p. 1). It was last seen alive in the Nueces River in 1993, when unreported numbers were found in the same area (Burlakova and Karatayev 2010c, p. 1). A shell was collected in the same general area in 1995 (Burlakova and Karatayev 2010c, p. 1), but additional surveys in 1996 and 1997 found no evidence of the species (Howells 1997a, pp. 43–44; 1998, p. 20). We presume the species no longer occurs in the upper portions of the Nueces River.

An anomalous (odd) population of golden orb has persisted in Lake Corpus Christi Reservoir in the lower Nueces River. While the species does not typically inhabit lentic (ponded) water, wave action is presumed to simulate

flowing water conditions and has supported a golden orb population since at least the 1970s (OSUM 2011b, p. 1). A few live individuals of golden orb have been found within the reservoir consistently since 1994 (Howells 1995, p. 39; 1996, pp. 30–31; Burlakova and Karatayev 2010c, p. 1). Numbers of golden orb collected increased in 1996, when 86 live golden orb were found at three different locations within the reservoir (Howells 1996, pp. 30–31). However, a drawdown of the lake in 1996 resulted in large numbers of golden orb stranded and killed (Howells 2010a, p. 9), and in 1998 no live individuals were found (Howells 1999, p. 19). Again in 2005, no live individuals were found during surveys, but in 2006, a total of nine were collected at three different sites within the reservoir (Howells 2006, pp. 73–76, 91–93). A small golden orb population likely persists in the reservoir.

Very little information is available on the distribution of golden orb in the Frio River. Shells were last seen in McMullen County in 1994 (Burlakova and Karatayev 2010c, p. 1), but no evidence of the species has been found in this river since (Howells 1995, pp. 37–38; 1996, p. 29; 2002a, pp. 9–10; 2004, pp. 19–20).

Summary

Based on historical and current data, the golden orb has declined rangewide and is now known from only nine populations in four rivers and has been eliminated from nearly the entire Nueces-Frio River system. Four of these populations appear to be stable and reproducing; the remaining five populations are small and isolated and show no evidence of recruitment. Only the populations in the middle Guadalupe River and lower San Marcos River are likely connected; the remaining extant populations are highly fragmented and restricted to short reaches.

Species Information for Smooth Pimpleback

Species Description

The smooth pimpleback is a nearly round, thick-shelled freshwater mussel that generally reaches at least 60 mm (2.6 in) in length (Howells 2010b, p. 4). It is moderately thick, solid, and inflated. Externally, the smooth pimpleback, like its name suggests, is relatively smooth with minute sculpturing; it may or may not have a few small pustules (raised bumps) (Howells 2010b, p. 2). The external coloration of the shell ranges from tan

to light brown, dark brown, and black with no rays (Howells 2010b, p. 4).

Taxonomy

The smooth pimpleback was originally described by Lea in 1859 as *Unio houstonensis*. It was later placed in the genus *Margarona* and ultimately moved to *Quadrula* by Simpson (1900, p. 782). Graf and Cummings (2007, p. 18) have proposed moving it to the genus *Amphinaias*, but other freshwater mussel taxonomists recommend waiting for additional work to be completed on members of *Quadrula* before splitting the genus (Bogan 2011, pers. comm.). The smooth pimpleback is recognized by the Committee on Scientific and Vernacular Names of Mollusks of the Council of Systematic Malacologists, American Malacological Union (Turgeon *et al.* 1998, p. 37), and we recognize it as a valid species.

Biology and Life History

There is no specific information on age, size of maturity, or host fish use for smooth pimpleback. Numerous individuals were examined for gravidity between June and November, with no evidence of eggs or glochidia (Howells 2000b, p. 38). Other species in the genus *Quadrula* successfully parasitize catfish, and it is likely smooth pimpleback does as well (Howells 2010b, p. 2); additionally, mussels in the genus *Quadrula* are typically short-term brooders (Gorden and Layzer 1989, p. 6; Garner *et al.* 1999, p. 277), and we expect the same of the smooth pimpleback.

Habitat

The smooth pimpleback has been found in mud, sand, and fine gravel in medium-to-large rivers and some reservoirs (Howells 2010b, p. 3). Unlike most other *Quadrula* species in central Texas, smooth pimpleback do occur in some reservoirs (Howells 2002b, p. 8; 2010b, p. 3).

Distribution and Abundance

Historical Distribution

The smooth pimpleback is native to the central and lower Brazos and Colorado Rivers and their tributaries in central Texas (Howells 2010b, p. 4). The smooth pimpleback has also been reported from the Trinity River and other drainages in Texas, as well as from areas outside of Texas, including southern Arkansas and the Verdigris River in Kansas. These reports are likely misidentifications of other pimpleback species that can sometimes closely resemble smooth pimpleback (Howells 2010b, pp. 4–5). The smooth pimpleback was historically uncommon

where it occurred; from the 1960s through the 1990s, experts failed to find large populations persisting throughout its range (Howells 2009, p. 12).

In the Colorado River, historical reports indicate that the smooth pimpleback occurred from San Saba County downstream to Wharton County, as well as in the Llano River and Onion and Skull Creeks. Within the Brazos River basin, the species historically occurred throughout the length of the mainstem of the Brazos River (Howells 2009, p. 12), as well as in the Clear Fork Brazos, Leon, Navasota, Little Brazos, San Gabriel, Lampasas, and Little Rivers and Yegua Creek (Howells 2010b, pp. 4–6; Randklev *et al.* 2010b, p. 20).

Current Distribution

The smooth pimpleback has been nearly extirpated from the Colorado River basin, and a few small populations persist in the Brazos River basin. Recent surveys suggest a greater abundance and distribution of the smooth pimpleback in the central Brazos River drainage than was indicated by collections from the past 40 years, with five populations represented by more than a few individuals.

Colorado River System

The smooth pimpleback historically occurred throughout the mainstem Colorado River as well as several tributaries, but it is currently restricted to one mainstem reservoir, two sites on the mainstem Colorado River, and the San Saba River. Populations in all of the other historically occupied tributaries and two reservoirs appear to have been extirpated.

In the mainstem Colorado River, smooth pimpleback were historically known from much of the length of the river (Howells 1996, p. 21; 1997a, pp. 34–35; Randklev *et al.* 2010c, p. 4; OSUM 2011c, p. 1). Numerous surveys in many locations on the Colorado River occurred between 1993 and 2009, and no evidence of smooth pimpleback was found (Howells 1995, p. 29; 1996, p. 23; 1997a, pp. 27, 31; 2002a, p. 6; 2004, p. 7, 11; 2005, p. 6; Burlakova and Karatayev 2010a, pp. 15–16), except for in Colorado County in 1999, when three live smooth pimpleback were found (Howells 2000a, p. 27). During two surveys in 2009, live smooth pimpleback were found in the same general area as in 1999 (Burlakova and Karatayev 2010a, p. 16; Johnson 2009, p. 1). Farther downstream, in Wharton County, live smooth pimpleback were found at two sites in 2009 (Burlakova and Karatayev 2010a, p. 16), despite

having been surveyed in 1995 and none found (Howells 1996, p. 23).

Inks Lake is a small mainstem reservoir on the Colorado River in Burnet County. Several live smooth pimpleback were found in 1992 (Howells 1994, p. 4); however, since that time only shell material has been found during four separate surveys between 1996 and 2005 (Howells 1997a, pp. 32–33; 1999, p. 16; 2005, p. 8; 2006, p. 67). Frequent drawdowns in this lake appear to have affected all species of freshwater mussels, as there has been a sharp decline in the overall mussel community (Howells 1999, p. 16).

One live smooth pimpleback was found in Lake Lyndon B. Johnson, a large mainstem reservoir on the Colorado River, in 2001, but no live individuals have been found since (Howells 2002a, pp. 6–7; 2006, pp. 68–69). Farther downstream, in Lake Marble Falls, 13 live smooth pimpleback were found in 1995 during a drawdown of lake levels (Howells 1996, p. 22), but subsequent surveys in 1996 failed to find any additional living animals (Howells 1997a, p. 33). The small recent survey effort is not sufficient to conclude that the smooth pimpleback no longer occur in these lakes, and small populations may still persist there.

Smooth pimpleback were recently found in the San Saba River in San Saba County, when 29 individuals were found at two locations (Burlakova and Karatayev 2011, p. 5). Various size and age classes were represented, indicating a reproducing, recruiting population (Burlakova and Karatayev 2011, p. 5). Even more recently, 206 smooth pimpleback, including adults and juveniles, were recorded in this same area in riffle and pool habitat (Randklev 2011b, p. 1).

No smooth pimpleback populations remain in any of the Colorado River tributaries in which the species was historically known to occur, including the full length of the Llano River (Howells 1996, pp. 21–22; 1998, p. 17; 2000a, p. 25; 2005, p. 8; Randklev *et al.* 2010c, p. 4; OSUM 2011c, p. 1). A single subfossil shell, likely a smooth pimpleback, was found in the Llano River in Kimble County in 1995 (Howells 1996, pp. 21–22), but no other evidence of the species has been found in the Llano River in recent years. Additionally, although Onion and Skull Creeks were historically occupied by smooth pimpleback (Randklev *et al.* 2010c, p. 4), the species has not been found recently in either stream (Howells 1995, pp. 28–29).

Brazos River System

The smooth pimpleback historically occurred in the Brazos River system from Palo Pinto County downstream to Austin and Waller Counties, as well as in numerous tributaries. The species has been extirpated from the upstream half of the mainstem Brazos River and from at least three tributaries. Substantial populations persist in the Leon River, Navasota River, and Yegua Creek, and small populations remain in the lower Brazos and Little Brazos Rivers.

In the mainstem Brazos River, surveys in Palo Pinto, Somervell, and Bosque Counties between 1996 and 2000 indicate that the smooth pimpleback has been extirpated from the upstream portion of the river (Howells 1997a, pp. 16, 18–19; 1999, pp. 11–12; 2001, p. 19). Despite surveys in 1996 and 1998 in which no individuals were found (Howells 1997a, p. 21; 1999, p. 12), a single live smooth pimpleback was found in McLennan County in the middle Brazos River in 2005 (Howells 2010b, p. 5), and two live individuals were recorded in Falls County in 2006 (Karatayev and Burlakova 2008, pp. 6–10).

Although not extirpated from the middle Brazos River, the smooth pimpleback occurs only in low numbers. In Milam and Robertson Counties, no smooth pimpleback were found in 1998 (Howells 1999, p. 13), but eight live individuals were found in 2006 (Burlakova and Karatayev 2010b, p. 1). More recently, in 2008, 13 live smooth pimpleback were found at the same site (Randklev *et al.* 2009, p. 18). Additionally, downstream in Burleson and Brazos Counties, which were historically occupied by the smooth pimpleback (OSUM 2011c, p. 1), a small population persists. In 1995, one live and one recently dead individual were collected within Brazos County (Howells 1996, pp. 17–18). Although none were found here in 1999 (Howells 2000a, pp. 21–22), in 2006 a single live smooth pimpleback was collected at this site (Karatayev and Burlakova 2008, pp. 6–10). Additionally, further downstream in Grimes and Waller Counties, a single live individual was found in 2006 (Burlakova and Karatayev 2010b, p. 1) and again in 2008 (Randklev *et al.* 2009, p. 18). Smooth pimpleback are more numerous in the lower mainstem Brazos River, in Austin and Waller Counties, where 38 live individuals were found in 2006 (Karatayev and Burlakova 2008, pp. 6–10).

Tributaries to the Brazos River also contain smooth pimpleback populations. The Leon River, in the Little River drainage of the Brazos,

historically contained smooth pimpleback throughout its length in Hamilton, Coryell, and Bell Counties (Howells 1994, p. 19, 1997a, p. 20; Randklev *et al.* 2010c, p. 4; OSUM 2011c, p. 1). Currently, a smooth pimpleback population persists in Hamilton County, where numerous live individuals were found in 2006 and 2011 (Howells 2006, pp. 82–83; Randklev 2011a, p. 1), as well as several locations in Coryell County, where numerous individuals were also recently found (Randklev 2011a, p. 1).

Only subfossil smooth pimpleback shells have been found in the Lampasas River in Bell County in 1996 (Howells 1997a, pp. 20, 23). Subsequent surveys of the river in both Bell and Lampasas Counties yielded no evidence of smooth pimpleback (Howells 1999, p. 14; 2001, p. 20), and the species has likely been extirpated from the Lampasas River.

The Little River in Milam County is also a historical location for the smooth pimpleback (Randklev *et al.* 2010c, p. 4). Old shells were found at this site in 1996 (Howells 1997a, p. 22), and a single live individual was found here in 2006 (Karatayev and Burlakova 2008, p. 6). Farther downstream, at the confluence with the Brazos River, none have been found (Howells 1996, p. 17).

A single old smooth pimpleback shell has been found in the San Gabriel River in Milam County (Howells 1997a, p. 23), and it is likely the species has been extirpated from this Brazos River tributary as well.

In the Little Brazos River, the smooth pimpleback appears to persist in low numbers. Although none were found in Robertson County in 1993 and there had appeared to be a die off of numerous freshwater mussel species (Howells 1995, p. 18), one live smooth pimpleback was found during a 2006 survey (Karatayev and Burlakova 2008, p. 6). Farther downstream in Brazos County, recently dead individuals were discovered in 2001 (Howells 2002a, pp. 4–5). The species occurred in this area historically (Randklev *et al.* 2010c, p. 4), and reports of mussels in the Little Brazos River from the 1950s described the freshwater mussel community as numerous, including smooth pimpleback (Gentner and Hopkins 1966, pp. 458–459), but no live individuals have been collected in this area in recent years (Howells 1996, p. 18; 1999, p. 14).

The smooth pimpleback has been extirpated from the Clear Fork Brazos River. Although this species was originally documented from this river in Shackelford County in 1893 (Randklev *et al.* 2010c, p. 4), none have been found

in this stream since (Howells 1999, p. 19).

In the Navasota River, smooth pimpleback historically occurred in Leon, Brazos, Grimes, and Washington Counties (Randklev *et al.* 2010c, p. 4; OSUM 2011c, p. 1). Currently, the species persists in each of those counties, with a large population occurring in the lower river. In Leon County three recently dead smooth pimpleback shells were found in 2000 (Howells 2001, p. 23), indicating that a few individuals may persist in the area. However, one of the largest known populations occurs farther downstream near the confluence of the Navasota and Brazos Rivers. Nine live individuals were found in this area in 2006 (Karatayev and Burlakova 2008, pp. 6–10), and in 2008 a total of 117 live smooth pimpleback were recorded at 3 different locations within Washington and Grimes Counties (Randklev *et al.* 2009, pp. 6, 18). A large population continues to persist in the Navasota River, with a total of 314 smooth pimpleback recorded at two sites in 2011 (Randklev 2011a, p. 1).

In Yegua Creek, no smooth pimpleback were found during several surveys between 1996 and 2003 (Howells 1997a, pp. 24–26; 2001, p. 22; 2004, p. 6), although subfossil shells were found in Washington County in 1996. However, in 2006, a live individual was discovered (Karatayev and Burlakova 2008, pp. 6–10), which prompted further surveys in 2008. Numerous smooth pimpleback were found during subsequent surveys at four different locations within Washington and Burleson Counties (Randklev *et al.* 2009, pp. 16–18; Randklev 2011a, p. 1), indicating the presence of a potentially large population in this stream.

Summary

Based on historical and current data, the smooth pimpleback has declined rangewide and is now known from only nine locations. The species has been eliminated from nearly the entire Colorado River and all but one of its tributaries, as well as from the upper Brazos River and several tributaries. The San Saba River, lower Brazos River, Navasota River, Leon River, and Yegua Creek populations appear to be stable and reproducing, but the remaining populations are small, isolated, and represented by only a few individuals.

Species Information for Texas Pimpleback

Species Description

The Texas pimpleback is a large pimpleback species with a moderately

inflated shell that generally reaches 60–90 mm (2.4–3.5 in) (Howells 2002b, pp. 3–4). With the exception of growth lines, the shell of the Texas pimpleback is generally smooth and moderately thick (Howells 2002b, p. 4). Externally, coloration ranges from yellowish-tan to dark brown with some individuals mottled or with dark green rays. Internally, the nacre is white and iridescent posteriorly (Howells 2002b, p. 4).

Taxonomy

The Texas pimpleback was originally described as *Unio petrinus* by Gould in 1855. It was placed in the genus *Margaron* by Lea in 1870 and ultimately moved to *Quadrula* by Simpson in 1900 (Simpson 1900, p. 783). Graf and Cummings (2007, p. 18) have proposed moving it to the genus *Amphinaias*, but other freshwater mussel taxonomists recommend waiting for additional work to be completed on members of *Quadrula* before splitting the genus (Bogan 2011, pers. comm.). The Texas pimpleback is recognized by the Committee on Scientific and Vernacular Names of Mollusks of the Council of Systematic Malacologists, American Malacological Union (Turgeon *et al.* 1998, p. 37), and we recognize it as a valid species.

Biology and Life History

There is very little specific information on age, size of maturity, or host fish use for Texas pimpleback. Gravid females have been found from June through August, and the smallest documented gravid female was 45 mm (1.8 in) long (Howells 2000b, p. 38). Glochidia are hookless and elliptical in shape (Howells *et al.* 1996, p. 120). To date, no host fish have been confirmed for the Texas pimpleback; however, glochidia have been reported attached to and encysted on flathead catfish (*Pylodictis olivaris*), yellow bullhead (*Ameiurus natalis*), and bluegill in laboratory settings, although none transformed to the juvenile stage (Howells 2010e, p. 3). This is consistent with other species in the genus *Quadrula*, which also parasitize catfish species.

Habitat

The Texas pimpleback typically occurs in moderately sized rivers, usually in mud, sand, gravel, and cobble, and occasionally in gravel-filled cracks in bedrock slab bottoms (Horne and McIntosh 1979, p. 122; Howells 2002b, p. 4). The species has not been found in water depths over 2 m (6.6 ft). Texas pimpleback have not been found in reservoirs, which indicates that this

species is intolerant of deep, low-velocity waters created by artificial impoundments (Howells 2002b, p. 4). In fact, Texas pimpleback appear to tolerate faster water more than many other mussel species (Horne and McIntosh 1979, p. 123).

Distribution and Abundance

Historical Distribution

The Texas pimpleback is endemic to the Colorado and Guadalupe-San Antonio River basins of central Texas (Howells 2002b, p. 3). In the Colorado River basin, Texas pimpleback occurred throughout nearly the entire mainstem, as well as numerous tributaries, including the Concho, North Concho, San Saba, Llano, and Pedernales Rivers, and Elm and Onion Creeks (Howells 2010e, p. 5; Randklev *et al.* 2010c, p. 4; OSUM 2011d, p. 1). Within the Guadalupe-San Antonio River basin, it occurred throughout most of the length of the Guadalupe River, as well as in the San Antonio, San Marcos, Blanco, and Medina Rivers (Horne and McIntosh 1979, p. 122; Howells 2010e, p. 5; OSUM 2011d, p. 1).

Current Distribution

The Texas pimpleback has declined significantly rangewide, and only four streams—the San Saba River, Concho River, Guadalupe River, and San Marcos River—are known to harbor persisting Texas pimpleback populations. These populations are disjunct, small, and isolated. The species has been extirpated from the remainder of its historical range.

Colorado River System

In the Colorado River system, Texas pimpleback once occurred throughout the mainstem and in many major tributaries. Currently, the species has been extirpated from the Pedernales, North Concho, and Llano Rivers, as well as Onion Creek. It has also likely been extirpated from the mainstem Colorado River and Elm Creek. The Concho River contains the most abundant population of Texas pimpleback and one of only two populations of the species likely to be remaining in the Colorado River system, but most individuals are old and there has been very little evidence of recruitment.

In the mainstem Colorado River, Texas pimpleback historically occurred from Runnels County downstream to Colorado County (Howells 2010e, p. 5; Randklev *et al.* 2010c, pp. 3–4; OSUM 2011d, p. 1). However, surveys in numerous locations along the river yielded no evidence of the species anywhere except in Runnels and San

Saba Counties (Howells 1995, pp. 20, 29; 1997a, pp. 27, 31, 35; 2000a, p. 27; 2002a, p. 7). In Runnels County, Texas pimpleback shells were found in 1993 (Howells 1995, p. 20), but several subsequent surveys between 1996 and 2008 detected no further evidence of the species (Howells 1997a, p. 27; 1998, p. 10; 2002a, p. 7; 2004, p. 7; Burlakova and Karatayev 2010a, p. 10). In San Saba County, a single shell was collected in 1989 (Howells 2002b, p. 6), and three recently dead individuals were found in 1999 (Howells 2000a, pp. 25–26). An additional shell was collected in 2001 (Howells 2002a, p. 6). No live individuals have been collected from this reach of the Colorado River.

In Runnels County, Elm Creek once supported a Texas pimpleback population. Small numbers of Texas pimpleback were found in 1993 and 1995 (Howells 1995, p. 21; 1996, p. 20), but none were found in 1997, 2001, or 2003 (Howells 1998, p. 11; 2002a, p. 5; 2004, p. 7). In 2005 and 2008, only dead individuals were collected (Howells 2006, pp. 63–64; Burlakova and Karatayev 2010a, p. 10). No live individuals have been found in over a decade despite repeated sampling efforts, and it is likely the Texas pimpleback has been extirpated from this stream.

The Concho River in Concho County supports the largest Texas pimpleback population. Thirteen and 28 individuals were collected in 1993 and 1994, respectively (Howells 1995, pp. 24–25; 2006, p. 61). However, low water and high temperatures in 1997 killed large numbers of many freshwater mussel species in the area up and downstream of Paint Rock, and 63 recently dead Texas pimpleback were found (Howells 1998, pp. 14–15). A severe drought in 1999 resulted in this area of the Concho River being reduced to a series of small pools. Few live Texas pimpleback were collected during this drought, in addition to many recently dead individuals (Howells 2000a, p. 23). No evidence of the species was found in 2004 (Howells 2005, p. 9), but eight live individuals were found in 2005 (Howells 2006, p. 60), evidence that the species had survived the extreme dewatering of the river. In 2008, 61 live Texas pimpleback were collected in this same area, and the population was estimated to contain approximately 4,000 individuals (Burlakova and Karatayev 2010a, p. 10; 2010b, p. 1). However, the average length of individuals collected at this site was over 90 mm (3.5 in), indicating that reproduction is limited in this population. Further, although no mussel surveys occurred in 2009 and 2010, the

river was reported to be extremely low during this time (Howells 2010e, p. 6); the result of this additional dewatering on the population is unknown.

The San Saba River historically contained Texas pimpleback (Randklev *et al.* 2010c, p. 2), but no live individuals had been collected in over a decade until recently when shells were collected in 1992 and 1995 (Howells 1994, p. 7; 1996, p. 21), and five live individuals were collected in 1997 (Howells 1998, p. 16). However, subsequent surveys were conducted in 2000, 2004, and 2005, with only shell material being found in 2000 (Howells 2001, pp. 28–29), and no evidence of Texas pimpleback was found in 2004 and 2005 (Howells 2005, pp. 8–9; 2006, pp. 64–65). A single shell was collected in 2008 (Burlakova and Karatayev 2010b, p. 1). However, in 2011, 39 live individuals were found at two sites in San Saba County (Burlakova and Karatayev 2011, p. 3). The individuals found were of various sizes and ages, indicating a reproducing population (Burlakova and Karatayev 2011, p. 4). Further surveys at this site confirm a large population in the area, with 140 individuals, including many juveniles, found here (Randklev 2011b, p. 1).

The Texas pimpleback also historically occurred in the North Concho, Pedernales, and Llano Rivers, as well as Onion Creek (Howells 2010e, p. 5; Randklev *et al.* 2010c, p. 4; OSUM 2011d, p. 1); all are tributaries within the Colorado River system. In the North Concho River, all freshwater mussels are presumed extirpated from historically occupied areas (Howells 1995, pp. 22–23). The Pedernales River historically harbored a Texas pimpleback population (OSUM 2011d, p. 1), but only old shells have been collected in this river in recent years (Howells 1994, p. 5). Since 1993, no evidence of Texas pimpleback has been found (Howells 1995, pp. 27–28; 1999, p. 16), and the species is presumed to be extirpated. Additionally, repeated surveys in the Llano River in Kimble and Mason Counties consistently failed to collect live Texas pimpleback, with shells found only in Llano County in 1997 (Howells 1996, pp. 21–22; 1998, p. 17; 2005, p. 8). The Texas pimpleback is likely extirpated from all of these streams.

Guadalupe River System

In the Guadalupe River system, the Texas pimpleback has been extirpated from nearly the entire reach of the mainstem Guadalupe, San Antonio, and Blanco Rivers. Very small populations remain only in the lower Guadalupe and

San Marcos Rivers, represented by one or two individuals in each.

In the mainstem Guadalupe River, the Texas pimpleback was historically known throughout the length of the river, from as long ago as 1905 (Randklev *et al.* 2010c, p. 1; OSUM 2011d, p. 1). Numerous surveys between 1992 and 2005 have not yielded any evidence of the species anywhere but in Victoria County (Howells 1994, pp. 7–9; 1995, pp. 30–32; 1996, pp. 25–27; 1997a, pp. 37–40; 1999, pp. 18–19; 2002a, p. 8; 2003, pp. 15, 17; 2006, pp. 71–72; Johnson 2009, p. 1), where two live individuals were collected in 2009. A small population may remain in the lower Guadalupe River.

In the San Marcos River near the confluence with the Blanco River in Hays County, repeated surveys between 1992 and 2000 yielded no evidence of Texas pimpleback (Howells 1994, pp. 9–10; 1995, pp. 33–34; 1996, p. 27; 1997a, p. 40; 2000a, p. 28; 2001, pp. 32–33). However, in 2003 two shells were collected (Howells 2004, p. 16), and in 2004, a single live individual was found (Howells 2005, p. 10). The Texas pimpleback likely persists in this river in very low numbers.

The Texas pimpleback appears to be extirpated from the San Antonio River, with only shell fragments found near the City of San Antonio in Bexar County in 1993 (Howells 1995, p. 35). No evidence of the species was found downstream in Karnes County in 1996 (Howells 1997a, pp. 41–42).

The Texas pimpleback was once described as abundant in the Blanco River just upstream of its confluence with the San Marcos River in Hays County (Horne and McIntosh 1979, p. 126), but repeated surveys of this area between 1992 and 1995 yielded no recent evidence of the species (Howells 1994, p. 9; 1995, pp. 32–33; 1996, p. 27), with only a subfossil shell collected in 1993 (Howells 1995, p. 33). No shell material or live individuals were found in additional surveys in 2011 (Johnson 2011, p. 1).

Summary

The Texas pimpleback has been eliminated from long reaches of former habitat in hundreds of miles of the Colorado and Guadalupe River systems. Only two populations appear large enough to be stable, but evidence of recruitment in the Concho River population is limited. The San Saba River population may be the only remaining recruiting population of Texas pimpleback. Two additional populations are represented by one or two individuals; all populations are highly disjunct.

Species Information for Texas Fawnsfoot

Species Description

The Texas fawnsfoot is a small, relatively thin-shelled freshwater mussel that can reach 60 mm (2.4 in) in length but is usually much smaller (Howells 2010d, p. 2). The shell is long and oval, generally free of external sculpturing, with external coloration that varies from yellowish- or orangish-tan, brown, reddish-brown, to smoky-green with a pattern of broken rays or irregular blotches (Howells 2010d, p. 2). The nacre is bluish-white or white and iridescent posteriorly (Howells 2010d, p. 2).

Taxonomy

The Texas fawnsfoot was first described as *Unio macrodon* by Lea in 1859 and was subsequently placed in the genus *Margarona* by Lea in 1870 and then moved to *Plagiola* by Simpson (1900, p. 605). Ultimately the species was placed in the genus *Truncilla* by Strecker (1931, pp. 63, 65). The Texas fawnsfoot is recognized by the Committee on Scientific and Vernacular Names of Mollusks of the Council of Systematic Malacologists, American Malacological Union (Turgeon *et al.* 1998, p. 37), and we recognize it as a valid species.

Biology and Life History

There is no specific information on age, size of maturity, or host fish use for Texas fawnsfoot. However, other species in the genus *Truncilla* parasitize freshwater drum (*Aplodinotus grunniens*) (OSUM 2011f, p. 1), and it is likely the Texas fawnsfoot does as well. Freshwater drum are ubiquitous throughout the range of Texas fawnsfoot (Hubbs *et al.* 2008, p. 53).

Habitat

Since Texas fawnsfoot were not found alive for many years, very little information is available about its habitat preferences. In the past only Texas fawnsfoot shells and recently dead individuals were occasionally found along rivers following drought-related dewatering or bank deposition after high floods. These shells and recently dead individuals indicated that the Texas fawnsfoot occurs in flowing water, as it was never found in ponds, lakes, or reservoirs, suggesting that it is intolerant of deep, low-velocity waters created by artificial impoundments (Howells 2010d, p. 3). The recently discovered live population in the Brazos River indicates that the species occurs in rivers with soft, sandy sediment with moderate water flow (Randklev and

Lundeen 2010, p. 1; Randklev *et al.* 2010a, p. 298; Johnson 2011, p. 1).

Distribution and Abundance

Historical Distribution

The Texas fawnsfoot is endemic to the Brazos and Colorado Rivers of central Texas (Howells *et al.* 1996, p. 143; Randklev *et al.* 2010a, p. 297). From the 1960s to the 1990s, malacologists working in central Texas found few individuals and few new population locations (Howells 2010d, p. 6). Historical records suggest the Texas fawnsfoot inhabited much of the Colorado River, from Wharton County upstream as far as the North Fork Concho River in Sterling County, as well as throughout the Concho, San Saba, and Llano Rivers and Onion Creek within the Colorado River basin (Howells 2010d, p. 4; Randklev *et al.* 2010b, p. 24). In the Brazos River, the species occurred from Fort Bend County upstream to the lower reaches of the Clear Fork Brazos River in Shackelford County, as well as in the Leon River, Little River, San Gabriel River, Deer Creek, and Yegua Creek (Howells 2010d, pp. 4–5; Randklev *et al.* 2010b, p. 24). Species reports from the Trinity River and other east Texas locations are of misidentified fawnsfoot (*Truncilla donaciformis*) (Howells 2010d, p. 4).

Current Distribution

Relatively few Texas fawnsfoot have been documented since this species was first described in 1859, and very few live individuals have been found in recent decades (Randklev *et al.* 2010a, p. 297). All of these animals were flood deposited on gravel bars and near death just prior to collection (Randklev *et al.* 2010a, p. 297), preventing information from being gathered about population size, preferred habitat, and other parameters. A live population of Texas fawnsfoot was not discovered until 2008 in the Brazos River near its confluence with the Navasota River (Randklev *et al.* 2010a, p. 297). A second live population was found in 2009 in the Colorado River (Johnson 2009, p. 1). These two locations contain the only confirmed populations of the species to date. Evidence of other remnant populations has also been found in the Clear Fork Brazos River, San Saba River, and Deer Creek.

Colorado River System

The Texas fawnsfoot has been eliminated from almost all of the Colorado River system. Live individuals were found in the lower mainstem Colorado River in 2009, and the only other evidence of current occurrence of

Texas fawnsfoot in the Colorado River basin is in the San Saba River, where a population persists.

In the mainstem Colorado River, the Texas fawnsfoot historically occurred from Wharton County upstream into the headwaters (Randklev *et al.* 2010c, p. 4; OSUM 2011e, p. 1). Surveys throughout the upper Colorado River between 1993 and 2009 yielded no evidence of Texas fawnsfoot (Howells 1994, pp. 20–21, 29; 1996, pp. 20–21, 23; 1997a, pp. 27, 31, 34–35; 1998, p. 10; 2000a, p. 27; 2002a, p. 6; 2004, p. 7; Burlakova and Karatayev 2010a, p. 16), except for one recently dead individual found in 1999 in San Saba County when the entire river was dewatered and all mussels were eliminated from the area (Howells 2000a, pp. 25–26; 2009, p. 17). The lack of evidence of the species since that time indicates that the population may have been lost. In the lower Colorado River in Colorado County, several old shells of Texas fawnsfoot were found at several sites in 1996 (Howells 1997a, p. 35), and, subsequently in 2009, two live individuals were discovered (Johnson 2011, p. 1). The population was later estimated to be approximately 2,800 individuals, with individuals ranging in size from 21 to 38 mm (0.8–1.5 in) (Burlakova and Karatayev 2010a, p. 17), indicating that reproduction and recruitment is occurring.

Texas fawnsfoot were not known to occur in the San Saba River until a single live individual was collected in 2011 (Burlakova and Karatayev 2011, p. 6). Additional surveys yielded 16 Texas fawnsfoot of various ages collected at the site (Randklev 2011b, p. 1), indicating a persistent, recruiting population.

Texas fawnsfoot is presumed extirpated from the remainder of the Colorado River basin. Although historical records exist in the North Concho, Concho, and Llano Rivers and in Onion Creek (Randklev *et al.* 2010c, p. 4), numerous surveys of these streams indicate the extirpation of the species (Howells 1994, pp. 5–6; 1995, pp. 22–25, 28–29; 1996, pp. 21–22; 1998, pp. 14–17; 1999, pp. 15–16; 2000a, pp. 23, 25; 2001, p. 27; 2005, p. 9; Burlakova and Karatayev 2011, p. 6).

Brazos River System

In the Brazos River system, the Texas fawnsfoot persists in the mainstem Brazos River, Clear Fork Brazos River, Navasota River, and possibly in Deer Creek. The species has been extirpated from the Leon River, Little River, San Gabriel River, and Yegua Creek.

In the mainstem Brazos River, the Texas fawnsfoot historically occurred throughout the length of the river, from

Palo Pinto County downstream to Fort Bend County (Randklev *et al.* 2010c, pp. 2–4; Burlakova and Karatayev 2010b, p. 1; OSUM 2011e, p. 1). While the species appears to have retained its range through the length of the Brazos River, occurrences are represented by very few live or recently dead individuals. In the upper Brazos River in Palo Pinto and Parker Counties, two live individuals were found at each of two sites in 1996, as well as numerous shells (Howells 1997a, pp. 16, 17). A survey in 2000 yielded no evidence of Texas fawnsfoot in this area (Howells 2001, p. 19). Nearby, in Somervell County, four recently dead individuals were found in the mainstem Brazos River in 1996 (Howells 1997a, pp. 18–19). In 2007, only one old shell was found in the same area (Burlakova and Karatayev 2010b, p. 1).

Surveys in Milam and Falls Counties have not yielded any evidence of Texas fawnsfoot, indicating the species has been extirpated from this section of the Brazos River (Howells 1995, p. 17; 1999, pp. 12–13).

In the middle Brazos River, Texas fawnsfoot persists in low numbers in the vicinity of Brazos County. One live individual was found in 1994 (Howells 1996, pp. 17–18), representing the first live collection of the species anywhere since the 1970s. In 1999, numerous recently dead Texas fawnsfoot of mixed sizes and ages were found at several sites in Burleson and Brazos Counties (Howells 2000a, pp. 21–22), indicating a recruiting population existed in the area. The species has been documented here in repeated surveys in 2000, 2003, and 2006 (Howells 2001, p. 22; Karatayev and Burlakova 2008, p. 7; Howells 2009, p. 17), indicating that the species continues to persist in the area.

The first account of a living population of Texas fawnsfoot (animals living *in situ* rather than deposited on or near the banks by floods) occurred in 2008 in the lower Brazos River near its confluence with the Navasota River (Randklev *et al.* 2010a, p. 297). Ten live individuals were collected, and all were small, indicating successful reproduction and recent recruitment. An additional Texas fawnsfoot was found in this area in 2011 (Randklev 2011a, p. 1).

The farthest downstream collection of Texas fawnsfoot in the Brazos River in recent years was in Austin and Waller Counties, when one live individual was found in 2006 (Karatayev and Burlakova 2008, p. 39). It is likely the species occurs sporadically through the section of the Brazos River between Brazos and Austin Counties.

Texas fawnsfoot was first discovered in the Navasota River in 2011, when three individuals were found in Washington and Grimes Counties (Randklev 2011a, p. 1). Previous surveys had not yielded evidence of the species in this river (Howells 2001, p. 23).

In Deer Creek, a tributary to the Brazos River in Falls County, a recently dead Texas fawnsfoot was collected in 2006 (Burlakova and Karatayev 2010b, p.1), despite previous surveys that yielded no evidence of the species (Howells 1999, p. 12).

Additionally, a Texas fawnsfoot population persists in the Clear Fork Brazos River. Recently dead Texas fawnsfoot have been collected in several locations along the length of the river, in Shackelford, Stephens, and Young Counties (Randklev *et al.* 2010c, p. 4; Randklev 2011, pers. comm.). Several other tributaries to the Brazos River that historically contained Texas fawnsfoot appear to no longer support the species after numerous surveys reveal no living or dead individuals, including the Leon River (Howells 1994, pp. 18–20; 1997a, pp. 19–20), the Little River (Howells 1997a, pp. 22–23), the San Gabriel River (Howells 1997a, p. 23), and Yegua Creek (Howells 1997a, pp. 24, 25–26; 1999, p. 14; 2001, p. 22; 2004, p. 6).

Summary

The Texas fawnsfoot has declined range-wide and is now known from only five populations. The species has been extirpated from nearly all of the Colorado River basin and from much of the Brazos River basin. Of the populations that remain, only the Colorado, San Saba, and Brazos River populations are likely to be stable and recruiting; the remaining populations are disjunct and restricted to short stream reaches.

Five-Factor Evaluation and Findings

Texas fatmucket, golden orb, smooth pimpleback, Texas pimpleback, and Texas fawnsfoot all occur in central Texas across four major river basins (Brazos, Colorado, Guadalupe, and Nueces-Frio River basins). These species depend on similar physical and biological features and on the successful functioning of riverine ecosystems to survive. Many of the species face the same or very similar threats. For each species, we identified and evaluated all the factors that may be threatening the species. However, to avoid redundancy of information when the analysis of the threats is the same between species, we referenced the reader to the initial description of the common threats. For example, the degradation of habitat and habitat loss due to dams and

impoundments is a common threat to all five species, so a full description of the threat was provided for the Texas fatmucket, and for the remaining species the initial description was referenced with species-specific information provided, as available.

Five-Factor Evaluation for Texas Fatmucket

Information pertaining to the Texas fatmucket in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

The decline of mussels in Texas and across the United States is primarily the result of habitat loss and degradation (Neves 1991, pp. 252, 265; Howells *et al.* 1996, pp. 21–22). Chief among the causes of mussel decline in Texas are the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants (Neck 1982a, pp. 33–35; Howells *et al.* 1996, pp. 21–22; Winemiller *et al.* pp. 17–18). These threats are discussed below.

Impoundments

A major factor in the decline of freshwater mussels across the United States has been the large-scale impoundment of rivers (Vaughn and Taylor 1999, p. 913). Dams are the source of numerous threats to freshwater mussels: They block upstream and downstream movement of species by blocking host fish movement; they eliminate or reduce river flow within impounded areas, thereby trapping silts and causing sediment deposition; and dams change downstream water flow timing and temperature, decrease habitat heterogeneity, and affect normal flood patterns (Layzer *et al.* 1993, pp. 68–69; Neves *et al.* 1997, pp. 63–64; Watters 2000, pp. 261–264; Watters 1996, p. 80). Within reservoirs (the impounded waters behind dams), the decline of freshwater mussels has been attributed to sedimentation, decreased dissolved oxygen, and alteration of resident fish populations (Neves *et al.* 1997, pp. 63–64; Pringle *et al.* 2000, pp. 810–815; Watters 2000, pp. 261–264). Dams significantly alter downstream water quality and stream habitats (Allan and Flecker 1993, p. 36; Collier *et al.* 1996, pp. 1, 7) resulting in negative effects to tailwater (the area downstream of a dam) mussel populations (Layzer *et al.* 1993, p. 69; Neves *et al.* 1997, p. 63; Watters 2000, pp. 265–266). Below dams, mussel declines are associated with changes and fluctuation in flow

regime, scouring and erosion of stream channels, reduced dissolved oxygen levels and water temperatures, and changes in resident fish assemblages (Williams *et al.* 1992, p. 7; Layzer *et al.* 1993, p. 69; Neves *et al.* 1997, pp. 63–64; Pringle *et al.* 2000, pp. 810–815; Watters 2000, pp. 265–266). Numerous dams have been constructed throughout the Colorado, Guadalupe, Brazos, and Nueces-Frio River systems within the range of all five mussels addressed in this finding (Stanley *et al.* 1990, p. 61).

Population losses due to the effects of dams and impoundments have likely contributed more to the loss of diversity and abundance of freshwater mussels across Texas, including the Texas fatmucket, than any other factor. Stream habitat throughout nearly all of the range of Texas fatmucket has been affected by numerous impoundments, leaving generally short, isolated patches of remnant habitat between dams. Impoundments have resulted in profound changes to the nature of the rivers, primarily replacing free-flowing river systems with a series of large reservoirs.

There are no natural lakes within the range of the Texas fatmucket, nor has it ever been found in reservoirs. Surveys of the reservoirs on the Guadalupe and Colorado Rivers have been ongoing since at least 1992, and no evidence of live or dead Texas fatmucket has been found in any reservoir (Howells 1994, pp. 1–20; 1995, pp. 1–50; 1996, pp. 1–45; 1997a, pp. 1–58; 1998, pp. 1–30; 1999, pp. 1–34; 2000a, pp. 1–56; 2001, pp. 1–50; 2002a, pp. 1–28; 2003, pp. 1–42; 2004, pp. 1–48; 2005, pp. 1–23; 2006, pp. 1–106; Karatayev and Burlakova 2008, pp. 1–47; Burlakova and Karatayev 2010a, pp. 1–30; 2011, pp. 1–8), further indicating this species is not tolerant of impoundments.

Impoundments occur throughout the range of the Texas fatmucket. The majority of the Nueces-Frio, Guadalupe, San Antonio, Colorado, and Brazos Rivers, as well as many tributaries, are now impounded. There are 31 major reservoirs within the Colorado River basin, with another reservoir (Goldthwaite Reservoir) being considered on the Colorado River in Mills and San Saba Counties; this reservoir was the number one recommendation in the water plan for the region (Texas Water Development Board (TWDB) 2011, p. 4–85). There are 29 reservoirs throughout the Guadalupe River basin and 34 reservoirs throughout the San Antonio River basin, each with a storage capacity of 3000 acre-feet or more, and many smaller reservoirs (Exelon 2010, p. 2.3–4). The majority of the large dams were

constructed for power generation, flood control, and water supply, primarily by the Lower Colorado River and Guadalupe-Blanco River Authorities, beginning in the early twentieth century (Guadalupe-Blanco River Authority 2011, p. 1; Lower Colorado River Authority (LCRA) 2011a, p. 1). These, and numerous smaller dams, occur throughout the Colorado and Guadalupe River basins and have resulted in ongoing destruction and modification of Texas fatmucket habitat and the curtailment of its range.

Dams threaten freshwater mussels in several ways. First, they can prevent the movement of freshwater mussel host fish. The overall distribution of mussels is a function of the dispersal of their hosts (Watters 1996, p. 83). For example, Watters (1996, p. 80) found that the distributions of the fragile papershell (*Leptodea fragilis*) and pink heelsplitter (*Potamilus alatus*) in five midwestern rivers were determined by the presence of low-head dams. These dams were non-navigable (without locks), lacked fish ladders, and varied in height from 1 to 17.7 m (3 ft to 58 ft), and the host fish could not disperse through them. Although the distribution of mussels may depend on many ecological factors, the evidence presented in Watters (1996, pp. 79–85) illustrates that dams as small as 1 m (3 ft) high can limit the distribution of mussels. There are many dams that occur throughout the range of the Texas fatmucket that lack fish ladders and may be a barrier to the movement of fish hosts and, therefore, the distribution of mussels. Because the Texas fatmucket populations are all separated by dams of various sizes that are not passable by fish, the mussel is unable to disperse from its current occupied range through host fish migration.

Dams also alter aquatic habitat within the resulting impoundments. It is well documented that many mussel species that are adapted to flowing water stream environments do poorly in the altered aquatic conditions found within impoundments (Williams *et al.* 1992, p. 7; Vaughn and Taylor 1999, p. 913). Once a dam is constructed, the original river channel upstream remains intact but under much deeper water with much lower velocities. As water velocity decreases, water loses its ability to carry sediment; sediment falls to the substrate, eventually smothering mussels that cannot adapt to soft substrates (Watters 2000, p. 263). Over time, the original mussel species composition of the stream channel may be eliminated or changed in favor of silt-tolerant species (Watters 2000, p. 264). The mussel community may be altered

from one with many different species to a community dominated by one to several very common species (Neck 1982b, p. 174). Texas fatmucket does not occur in reservoirs, indicating it is not tolerant of lentic conditions, and it is now extirpated from impounded areas where it occurred prior to inundation. The inundation of stream habitat by impoundments is a likely cause of the reduction in the distribution of the Texas fatmucket. The presence of the impoundments has caused the permanent loss of Texas fatmucket habitat throughout its range.

The loss of seven freshwater mussel species native to Texas, including Texas fatmucket and golden orb, due to impoundment construction was documented on the Medina River (Neck 1989, p. 323). The Medina River was impounded in 1913 by construction of Medina Dam, and now only three different species of mussels, all of which are tolerant of lentic habitats, occur in the impounded area. The bottom of Medina Lake now consists of moderate and steep limestone slopes and excessive silt deposits, whereas before it was most likely made up of a combination of silt, sand, and gravel substrates. Most mussels native to the Medina River were unable to adapt to the change in flowing water and substrate conditions (Neck 1989, p. 323), including the Texas fatmucket, which is no longer found in the river.

Mussels downstream of impoundments are often affected through changes in fish host availability, water quality (particularly lower water temperatures), habitat structure, and stream channel scouring (Vaughn and Taylor 1999, p. 916). The release of cold water from the hypolimnion (deeper and colder layer of water in reservoirs) can decrease the occurrence of fish species adapted to warm water and increase the occurrence of fish species adapted to colder water (Edwards 1978, pp. 73–75). This changes the species composition of suitable host fish and may prevent mussels from completing an essential part of their reproductive cycle. This has been demonstrated by the extirpation of mussel species from several rivers on the eastern seaboard of the United States, which has been linked to the disappearance of appropriate host fish; the reintroduction of the host fish to rivers has enabled mussel species to recolonize areas (Kat and Davis 1984, p. 174). In addition, because mussel reproduction is temperature dependent (Watters and O'Dee 1999, pp. 455–456), it is likely that individual mussels living in cold waters downstream of dam releases may

reproduce less frequently, if at all (Layzer *et al.* 1993, p. 69). Low water temperatures can also significantly delay or prevent metamorphosis (Watters and O'Dee 1999, pp. 454–455) and glochidial release, which is often triggered by water temperature (Watters and O'Dee 2000, p. 136).

Similar changes in water temperatures downstream of dams may be responsible for the loss of some Texas fatmucket populations. For example, Canyon Reservoir on the Guadalupe River in Comal County is a deep impoundment built in 1964 that has hypolimnetic water releases. Temperature monitoring stations throughout the Guadalupe River basin show that maximum temperatures above Canyon Reservoir averaged 29.6 degrees Celsius ($^{\circ}\text{C}$) (85.3 degrees Fahrenheit ($^{\circ}\text{F}$)); the maximum stream temperatures below the reservoir averaged only 19.7 $^{\circ}\text{C}$ (67.5 $^{\circ}\text{F}$) (Edwards 1978, p. 72). After impoundment, dissolved oxygen and water temperature dropped, with an accompanying drop in mussel numbers and species diversity (Young *et al.* 1976, p. 216). According to historical museum records analyzed by Randklev *et al.* (2010b, pp. 1–32), the Texas fatmucket once occurred in this area of the Guadalupe River prior to the construction of Canyon Reservoir. The Guadalupe River and Canyon Lake in Comal and Kendall Counties were surveyed in 2009, and no live or recently dead Texas fatmucket were found (Burlakova and Karatayev 2010a, pp. 12–13). We reasonably conclude that the loss of the Texas fatmucket from this area was caused by the changes to the aquatic habitat of the Guadalupe River from the effects of Canyon Reservoir. Many of the dams throughout the range of Texas fatmucket have hypolimnetic water releases, including Canyon Reservoir on the Guadalupe River (Magnelia 2001, p. 1), and Inks Lake, Lake LBJ (Schnoor and Fruh 1979, p. 506), and Lake Travis (Texas Natural Resource Conservation Commission 2001, p. 4) on the Colorado River, among others. We anticipate that changes in water temperatures from water released by these and other reservoirs also alter mussel habitats in streams, causing the elimination of mussel populations downstream.

In addition to the temperature of water released from dams, highly fluctuating, turbulent tailwaters devoid of sediment will scour the riverbed downstream of dams, rendering the area without mussel habitat (Layzer *et al.* 1993, p. 69). Depending on the use of the dam, water levels may fluctuate on a regular interval (for hydroelectric purposes) or at random (for flood

control) (Watters 2000, p. 265). On the Colorado River, Inks Lake, Lake Marble Falls, Lake Buchanan, Lake Austin, Lake Travis, and Lady Bird Lake are each used for one or both of these purposes. Mortality of another rare mussel species in Texas, the Texas heelsplitter (*Potamilus amphichaenus*) was attributed to scheduled dewatering of the Neches River below B.A. Steinhagen Reservoir in east Texas (Neck and Howells 1994, p. 15).

Fluctuating water levels below dams also result in dramatic changes in water velocity. Downstream of Lake Livingston on the Trinity River in east Texas, for example, high-volume water discharges and abrupt stoppages of flow resulted in a river bed composed of large rocks and shifting sand (Neck and Howells 1994, p. 14); these kinds of habitat changes would be inhospitable to Texas fatmucket below the dams within its range. In some rivers this unstable zone may be extensive. For example, on the Brazos River downstream of Possum Kingdom Reservoir in Texas exhibited unstable substrate for 150 km (240 mi) below the dam (Yeager 1993, p. 68).

In one study of the downstream effects of dams, Vaughn and Taylor (1999, p. 915) found a strong, gradual, linear increase in mussel species richness and abundance at sites on the Little River in Oklahoma downstream from Pine Creek Reservoir. Their research revealed that mussel species richness and total abundance did not begin to rebound until 20 km (12 mi) downstream of the impoundment and did not peak until 53 km (33 mi) downstream. They noted the most obvious difference since reservoir construction has been the alteration of the flow and temperature regimes, which gradually return to pre-impoundment levels with downstream distance from the dam. These alterations appear to have produced an extinction gradient of mussels that is most severe near the dam (Vaughn and Taylor 1999, p. 915). We expect similar effects on the Texas fatmucket and other Texas mussels downstream of dams.

In one area on the Guadalupe River in Kerr County, a Texas fatmucket population once existed directly below a small dam (Howells 1997a, p. 36), indicating the effects of the dam construction and closure were not immediately lethal. However, the population has been presumed extirpated since 1998 (Howells 2006, p. 71), and it is likely that fluctuating downstream flows from the dam contributed to the loss of this population.

Dam construction also fragments the range of Texas fatmucket, leaving remaining habitats and populations isolated by the structures as well as by extensive areas of deep uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat that may be impacted by temporary but devastating events, such as severe drought, floods, or pollution. Dams impound river habitats throughout almost the entire range of the species, and these impoundments have left short and isolated patches of remnant habitat, typically between impounded reaches.

In summary, the widespread construction of dams has affected the Texas fatmucket throughout its range by significantly altering stream habitat both upstream and downstream of the dams by changing fish assemblages, water depths and velocities, water temperature, dissolved oxygen, substrate, and stream channels. The effects of dams are ongoing and continue to negatively impact the Texas fatmucket rangewide. Because of this loss of habitat and its effects on the populations, we find that the effects of impoundments are a threat to the Texas fatmucket.

Sedimentation

Siltation and general sediment runoff is a pervasive problem in streams and has been implicated in the decline of stream mussel populations (Ellis 1936, pp. 39–40; Vannote and Minshall 1982, p. 4105; Dennis 1984, p. ii; Brim Box and Mossa 1999, p. 99; Fraley and Ahlstedt 2000, pp. 193–194). Specific biological effects on mussels from excessive sediment include reduced feeding and respiratory efficiency from clogged gills (Ellis 1936, p. 40), disrupted metabolic processes, reduced growth rates, increased substrate instability, limited burrowing activity (Marking and Bills 1979, pp. 208–209; Vannote and Minshall 1982, p. 4106), physical smothering, and disrupted host fish attractant mechanisms (Hartfield and Hartfield 1996, p. 373). The primary effects of excess sediment on mussels are sublethal, with detrimental effects not immediately apparent (Brim Box and Mossa 1999, p. 101).

The physical effects of sediment on mussel habitats are multifold and include changes in suspended material load; changes in streambed sediment composition from increased sediment production and runoff in the watershed; changes in the form, position, and stability of stream channels; changes in water depth or the width-to-depth ratio, which affects light penetration and flow regime; actively aggrading (filling) or

degrading (scouring) channels; and changes in channel position that may leave mussels stranded (Brim Box and Mossa 1999, pp. 109–112).

Increased sedimentation and siltation may explain, in part, why Texas fatmucket appear to be experiencing recruitment failure in some streams. Interstitial spaces (small openings between rocks and gravels) in the substrate provide essential habitat for juvenile mussels. When clogged with sand or silt, interstitial flow rates and spaces may become reduced (Brim Box and Mossa 1999, p. 100), thus reducing juvenile habitat availability. Juvenile freshwater mussels, including Texas fatmucket juveniles, burrow into interstitial substrates, making it particularly susceptible to degradation of this habitat.

Even in 1959, both the Colorado and Guadalupe Rivers were noted as having high sedimentation rates from agricultural activities (Soil Conservation Service 1959, pp. 56, 59). Approximately 40 percent of U.S. river miles do not meet Clean Water Act standards due to excessive sediment loads (Environmental Protection Agency (EPA) 2000, p. 1), with agricultural activities being the primary source of sediment in streams (Waters 1995, p. 170). In general, sedimentation, resulting from unrestricted access by livestock, has been shown to be a significant threat to many streams and their mussel populations (Fraley and Ahlstedt 2000, p. 193). A primary land use throughout the range of the Texas fatmucket is grazing by cattle, sheep, and goats (Hersh 2007, p. 11). Soil compaction, which reduces vegetative growth, from intensive grazing may reduce infiltration rates and increase runoff and erosion, and trampling of riparian vegetation increases the probability of erosion (Armour *et al.* 1994, p.10; Brim Box and Mossa 1999, p. 103).

Another cause of increased sediments in streams is widespread brush removal, such as that of the native plant, *Juniperus ashei* (Ashe juniper), throughout central Texas. *Juniperus ashei* removal can cause a marked increase in sediment runoff into streams (Greer 2005, p. 76). The Texas State Soil and Water Conservation Board has a funding program specifically for *Juniperus ashei* removal in Blanco, Gillespie, Kerr, Kendall, and Travis Counties (Gillespie County Soil and Water Conservation District 2011, p. 1), which includes the watersheds of three known Texas fatmucket populations in Live Oak Creek, Threadgill Creek, and the upper Guadalupe River. In one example, Howells (2010f, p. 6) noted

increased sediment deposition after widespread *Juniperus ashei* removal upstream of the Texas fatmucket population in Live Oak Creek.

Sedimentation may become an increasing threat to the Texas fatmucket in the Colorado and Guadalupe River basins as the Austin and San Antonio metro areas continue to expand. Activities associated with urbanization, such as road construction and increased impervious surfaces (surfaces that do not allow infiltration of rain water), can be detrimental to stream habitats (Couch and Hamilton 2002, p. 1). Runoff from increased impervious surfaces increases sediment loads in streams and destabilizes stream channels (Pappas *et al.* 2008, p. 151). Impervious surfaces also result in channel instability by accelerating stormwater runoff, which increases bank erosion and bed scouring, thereby further increasing downstream sedimentation (Brim Box and Mossa 1999, p. 103). While erosion and sedimentation associated with road construction may be temporary, the existence of road crossings is shown to have ongoing impacts to mussel habitat. For example, in the Guadalupe River, road crossings were found to cause a long-term increase in sedimentation both upstream and downstream, as channel constriction reduced flow upstream, causing sediment deposition, and runoff from the road increased sedimentation downstream (Keen-Zebert and Curran 2009, p. 301). Urban development activities may also affect streams and their mussel fauna where adequate streamside buffers are not maintained and erosion from adjacent land is allowed to enter streams (Brainwood *et al.* 2006, p. 511).

Large projects that reduce vegetative cover within the watersheds supporting Texas fatmucket populations can also increase sedimentation flowing into streams. For example, the Lower Colorado River Authority Transmission Services Corporation (LCRA TSC) is proposing to construct two new 345-kilovolt (kV) electric transmission line facilities between Tom Green (in the Colorado River basin near San Angelo) and Kendall Counties (in the Guadalupe River basin north of San Antonio) to provide electrical power to accommodate increased human populations (Clary 2010, p. 1). All of the proposed project routes occur within the range of the Texas fatmucket. Two proposed segments would cross through Live Oak Creek, one through the San Saba River, and one through the upper Guadalupe River; all of these streams contain populations of the Texas fatmucket. The proposed project could negatively affect Texas fatmucket

habitat if construction or maintenance of the transmission line requires removal of vegetation within the riparian zone and that removal results in an increase in sediment runoff into Live Oak Creek and the Guadalupe and San Saba Rivers (Clary 2010, pp. 7, 9, 15). Similar infrastructure development activities to accommodate Texas population growth are expected to be undertaken across the species' range and will likely lead to additional sources of sediment in the streams inhabited by the Texas fatmucket.

Streams occupied by Texas fatmucket are subject to increasing levels of sedimentation from agricultural activities, instream sand and gravel mining, vegetation removal, and urbanization. All of these activities are ongoing throughout the range of the Texas fatmucket and are unlikely to decrease, resulting in significant threats to the Texas fatmucket.

Dewatering

River dewatering can occur in several ways: Anthropogenic activities such as surface water diversions and groundwater pumping, and natural events, such as drought. Surface water diversions and groundwater pumping can lower water tables, reducing river flows and reservoir levels. When water levels in streams and reservoirs are lowered dramatically, it can result in mussels being stranded and dying in previously wetted areas. This is a particular concern within and below reservoirs where water levels are managed for purposes that result in water levels in the reservoir or downstream to rise or fall in very short periods of time, such as when hydropower facilities release water during peak energy demand periods. Rivers can also be dewatered to expedite construction activities, which happened in the upper Guadalupe River in Kerr County in 1998 for bridge construction; numerous Texas fatmuckets were exposed and desiccated (dried out and died) (Howells 1999, pp. 18–19).

Drought can also severely affect Texas fatmucket populations. For example, near-record dry conditions in 2008, followed by a pattern of below-normal rainfall during the winter and spring of 2009, led to one of the worst droughts in recorded history for most of central Texas, including the range of the Texas fatmucket (Nielsen-Gammon and McRoberts 2009, p. 2). This drought's severity was exacerbated by abnormally high air temperatures, a likely effect of climate change, which has increased average air temperatures in Texas by at least 1 °C (1.8 °F) (Nielsen-Gammon and McRoberts 2009, p. 22). The reservoirs

within the Colorado River basin were extremely low during this time due to the drought (Clean Water Action 2011, p. 1), as were river levels. Minimal to no flow was recorded at numerous sites within the basin (U.S. Geological Survey (USGS) 2011a, p. 1). Four of the five current sites of the Texas fatmucket may have had very low flows during the 2009 drought, including populations in the San Saba, Llano, Pedernales, and Guadalupe Rivers (Howells 2010c, pp. 9–10). As low flows persist, mussels face oxygen deprivation, increased water temperature, and, ultimately, stranding (Golladay *et al.* 2004, p. 501). Only the Llano River has been surveyed since 2009, and the species persists in that river (Burlakova and Karatayev 2011, p. 1). Central Texas is currently experiencing another extreme drought, with rainfall between October 2010 and July 2011 being the lowest on record during those months (LCRA 2011c, p. 1), and the effects of this drought are being observed but are not yet fully known. As of the date of publication of this finding, the Llano River has nearly stopped flowing (Mashhood 2011, p. 1); this has undoubtedly affected Texas fatmucket populations in this river.

We do not know the extent of the impacts of stream dewatering on the Texas fatmucket; however, because this species' populations are so small and isolated, the loss of numerous individuals at a site can have dramatic consequences to the population. Hydropower facilities, construction, surface water diversions, groundwater pumping, and drought are occurring throughout the range of the Texas fatmucket; therefore, the effects of dewatering are ongoing and unlikely to decrease in the future, resulting in significant threats to the Texas fatmucket.

Sand and Gravel Mining

Sand and gravel mining (removing bed materials from streams) has been implicated in the destruction of mussel populations across the United States (Hartfield 1993, pp. 136–138). Sand and gravel mining causes stream instability by increasing erosion and turbidity (a measure of water clarity) and causing subsequent sediment deposition downstream (Meador and Layher 1998, pp. 8–9). These changes to the stream can result in large-scale changes to aquatic fauna, by altering habitat and affecting spawning of fish, mussels, and other aquatic species (Kanehl and Lyons 1992, pp. 4–11).

Sedimentation and increased turbidity can accrue from instream mining activities. In the Brazos River, a gravel dredging operation was

documented as depositing sediment as far as 1.6 km (1 mi) downstream (Forshage and Carter 1973, p. 697). Accelerated streambank erosion and downcutting of streambeds are common effects of instream sand and gravel mining, as is the mobilization of fine sediments during sand and gravel extraction (Roell 1999, p. 7).

Mining activities may threaten some local Texas fatmucket populations. Currently, one mining operation is permitted near the population in Onion Creek (TPWD 2008c, p. 1), and another in the Llano River watershed in Kimble County (TPWD 2008a, p. 1). The permits allow for repeated removal of sand and gravel at various instream locations. Two additional mining operations occur in historical habitat for the species—the mainstem Colorado River (U.S. Army Corps of Engineers (USACE) 2010, p. 2) and Johnson Creek (TPWD 2007a, p. 1).

In areas where repeated mining occurs, an upstream progression of channel degradation and erosion (called headcutting) can occur (Meador and Layher 1998, p. 8). Headcutting may move miles upstream in a zipper-like fashion as the upper boundary of the modified area collapses. Headcutting can be found within the majority of rivers and streams in Texas, including within the Texas fatmucket's current and historical range (Kenyon *et al.* 1967, p. 22). Headcuts induced by sand and gravel mining can cause dramatic changes in streambank and channel shape that may affect instream flow, water chemistry and temperature, bank stability, and siltation (Meador and Layher 1998, p. 8), all of which are harmful to freshwater mussels. Mussels are particularly vulnerable to channel degradation and sedimentation processes associated with headcutting due to their immobility (Pringle 1997, p. 429).

In addition to headcutting, mines that are located near stream channels are subject to the gravel pit being captured by the stream during flood events or due to gradual channel migration (Simmang and Curran 2006, p. 1). For example, two gravel mines along the Colorado River downstream of Austin were inundated; one by stream channel migration in 1984, one by stream capture in 1991 (Simmang and Curran 2006, p. 1). Once captured by the mainstem river, gravel mines contribute large amounts of suspended sediment to the river, causing additional turbidity and sedimentation and further degrading mussel habitat.

Two Texas fatmucket populations in the mainstem Colorado River and Johnson Creek may be currently affected by sand and gravel mining. These

activities occur over a long period of time, destabilizing habitat and altering substrates and banks both upstream and downstream. Altered habitat will cause a decrease in the likelihood of recolonization by mussels after the activity has been completed. Therefore, the effects of sand and gravel mining are an ongoing threat to the Texas fatmucket.

Chemical Contaminants

Chemical contaminants are ubiquitous throughout the environment and are a major reason for the decline of freshwater mussel species nationwide (Richter *et al.* 1997, p. 1081; Strayer *et al.* 2004, p. 436; Wang *et al.* 2007a, p. 2029). Chemicals enter the environment through both point and nonpoint discharges, including spills, industrial sources, municipal effluents, and agriculture runoff. These sources contribute organic compounds, heavy metals, pesticides, herbicides, and a wide variety of newly emerging contaminants to the aquatic environment. As a result, water quality can be degraded to the extent that mussel populations are adversely affected.

Chemical and oil spills can be especially devastating to mussels because they may result in exposure of a relatively immobile species to elevated concentrations that far exceed toxic levels. Acute and chronic exposure to oil spills in freshwater systems is largely understudied; therefore, little information is available on effects of oil spills on freshwater ecosystems (Harrel 1985, p. 223; Bhattacharyya *et al.* 2002, p. 205). Oil is retained much longer in marshes and other low-energy environments, such as slow-moving streams and rivers, than on wave-swept coasts (Bhattacharyya *et al.* 2002, p. 205). Oils have been found in sediments at low energy sites as much as 5 years after the occurrence of spills, and they may be released into the water column long after the initial spill. Oil may have various chronic effects on water-column and benthic (bottom-dwelling) species. These effects include sensory disruption, behavioral and developmental abnormalities, and reduced fertility (Bhattacharyya *et al.* 2002, p. 205). Oil spilled on the water surface may also limit oxygen exchange, coat the gills of aquatic organisms, and cause pathological lesions on respiratory surfaces, thereby affecting respiration in aquatic organisms. Effects of oil on freshwater mussels may result from oil settling on the sediment surfaces and accumulating in the sediment. This can prevent invertebrate colonization (Bhattacharyya *et al.* 2002,

p. 205). Complete recovery of benthic communities may be a matter of years, with communities in the meantime consisting solely of pollutant-tolerant organisms (Bhattacharyya *et al.* 2002, p. 205). Oil spills can occur from on-site accidents (tank, pipeline spills) or from tanker truck accidents within watersheds occupied by Texas fatmucket. For example, 450 gallons of oil were spilled into Lake Bastrop, a reservoir on a tributary to the Colorado River, in February 2011 (Cihock 2011, p. 1).

Exposure of mussels to persistent low concentrations of contaminants likely to be found in aquatic environments can also adversely affect mussels and their populations. Such concentrations may not be immediately lethal, but over time can result in mortality, reduced filtration efficiency, reduced growth, decreased reproduction, changes in enzyme activity, and behavioral changes to all mussel life stages (Naimo 1995, pp. 351–352; Baun *et al.* 2008, p. 392). Frequently, procedures that evaluate the “safe” concentration of an environmental contaminant (for example, national water quality criteria) do not have data for freshwater mussel species or do not consider data that are available for freshwater mussels (March *et al.* 2007, pp. 2066–2067, 2073).

One chemical that is particularly toxic to early life stages of mussels is ammonia. Sources of ammonia include agricultural activities (animal feedlots and nitrogenous fertilizers), municipal wastewater treatment plants, and industrial waste (Augsburger *et al.* 2007, p. 2026), as well as precipitation and natural processes (decomposition of organic nitrogen) (Goudreau *et al.* 1993, p. 212; Hickey and Martin 1999, p. 44; Augsburger *et al.* 2003, p. 2569; Newton 2003, p. 2543). Therefore, ammonia is considered a limiting factor for survival and recovery of some mussel species due to its ubiquity in aquatic environments, high level of toxicity, and because the highest concentrations typically occur in mussel microhabitats (Augsburger *et al.* 2003, p. 2574). In addition, studies have shown that ammonia concentrations increase with increasing temperature and low-flow conditions (Cherry *et al.* 2005, p. 378; Cooper *et al.* 2005, p. 381), which may be exacerbated during low-flow events in streams. Within the range of Texas fatmucket, high ammonia levels are common, either chronically, such as in Elm Creek, which is listed as impaired due to high ammonia concentrations (Texas Commission on Environmental Quality (TCEQ) 2010a, p. 294), or due to spills. A wastewater leak in August 2010 spilled approximately 380,000

liters (L) (100,000 gallons (gal)) of sewage into Elm Creek (Bramlette and Cosel 2010, p. 1); ammonia is present in high concentrations in sewage, among other pollutants. Additionally, a sewage spill in 2008 in Onion Creek discharged nearly 380,000 L (100,000 gal), and another sewage spill occurred in April 2011 in Quinlan Creek, a tributary to the Guadalupe River near the Kerr County population (MacCormack 2011, p. 1). High ammonia levels from chronic sources as well as from spills may be affecting Texas fatmucket populations.

In addition to ammonia, agricultural sources of chemical contaminants include two broad categories that have the potential to adversely affect mussel species: Nutrients and pesticides. High amounts of nutrients, such as nitrogen and phosphorus, in streams can stimulate excessive plant growth (algae and periphyton, among others), which in turn can reduce dissolved oxygen levels when dead plant material decomposes. Nutrient over-enrichment in streams is primarily a result of runoff of fertilizer and animal manure from livestock farms, feedlots, and heavily fertilized row crops (Peterjohn and Correll 1984, p. 1471). Over-enriched conditions are exacerbated by low-flow stream conditions, such as those experienced during typical summer season flows. Bauer (1988, p. 244) found that excessive nitrogen concentrations can be detrimental to the adult freshwater pearl mussel (*Margaritifera margaritifera*), as was evident by the positive linear relationship between mortality and nitrate concentrations. Also, a study of mussel life span and size (Bauer 1992, p. 425) showed a negative correlation between growth rate and high nutrient concentrations, and longevity was reduced as the concentration of nitrates increased. Juvenile mussels in interstitial habitats are particularly affected by depleted dissolved oxygen levels resulting from nutrient over-enrichment (Sparks and Strayer 1998, p. 133). The Texas fatmucket occurs within the Concho River watershed, which has been documented as having particularly high nitrates for nearly 20 years, likely due to intensive agriculture in the area (Texas Clean Rivers Program 2008, p. 2), which may be affecting the Texas fatmucket population.

Mussels are also affected by metals (Keller and Zam 1991, p. 543) such as cadmium, chromium, copper, mercury, and zinc, which can negatively affect biological processes such as growth, filtration efficiency, enzyme activity, valve closure, and behavior (Keller and Zam 1991, p. 543; Naimo 1995, pp. 351–355; Jacobson *et al.* 1997, p. 2390;

Valenti *et al.* 2005, p. 1244). Metals occur in industrial and wastewater effluents and are often a result of atmospheric deposition from industrial processes and incinerators. Studies have shown that copper can have toxic effects on glochidia and juvenile freshwater mussels (Wang *et al.* 2007a, pp. 2036–2047; Wang *et al.* 2007b, pp. 2048–2056). In the range of Texas fatmucket, high copper concentrations have been recorded in fish in the lower Guadalupe River and San Antonio River (Lee and Schultz 1994, p. 8). While these high levels of copper in fish are not directly informative of the level of copper within the habitat of the Texas fatmucket, these observations demonstrate that copper levels are likely high in the lower Guadalupe and San Antonio Rivers. Because we know that copper contamination in water can lead to death of mussels, we conclude that the copper may be adversely affecting Texas fatmucket.

Mercury is another heavy metal that has the potential to negatively affect mussel populations, and it is widely distributed in the environment. Mercury has been detected throughout aquatic environments as a product of municipal and industrial waste and atmospheric deposition from coal burning plants. Rainbow mussel (*Villosa iris*) glochidia have been demonstrated to be more sensitive to mercury than juvenile mussels, with the median lethal concentration value of 14 parts per billion (ppb) for glochidia, compared to 114 ppb for the juvenile life stages (Valenti 2005, p. 1242). The chronic toxicity tests conducted determined that juveniles exposed to mercury greater than or equal to 8 ppb exhibited reduced growth. Acute mercury toxicity was determined to be the cause of extirpation of a diverse mussel community for a 112 km (70 mi) portion of the North Fork Holston River in Virginia (Brown *et al.* 2005, pp. 1455–1457). Mercury has been documented throughout the Guadalupe and San Antonio Rivers, with particularly high concentrations in fish in the upper reaches of both rivers (Lee and Schultz 1994, p. 8). As with copper, we do not have information on the concentration of mercury that Texas fatmucket is being exposed to in these streams, but the higher than expected levels in fish indicate high mercury levels in the area, which may be adversely affecting Texas fatmucket.

Pesticides are another source of contaminants in streams. Elevated concentrations of pesticides frequently occur in streams due to pesticide runoff, overspray application to row crops, and lack of adequate riparian buffers. The

timing of agricultural pesticide applications in the spring often coincides with the reproductive and early life stages of mussels, which may increase the vulnerability of mussels to pesticides (Bringolf *et al.* 2007a, p. 2094). Little is known regarding the effect of currently used pesticides to freshwater mussels even though some pesticides, such as glyphosate (active ingredient in Roundup®), are used globally. Recent studies tested the toxicity of glyphosate, its formulations, and a surfactant (MON 0810) used in several glyphosate formulations, to early life stages of the fatmucket (*Lampsilis siliquoidea*) (Bringolf *et al.* 2007a, p. 2094), a freshwater mussel closely related to the Texas fatmucket. Studies conducted with fatmucket juveniles and glochidia determined that the surfactant was the most toxic of the compounds tested and that fatmucket glochidia were the most sensitive organisms tested to date (Bringolf *et al.* 2007a, p. 2094). Roundup®, technical grade glyphosate isopropylamine salt, and isopropylamine were also acutely toxic to juveniles and glochidia (Bringolf *et al.* 2007a, p. 2097). These commonly applied pesticides may be adversely affecting Texas fatmucket populations.

The effects of other widely used pesticides, including atrazine, chlorpyrifos, and permethrin, on glochidia and juvenile life stages have also recently been studied (Bringolf *et al.* 2007b, p. 2101). Environmentally relevant concentrations (concentrations that may be found in streams) of permethrin and chlorpyrifos were found to be toxic to glochidia and juvenile fatmucket (Bringolf *et al.* 2007b, pp. 2104–2106). Commonly applied pesticides are a threat to mussels as a result of their widespread use. All of these pesticides are commonly used on agricultural lands throughout the range of the Texas fatmucket, which may be adversely affecting the species.

A potential, but undocumented, threat to freshwater mussels, including Texas fatmucket, are compounds referred to as “emerging contaminants” that are being detected in aquatic ecosystems at an increasing rate. These include pharmaceuticals, hormones, and other organic contaminants that have been detected downstream from urban areas and livestock production (Kolpin *et al.* 2002, p. 1202) and have been shown to affect fish behavior (TCEQ 2010b, p. 3). In samples of the Trinity River, for example, compounds such as antidepressants, antihistamines, blood pressure lowering medication, anti-seizure medication, and antimicrobial compounds were all detected during a 2006 study (TCEQ 2010b, pp. 27–28). A

large potential source of these emerging contaminants is wastewater being discharged through both permitted (National Pollutant Discharge Elimination System (NPDES)) and non-permitted sites within the Colorado and Guadalupe River systems. Although streams within the range of Texas fatmucket have not been tested for these emerging contaminants, permitted discharge sites are ubiquitous in watersheds with Texas fatmucket populations, providing many opportunities for contaminants to impact the species.

A study in the Blanco River found that mussels may be adversely affected by sewage effluent (Horne and McIntosh 1979, p. 132). Ammonia levels below the outfall were three times higher than the levels above the outfall and were higher than recently determined toxicity values of ammonia for mussels (Augsperger *et al.* 2003, p. 2572). The river was nutrient-enriched for miles downstream, and mussels were less abundant below the outfall than above (Horne and McIntosh 1979, pp. 124–125, 132). Texas fatmucket have not been found alive in the Blanco River since 1978.

Texas Commission on Environmental Quality (TCEQ) data for 2010 indicated that 26 of the 98 assessed water bodies within the Texas fatmucket's historical and current range did not meet surface water quality standards and were classified as impaired water bodies under the Clean Water Act (Texas Clean Rivers Program 2010a, p. 5; 2010b, p. 13), including Elm Creek, due to high ammonia. These water bodies were impaired with dissolved solids, nitrates, bacteria, low dissolved oxygen, aluminum, sulfates, selenium, chloride, and low pH associated with agricultural, urban, municipal, and industrial runoff. Of these, nitrates and low dissolved oxygen pose the greatest threat to Texas fatmucket, as discussed above. Chemical contaminants, such as oil, ammonia, copper, mercury, nutrients, pesticides, and other compounds, are currently a threat to the Texas fatmucket. The species is vulnerable to acute contamination from spills, which have been documented in four of the seven remaining populations, as well as chronic contaminant exposure, which is occurring rangewide.

Summary of Factor A

The reduction in numbers and range of the Texas fatmucket is primarily the result of the long-lasting effects of habitat alterations such as the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants.

Impoundments occur throughout the range of the species and have far-reaching effects both up- and downstream. Both the Colorado and Guadalupe River systems have experienced a large amount of sedimentation from agriculture, mining, urban development, and widespread *Juniperus ashei* removal. Sand and gravel mining affects Texas fatmucket habitat by increasing sedimentation and channel instability downstream and causing headcutting upstream. Finally, chemical contaminants have been documented throughout the range of the species and are significant concern to Texas fatmucket. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate threat of high magnitude to the Texas fatmucket.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Texas fatmucket is not a commercially valuable species and has never been harvested in Texas as a commercial mussel species (Howells 2010c, p. 11), although in the Llano River shells were found that were apparently collected by anglers for use as bait (Howells 1996, p. 22; 2010c, p. 11). Additionally, the Elm Creek population is suspected to have declined in part due to the publication of detailed location information, which may have inspired collectors to visit the site (Howells 2009, pp. 5–6). Scientific collecting is not likely to be a significant threat to the status of the species, although disturbing gravid females can result in glochidial loss and subsequent reproductive failure. Additionally, handling has been shown to reduce shell growth in other mussel species, including several other species of *Lampsilis* (Haag and Commens-Carson 2008, pp. 505–506). Repeated handling by researchers may adversely affect Texas fatmucket individuals, but these activities are occurring rarely and are not likely to be a threat to populations. Handling for scientific purposes contributes to the long-term conservation of the species.

We do not have any evidence of risks to the Texas fatmucket from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Based upon the best scientific and commercial information available, we conclude that overutilization for commercial, recreational, scientific, or educational

purposes does not pose a significant threat to the Texas fatmucket.

Factor C. Disease and Predation.

Disease

Little is known about disease in freshwater mussels. However, disease is believed to be a contributing factor in documented mussel die-offs in other parts of the United States (Neves 1987, pp. 11–12). Diseases have not been documented or observed during any studies of Texas fatmucket.

Predation

Raccoons have preyed on individual Texas fatmuckets stranded by low waters or deposited in shallow water or on bars following flooding or low water periods (Howells 2010c, p. 12). Predation of Texas fatmucket by raccoons may be occurring occasionally but there is no indication it is a significant threat to the status of the species.

Some species of fish feed on mussels, such as common carp (*Cyprinus carpio*), freshwater drum, and redear sunfish (*Lepomis microlophus*), all of which are common throughout the range of Texas fatmucket (Hubbs *et al.* 2008, pp. 19, 45, 53). Common species of flatworms are voracious predators of newly metamorphosed juvenile mussels of many species (Zimmerman *et al.* 2003, p. 30), including other species in the genus *Lampsilis* (Delp 2002, pp. 12–13). Predation is a normal aspect of the population dynamics of a healthy mussel population; however, predation may amplify declines in small populations.

Summary of Factor C

Disease in freshwater mussels is poorly known, and we do not have any information indicating it is a threat to the Texas fatmucket. Additionally, while predation is likely occurring within Texas fatmucket populations, it is a natural ecological interaction and we have no information indicating the extent of such predation is large enough to be a threat to populations of Texas fatmucket. Based upon the best scientific and commercial information available, we conclude that disease or predation is not a threat to the Texas fatmucket.

Factor D. The Inadequacy of Existing Regulatory Mechanisms.

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to threats that may place the Texas fatmucket in danger of extinction or increase its likelihood of becoming so in the future. Existing regulatory mechanisms that could affect threats to the Texas

fatmucket include State and Federal laws such as the Texas Threatened and Endangered Species regulations, Texas freshwater mussel sanctuaries, State and Federal sand and gravel mining regulations, and regulation of point and non-point source pollution.

Texas Threatened and Endangered Species Regulations

On January 8, 2010, the Texas Parks and Wildlife Commission placed 15 species of freshwater mussels, including the Texas fatmucket, on the State threatened list (Texas Register 2010, pp. 6–10). Section 68.002 of the Texas Parks and Wildlife (TPW) Code and Section 65.171 of the Texas Administrative Code (TAC) prohibit the direct take of a threatened species, except under issuance of a scientific collecting permit. “Take” is defined in Section 1.101(5) of the TPW Code as collect, hook, hunt, net, shoot, or snare, by any means or device, and includes an attempt to take or to pursue in order to take. While this law protects individuals from take, it is difficult to enforce and does not provide any protection for Texas fatmucket habitat. Moreover, our assessment finds that the species is not threatened by take (see Factor B above). There are no State provisions under the Texas Threatened and Endangered Species Regulations for reducing or eliminating the threats (see Factor A above) that may adversely affect Texas fatmucket or its habitat. In addition, these State regulations do not call for development of a recovery plan that will restore and protect existing habitat for the species. For these reasons, we find that existing Texas regulatory mechanisms for State-listed threatened species are currently inadequate to protect Texas fatmucket and its habitat or to prevent further decline of the species.

Freshwater Mussel Sanctuaries

The TPWD has designated specific areas of streams and reservoirs as no-harvest mussel sanctuaries (31 TAC, part 2, chapter 57, subpart B, Rule 57.157). The locations of the designated mussel sanctuaries were selected because they support populations of rare and endemic mussel species or are important for maintaining, repopulating, or allowing recovery of mussels in watersheds where they have been depleted. As a result of the designation of mussel sanctuaries, four of the Texas fatmucket populations are protected from harvesting disturbance of other species (Howells 2010f, p. 12). Unfortunately, mussel sanctuaries only restrict the harvest of mussels and do not address other activities that may

affect mussels or their habitats. Therefore, these designations provide no regulatory mechanisms to protect Texas fatmucket from habitat alteration.

State Sand and Gravel Mining Regulations

TPWD has been responsible for regulating the “disturbance of taking” streambed materials since 1911 (Meador and Layher 1998, p. 11) and has issued several permits for ongoing activities within the Texas fatmucket range (for more information on the effects of sand and gravel mining on Texas fatmucket, please refer to “Sand and Gravel Mining” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*). In addition to authorized activities, there are ongoing unauthorized sand and gravel mining activities within the range of Texas fatmucket. For example, the LCRA, which monitors water quality permit applications submitted through other agencies (LCRA 2011b, p. 1), found unpermitted sand removal from the Llano River in Llano County during a site visit in 2010 (Lehman 2010, p. 1). This site is located upstream from a known population of the Texas fatmucket and other rare mussels (Howells 1994, p. 6), and the sand removal may have increased turbidity and sedimentation downstream within Texas fatmucket habitat. Sand and gravel mining may be one of the least regulated of all mining activities (Meador and Layher 1998, p. 10).

Clean Water Act

The U.S. Army Corps of Engineers (USACE) retains oversight authority and requires a permit for gravel and sand mining activities that deposit fill into streams under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*). Additionally, a permit is required under section 10 of the Rivers and Harbors Act (33 U.S.C. 401 *et seq.*) for navigable waterways. However, many mining operations do not fall under these two categories. For example, nationwide permits are issued by the USACE for types of projects that are presumed to have minimal environmental impacts. However, projects permitted by nationwide permits, such as small mining operations, may have cumulative effects on aquatic species like the Texas fatmucket through increased sedimentation and channel instability.

Point source discharges of potential contaminants within the range of the Texas fatmucket have been reduced since the inception of the Clean Water Act, but this reduction may not provide adequate protection for filter-feeding organisms that can be affected by

extremely low levels of contaminants (see “Chemical Contaminants” under Factor A in the *Five-Factor Evaluation for Texas Fatmucket* section). The EPA’s established water quality criteria may not be protective of mussels. Current water quality standards applied by EPA were established to be protective of aquatic life; however, freshwater mussels were not used to develop these standards (EPA 2005, p. 5), and current research reveals mussels to be more sensitive to many aquatic pollutants than the tested organisms (Augsperger *et al.* 2007, p. 2025). For example, Augspurger *et al.* (2003, p. 2572) and Sharpe (2005, p. 28) suggested that the criteria for ammonia may not be sufficient to prevent impacts to mussels under current and future climate conditions. In addition, chronic copper concentrations lethal to juvenile freshwater mussels have been shown to be less than the EPA’s 1996 chronic water quality criterion for copper (Wang *et al.* 2007b, pp. 2052–2055), and, as stated above (see “Chemical Contaminants” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*), high copper concentrations have been documented in the lower Guadalupe and San Antonio Rivers (Lee and Schultz 1994, p. 8). Based on this information, the existing EPA water quality criteria may not be sufficient to prevent negative effects to the Texas fatmucket.

Nonpoint source pollution such as sedimentation and chemical contaminantation is considered a significant threat to Texas fatmucket habitat; however, the Clean Water Act does not adequately protect Texas fatmucket habitat from nonpoint source pollution, because most activities that cause nonpoint source pollution are not regulated under the Clean Water Act.

Summary of Factor D

Despite some State and Federal laws protecting the species and water quality, the Texas fatmucket continues to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. The regulatory measures described above are not sufficient to significantly reduce or remove the threats to the Texas fatmucket. Based upon our review of the best commercial and scientific data available, we conclude that the lack of existing regulatory mechanisms is an immediate threat of moderate magnitude to the Texas fatmucket.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Other natural and manmade factors that threaten the Texas fatmucket

include climate change, population fragmentation and isolation, and nonnative species.

Climate Change

It is widely accepted that changes in climate are occurring worldwide (International Panel on Climate Change (IPCC) 2007, p. 30). Understanding the effects of climate change on the Texas fatmucket is important because the disjunct nature of the remaining Texas fatmucket populations, coupled with the limited ability of mussels to migrate, makes it unlikely that the Texas fatmucket can adjust its range in response to changes in climate (Strayer 2008, p. 30). For example, changes in temperature and precipitation can increase the likelihood of flooding or increase drought duration and intensity, resulting in direct effects to freshwater mussels like the Texas fatmucket (Hastie *et al.* 2003, pp. 40–43; Golloday *et al.* 2004, p. 503). Because the range of the Texas fatmucket has been reduced to isolated locations with low population numbers in small rivers and streams, the Texas fatmucket is vulnerable to climatic changes that could decrease the availability of water or produce more frequent scouring flood events. Indirect effects of climate change may include declines in host fish populations, habitat reduction, and changes in human activity in response to climate change (Hastie *et al.* 2003, pp. 43–44).

For the next two decades, a warming of about 0.2 °C (0.4 °F) per decade is projected across the United States (IPCC 2007, p. 12), and hot extremes, heat waves, and heavy precipitation and flooding are expected to increase in frequency (IPCC 2007, p. 18). As with many areas of North America, central Texas is projected to experience an overall warming trend in the range of 2.5 to 3.3 °C (4.5 to 6 °F) over the next 50 to 200 years (Mace and Wade 2008, p. 656). Even under lower greenhouse gas emission scenarios, recent projections forecast a 2.8 °C (5 °F) increase in temperature and a 10 percent decline in precipitation in central Texas by 2080–2099 (Karl *et al.* 2009, pp. 123–124). Based on our current understanding of climate change, air temperatures are expected to rise and precipitation patterns are expected to change in areas occupied by the Texas fatmucket. Karl *et al.* (2009, p. 12) also suggests that climate change impacts on water resources in the southern Great Plains (including central Texas) are expected as rising temperatures and decreasing precipitation exacerbate an area already plagued by low rainfall, high

temperatures, and unsustainable water use practices.

One preliminary study forecasting the possible hydrological impacts of climate change on the annual runoff and its seasonality in the upper Colorado River watershed was conducted by CH2M HILL (2008). In this initial evaluation, four modeling scenarios (chosen to represent a range of possible future climatic conditions) were each run under a 2050 and 2080 time scenario, producing annual surface water runoff estimates at multiple sites with stream gages in the Colorado River basin. For the 2050 scenarios, the results from all four climate change scenarios predicted significant decreases in annual runoff totals compared to historic averages (CH2M HILL 2008, pp. 7–30–7–32). For the 2080 scenarios, one model predicted increases in annual runoff; the other three 2080 scenarios predicted decreases in annual runoff (CH2M HILL 2008, pp. 7–30–7–33). The modeling efforts from this study focus on annual averages and cannot necessarily account for the seasonal variations in flooding events or long periods of drought. However, the study demonstrates the potential effects of climate change on surface water availability, which is forecasted to result in an overall decline in stream flows in the region where the Texas fatmucket occurs.

In summary, climate change could affect the Texas fatmucket through the combined effects of global and regional climate change, along with the increased probability of long-term drought. Climate change exacerbates threats such as habitat degradation from prolonged periods of drought, increased water temperature, and the increased allocation of water for municipal, agricultural, and industrial use. As such, climate change, in and of itself, may affect the Texas fatmucket, but the magnitude and imminence (when the effects occur) of the effects remain uncertain. Based upon our review of the best commercial and scientific data available, we conclude that the effects of climate change in the future will likely exacerbate the current and ongoing threats of habitat loss and degradation caused by other factors, as discussed above.

Population Fragmentation and Isolation

All of the remaining populations of the Texas fatmucket are small and geographically isolated and thus are susceptible to genetic drift (change of gene frequencies in a population over time), inbreeding depression, and random or chance changes to the environment, such as toxic chemical spills (Watters and Dunn 1995, pp. 257–

258) or dewatering. Inbreeding depression can result in death, decreased fertility, smaller body size, loss of vigor, reduced fitness, and various chromosomal abnormalities (Smith 1974, pp. 350). Despite any evolutionary adaptations for rarity, habitat loss and degradation increase a species' vulnerability to extinction (Noss and Cooperrider 1994, pp. 58–62). Numerous authors (including Noss and Cooperrider 1994, pp. 58–62; Thomas 1994, p. 373) have indicated that the probability of extinction increases with decreasing habitat availability. 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) (Gilpin and Soule 1986, pp. 25–33; Shaffer 1981, p. 131; Shaffer and Samson 1985, pp. 148–150).

The Texas fatmucket was widespread throughout much of the Colorado and Guadalupe River systems when few natural barriers existed to prevent migration (via host species) among suitable habitats. Construction of dams, however, likely destroyed many Texas fatmucket populations through drastic habitat changes and isolated the remnant populations from each other. For fertilization, Texas fatmucket females need an upstream male to release sperm; populations with few individuals reduce the likelihood that females will be exposed to sperm while siphoning. Therefore, recruitment failure is a potential problem for many small populations rangewide, a potential condition exacerbated by its reduced range and increasingly isolated populations. If downward population trends continue, further significant declines in total Texas fatmucket population size and consequent reduction in long-term survivability may soon become apparent.

The small, isolated nature of the Texas fatmucket's remaining populations also increases the species' vulnerability to stochastic (random) natural events. When species are limited to small, isolated habitats, as the Texas fatmucket is, they are more likely to become extinct due to a local event that negatively affects the population (McKinney 1997, p. 497; Minckley and Unmack 2000, pp. 52–53; Shepard 1993, pp. 354–357). While the populations' small, isolated nature does not represent an independent threat to the species, it does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in

this analysis, and those that could occur in the future from unknown sources.

Based upon our review of the best commercial and scientific data available, we conclude that fragmentation and isolation of small remaining populations of the Texas fatmucket exacerbate ongoing threats to the species throughout all of its range and are expected to continue.

Nonnative Species

Various nonnative species of aquatic organisms are firmly established within the range of the Texas fatmucket and pose a threat to the species. Golden algae (*Prymnesium parvum*) is a microscopic algae considered to be one of the most harmful algal species to fish and other gill-breathing organisms (Lutz-Carrillo *et al.* 2010, p. 24). Golden algae was first discovered in Texas in 1985 and is presumed to have been introduced from western Europe (Lutz-Carrillo *et al.* 2010, p. 30). Since its introduction, golden algae has been found in Texas rivers and lakes, including two lakes in central Texas (Baylor University 2009, p. 1). Under certain environmental conditions, this algae can produce toxins that can cause massive fish and mussel kills (Barkoh and Fries 2010, p. 1; Lutz-Carrillo *et al.* 2010, p. 24). Evidence shows that golden algae probably caused fish kills in Texas as early as the 1960s, but the first documented fish kill due to golden algae in inland waters of Texas occurred in 1985 on the Pecos River in the Rio Grande basin (TPWD 2002, p. 1). The range of golden algae has increased to include portions of the Brazos and Colorado River basins, among others, and it has been responsible for killing more than 8 million fish in the Brazos River since 1981 and more than 2 million fish in the Colorado River since 1989 (TPWD 2010a, p. 1). Although actual mussel kills in Texas due to golden algae have not been recorded in the past, the toxin can kill mussels. Therefore, the elimination of host fish and the poisonous nature of the toxin to mussels make future golden algae blooms a threat to the Texas fatmucket.

An additional nonnative species, the zebra mussel (*Dreissena polymorpha*), poses a potential threat to the Texas fatmucket. This invasive species has been responsible for the extirpation of freshwater mussels in other regions of the United States, including the Higgin's eye (*Lampsilis higginsii*) in Wisconsin and Iowa (Service 2006, pp. 9–10). Zebra mussels attach in large numbers to the shells of live native mussels and are implicated in the loss of entire native mussel beds (Ricciardi *et al.* 1998, p. 615). This fouling impedes

locomotion (both laterally and vertically), interferes with normal valve movements, deforms valve margins, and essentially suffocates and starves the native mussels by depleting the surrounding water of oxygen and food (Strayer 1999, pp. 77–80). Heavy infestations of zebra mussels on native mussels may overly stress the animals by reducing their energy reserves. Zebra mussels may also filter the sperm and possibly glochidia of native mussels from the water column, thus reducing reproductive potential. Habitat for native mussels may also be degraded by large deposits of zebra mussel pseudofeces (undigested waste material passed out of the incurrent siphon) (Vaughan 1997, p. 11).

Zebra mussels are not currently found within the range of the Texas fatmucket. However, a live adult zebra mussel was first documented in Lake Texoma on the Red River (on the north Texas border with Oklahoma) in 2009 (TPWD 2009a, p. 1). Since that time, additional zebra mussels have been reported from Lake Texoma, where they are now believed to be well established (TPWD 2009c, p. 1). Zebra mussels are likely to spread to many other Texas reservoirs through accidental human transport (Schneider *et al.* 1998, p. 789). Although zebra mussels tend to proliferate in reservoirs or large pools, released zebra mussel larvae, called veligers, float downstream and attach to any hard surface available, rendering downstream Texas fatmucket populations extremely vulnerable to attachment and fouling. Because zebra mussels are so easily introduced to new locations, the potential for zebra mussels to continue to expand in Texas and invade the range of the Texas fatmucket is high. If this occurs, the Texas fatmucket is vulnerable to zebra mussel attachment and subsequent deprivation of oxygen, food, and mobility.

A molluscivore (mollusk eater), the black carp (*Mylopharyngodon piceus*) is a potential threat to the Texas fatmucket. The species has been commonly used by aquaculturists to control snails or for research in fish production in several States, including Texas (72 FR 59019, October 18, 2007). Black carp can reach more than 1.3 m (4 ft) in length and 150 pounds (68 kilograms (kg)) (Nico and Williams 1996, p. 6). Foraging rates for a 4-year-old fish average 3 to 4 pounds (1.4 to 1.8 kg) a day, indicating that a single individual could consume 10 tons (9,072 kg) of native mollusks over its lifetime (Mississippi Interstate Cooperative Resource Association (MICRA) 2005, p. 1). Black carp can escape from aquaculture facilities. For

example, in 1994 30 black carp escaped from an aquaculture facility in Missouri during a flood. Other escapes into the wild by non-sterile carp are likely to occur. Because of the high risk to freshwater mussels and other native mollusks, the Service recently listed black carp as an injurious species under the Lacey Act (72 FR 59019, October 18, 2007), which prevents importations and interstate transfer of this harmful species, but does not prevent its release into the wild once it is in the State. If the black carp were to escape within the range of the Texas fatmucket, it would likely negatively affect native mussels, including the Texas fatmucket.

Based upon our review of the best commercial and scientific data available, we conclude that golden algae is an ongoing threat to the Texas fatmucket, and other nonnative species, such as zebra mussels and black carp, are a potential future threat to the Texas fatmucket that is likely to increase as these exotic species expand their occupancy within the range of the Texas fatmucket.

Summary of Factor E

The effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, and the small sizes and fragmented nature of the remaining populations render them more vulnerable to extirpation. In addition, nonnative species, such as golden algae, currently threaten the Texas fatmucket, and the potential introduction of zebra mussels and black carp are potential future threats. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors are immediate threats of moderate magnitude to the Texas fatmucket.

Finding for Texas Fatmucket

As required by the Act, we considered the five factors in assessing whether Texas fatmucket 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 the Texas fatmucket. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Texas fatmucket experts and other Federal and State agencies.

This status review identified threats to the Texas fatmucket attributable to Factors A, D, and E. The primary threat to the species is from habitat destruction and modification (Factor A) from

impoundments, which scour riverbeds, thereby removing mussel habitat, decrease water quality, modify stream flows, and prevent fish host migration and distribution of freshwater mussels, as well as sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Additionally, most of these threats may be exacerbated by the current and projected effects of climate change (discussed in Factor E). Threats to the Texas fatmucket and its habitat are not being adequately addressed through existing regulatory mechanisms (Factor D). Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to result in the extinction of the Texas fatmucket in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the Texas fatmucket under the Act is warranted. We will make a determination on the status of the species as threatened or endangered when we complete a proposed listing determination. When we complete a proposed listing determination, we will examine whether the species may be endangered or threatened throughout all of its range or whether the species may be endangered or threatened in a significant portion of its range. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove other qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the Texas fatmucket at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for the Texas fatmucket at this time, because we have not identified a threat or activity that poses a significant risk, such that losses to the species during the normal listing process would endanger the continued existence of the entire species. However, if at any time we determine that issuing an emergency regulation temporarily listing Texas fatmucket is warranted, we will initiate this action at that time.

Listing Priority Number for Texas Fatmucket

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to

establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines," address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned the Texas fatmucket a Listing Priority Number (LPN) of 2, based on our finding that the species faces threats that are of high magnitude and are imminent. These threats include habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants; other natural or manmade factors such as climate change, small, isolated populations, and nonnative species; and the fact that the threats to the species are not being adequately addressed by existing regulatory mechanisms. Our rationale for assigning the Texas fatmucket an LPN of 2 is outlined below.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the Texas fatmucket faces to be high in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fatmucket and profoundly affect its survival and recruitment. Remaining populations are small, isolated, and highly vulnerable to stochastic events.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats to the Texas fatmucket as described under Factors A, D, and E in the *Five-Factor Evaluation*

for Texas Fatmucket section to be imminent because these threats have affected the species in the past, are ongoing, and will continue in the foreseeable future. Habitat loss and destruction have already occurred and will continue as the human population continues to grow in central Texas. Texas fatmucket populations may already be below the minimum viable population requirement, which would cause a reduction in the number of populations and an increase in the species' vulnerability to extinction. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Therefore, we consider these threats to be imminent.

The third criterion in our Listing Priority Number guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The Texas fatmucket is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned Texas fatmucket an LPN of 2.

We will continue to monitor the threats to the Texas fatmucket and the species' status on an annual basis, and should the magnitude or imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing the Texas fatmucket is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned the Texas fatmucket an LPN of 2, work on a proposed listing determination for the species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Five-Factor Evaluation for Golden Orb

Information pertaining to the golden orb in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

As discussed above, the decline of mussels in Texas and across the United States is primarily the result of habitat

loss and degradation. Chief among the causes of decline of the golden orb in Texas are the effects of impoundments, dewatering, sedimentation, sand and gravel mining, chemical contaminants, and off-road vehicle use. These threats are discussed below.

Impoundments

For general information on the effects of impoundments on freshwater mussels, please refer to “Impoundments” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*. Golden orb occur in one impoundment, Lake Corpus Christi, indicating that inundation may not be as detrimental to this species as it is to other, more flow-dependent mussel species. However, dams continue to fragment golden orb populations. There are 29 reservoirs, each with a storage capacity of 3,000 acre-feet or more, within the Guadalupe River basin and 34 within the San Antonio River basin, in addition to many other smaller reservoirs in these basins (Exelon 2010, p. 2.3–4). Three large reservoirs exist within the Nueces River basin.

Historical records showed that the golden orb once occurred in the Guadalupe River in Comal County before the Canyon Reservoir was constructed in 1964 (Randklev *et al.* 2010c, p. 4). No live or recently dead golden orb have been found in this reach since the reservoir was completed (Burlakova and Karatayev 2010a, pp. 14–15), and we presume the species is extirpated from this reach because of the effects of the reservoir. Surveys of the reservoirs in the Guadalupe River system have been ongoing since at least 1992, and no evidence of live or dead golden orb has been found in any of the reservoirs (Howells 1994, pp. 1–20; 1995, pp. 1–50; 1996, pp. 1–45; 1997a, pp. 1–58; 1998, pp. 1–30; 1999, pp. 1–34; 2000a, pp. 1–56; 2001, pp. 1–50; 2002a, pp. 1–28; 2003, pp. 1–42; 2004, pp. 1–48; 2005, pp. 1–23; 2006, pp. 1–106; Karatayev and Burlakova 2008, pp. 1–47; Burlakova and Karatayev 2010a, pp. 1–30; 2011, pp. 1–8).

For species such as golden orb that may be able to survive the initial inundation of reservoirs, conditions within the reservoir are likely to become uninhabitable. The deep water in reservoirs is very cold and often devoid of oxygen and necessary nutrients (Watters 2000, p. 264). Cold water (less than 11 °C (52 °F)) has been shown to stunt mussel growth (Hanson *et al.* 1988, p. 352). Because mussel reproduction is temperature dependent (Watters and O’Dee 1999, p. 455), it is likely that individuals living in the constantly cold hypolimnion in these

channels may never reproduce, or reproduce less frequently (Watters 2000, p. 264). Any golden orb that survived the initial inundation may have been unable to reproduce, eventually eliminating the species from large areas of the reservoir. The same would be true for mussels living in cold-water discharges downstream of large impoundments (Watters 2000, p. 264).

Dam construction also fragments the range of golden orb, leaving remaining habitats and populations isolated by the structures, as well as by extensive areas of deep, uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat that may be impacted by temporary but devastating events, such as severe drought, chemical spills, or unauthorized discharges. Dams impound river habitats throughout almost the entire range of the species. These impoundments have left short and isolated patches of remnant habitat, typically in between impounded reaches, such as the golden orb population on the Guadalupe River within about one mile (1.6 km) downstream of Lake Wood. This population is subject to dramatic flow fluctuations from the hydroelectric facility associated with the dam (Howells 2010a, p. 4), which can leave individuals stranded when water levels are quickly lowered or wash individuals downstream when flow is increased.

The widespread construction of dams throughout the range of golden orb has significantly altered stream habitat both upstream and downstream of the dams by changing fish assemblages, temperature, dissolved oxygen, and substrate. The effects of dams on the golden orb are expected to be ongoing decades after construction and are presumed to be continuing today. Because of this loss of habitat and its widespread effects on the populations, we conclude that the effects of dams are a threat to the golden orb.

Sedimentation

For general information on the effects of sedimentation on freshwater mussels like the golden orb, please refer to “Sedimentation” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the golden orb is affected by excessive sedimentation in streams. Even in 1959, the Guadalupe River was noted as having high sedimentation rates from agricultural activities (Soil Conservation Service 1959, p. 59). Turbidity has also been recorded as high in the Guadalupe River near Victoria (Exelon 2010, p. 2.3–186), indicating a

large amount of suspended sediment where a small golden orb population was recently found. Sedimentation can occur from agricultural activities, sand and gravel mining, urban runoff, and construction activities, among other sources.

One example of a proposed project that could lead to localized increases in sedimentation within the range of the golden orb is the LCRA TSC. This project proposes to construct two new, 345-kV electric transmission line facilities between Tom Green (in the Colorado River basin near San Angelo) and Kendall Counties (in the Guadalupe River basin north of San Antonio) to provide electrical power to accommodate increased human populations (Clary 2010, p. 1). One of the proposed transmission lines would cross the upper Guadalupe River in Kerr County, which contains a small population of golden orb. The proposed project could negatively affect golden orb habitat by clearing land within the riparian zone and may increase sediment runoff into the Guadalupe River (Clary 2010, p. 7). Similar activities to accommodate Texas population growth are expected to be undertaken across the species’ range and will likely lead to additional sources of sediment in the streams inhabited by the golden orb.

Streams occupied by golden orb are subject to increasing levels of sedimentation from agriculture, urbanization, and sand and gravel mining. Agriculture is a common land use in the Guadalupe and San Antonio River basins. Sedimentation may become an increasing threat to the golden orb in the Guadalupe River basin as the San Antonio metro area continues to expand. Activities associated with urbanization, such as road construction, increased impervious surfaces, and road construction can be detrimental to stream habitats (Couch and Hamilton 2002, p. 1), and the City of San Antonio, the second largest city in Texas, continues to grow (City of San Antonio 2010, p. 5). Sedimentation from agriculture, urbanization, and sand and gravel mining is widespread in the range of the golden orb will continue to threaten the species.

Dewatering

River dewatering can occur in several ways: anthropogenic activities such as surface water diversions and groundwater pumping, and natural events, such as drought, which can result in mussels stranded in previously wetted areas. This is a particular concern within and below reservoirs, whose water levels are managed for

various purposes that can cause water levels in the reservoir or downstream to rise or fall in very short periods of time, such as when hydropower facilities release water during peak energy demand periods. For example, Lake Corpus Christi reservoir has experienced several drawdowns of lake levels to reduce salinity levels in the reservoir, such as in 1996 and 2006. Golden orb have been stranded above the water line during both drawdowns, killing the exposed mussels (Howells 2006, pp. 75–76). Rivers can also be dewatered to facilitate construction activities, such as in the upper Guadalupe River in Kerr County, which was dewatered in 1998 for bridge construction, which exposed and killed golden orb (Howells 1999, pp. 18–19).

Drought can also severely impact golden orb populations. Central Texas, including the Guadalupe River basin, experienced a major drought in the late 1970s (Lewis and Oliveria 1979, p. 243). Near record dry conditions in 2008 followed by a pattern of below-normal rainfall during the winter and spring of 2009 led to one of the worst droughts in recorded history for most of central Texas, including the range of the golden orb (Nielsen-Gammon and McRoberts 2009, p. 2). This drought's severity was exacerbated by abnormally high air temperatures, a likely effect of climate change, which has already increased average air temperatures in Texas by at least 1 °C (1.8 °F) (Nielsen-Gammon and McRoberts 2009, p. 22). The Guadalupe River in Kerr County experienced minimal to no flow during periods of the 2009 drought (USGS 2011b, p. 2), which may have negatively affected this golden orb population. Central Texas is currently experiencing another extreme drought, with rainfall between October 2010 and July 2011 being the lowest on record during those months (LCRA 2011c, p. 1); the effects of this drought are being observed but are not yet fully known.

We do not know the extent of the impacts of stream dewatering on the golden orb; however, because several populations are small and isolated, the loss of numerous individuals at a site can have dramatic consequences to the population. Hydropower facilities, construction, and drought are occurring throughout the range of the golden orb; therefore, the effects of dewatering are ongoing and unlikely to decrease, resulting in significant threats to the golden orb.

Sand and Gravel Mining

For general information on the effects of sand and gravel mining on freshwater mussels, please refer to “Sand and

Gravel Mining” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

In 1995, the reach of the Guadalupe River near Victoria, which contains a golden orb population, was described as having numerous current and abandoned sand and gravel mining areas (USACE 1995, p. 7). Currently, TPWD has permitted one sand mining activity within the existing range of golden orb, in the Guadalupe River basin in Comal County (TPWD 2009b, p. 1); golden orb populations occur upstream and downstream of this area in the Guadalupe River. The permit allows for the repeated removal of sand and gravel at various locations within the stream.

Headcuts from sand and gravel mining operations have been documented in the San Antonio River basin in Karnes County from as early as 1967, with downstream channels having steep, eroded banks (Kennon *et al.* 1967, p. 22). The golden orb has not been documented from this area since 1996, and only an old, eroded shell was collected at that time (Howells 1997a, pp. 41–42).

The golden orb populations in the Guadalupe River may be currently threatened by sand and gravel mining. These activities occur over a long period of time, destabilizing habitat both upstream and downstream, which decreases the likelihood of recolonization after the activity has been completed. Therefore, the effects of sand and gravel mining are an ongoing threat to the golden orb.

Chemical Contaminants

For general information on the effects of chemical contaminants on freshwater mussels, please refer to “Chemical Contaminants” under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the golden orb is also threatened by chemical contaminants. TCEQ water quality standards for 2010 indicated the majority of the assessed water bodies within the golden orb's historical and current range did not meet surface water quality standards and were classified as impaired water bodies (Nueces River Authority 2010, pp. 1–37; Texas Clean Rivers Program 2010b, p. 13). These water bodies were impaired with dissolved solids, nitrates, bacteria, low dissolved oxygen, sulfates, phosphates, chloride, chlorophyll-a, and low pH associated with agricultural, urban, municipal, and industrial runoff. Of these, nitrates and low dissolved oxygen pose the greatest threat to the golden orb. Additionally, several streams within the range of the golden orb have been listed as impaired due to

high ammonia concentrations, including Elm Creek in the Guadalupe River basin (TCEQ 2010a, p. 294). High copper concentrations have been recorded in the lower Guadalupe and San Antonio Rivers (Lee and Schultz 1994, p. 8), and mercury has been documented throughout the Guadalupe and San Antonio Rivers, with particularly high concentrations found in fish tissues from the upper reaches of both rivers (Lee and Schultz 1994, p. 8). Row crop agriculture and wastewater discharges are prominent within the range of the golden orb. These activities result in chronic contamination from agricultural pesticides and emerging contaminants of rivers inhabited by the species and are a threat to golden orb.

Numerous spills of potential contaminant materials have occurred within the range of the golden orb. These can occur from on site accidents (tank, pipeline spills) or from tanker truck accidents within watersheds occupied by golden orb. For example, 100,000 gallons of sewage spilled into the San Antonio River near the City of San Antonio when a pipeline collapsed in October 2010 (San Antonio Water System 2010, p. 1). The largest known golden orb population occurs downstream of this location. Raw sewage contains very high ammonia levels, which is toxic to freshwater mussels, as well as other pollutants. Additionally, 300 gallons of diesel fuel spilled into the San Antonio River near the same location in May 2011 (Serna 2011, p. 1). Another sewage spill occurred in April 2011 in Quinlan Creek, a tributary to the Guadalupe River near the Kerr County population of golden orb (MacCormack 2011, p. 1). The actual effects on the golden orb of spills such as these recent examples are unknown, but there are likely to be negative consequences.

Because of the risk of spills as well as chronic contamination, chemical contaminants, such as oil, ammonia, copper, mercury, nutrients, pesticides, and other compounds are currently a threat to the golden orb. The species is vulnerable to acute contamination from spills as well as chronic contaminant exposure, which is occurring rangewide.

Summary of Factor A

The reduction in numbers and range of the golden orb is primarily the result of the long-lasting effects of habitat alterations such as the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Impoundments occur throughout the range of the species and have far-reaching effects both up- and

downstream. Both the Colorado and Guadalupe River systems experience a large amount of sedimentation from agriculture, instream mining, and urban development. Sand and gravel mining affects golden orb habitat by causing headcutting upstream, increasing sedimentation concentrations in the water downstream, and causing channel instability downstream. Chemical contaminants have been documented throughout the range of the species and may represent a significant threat to the golden orb. However, the large populations in the middle and lower Guadalupe River, lower San Antonio River, and San Marcos River indicate that some golden orb populations are not currently as vulnerable to habitat loss as others. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate threat of moderate magnitude to golden orb populations rangewide.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The golden orb is not a commercially valuable species and has never been harvested in Texas as a commercial mussel species (Howells 2010a, p. 12). Some scientific collecting occurs but is not likely to be a significant threat to the species because it occurs only rarely. However, handling mussels can disturb gravid females and result in glochidial loss and subsequent reproductive failure (Waller *et al.* 1995, p. 205). Additionally, handling has also been shown to reduce shell growth across mussel species, including several species of *Lampsilis* (Haag and Commens-Carson 2008, pp. 505–506). Repeated handling by researchers may adversely affect golden orb individuals, but these activities are occurring rarely and are not likely to threaten populations. Handling for scientific purposes contributes to the long-term conservation of the species.

We do not have any evidence of risks to the golden orb from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Based upon the best scientific and commercial information available, we conclude that overutilization of the golden orb for commercial, recreational, scientific, or educational purposes does not pose a significant threat to the species rangewide.

Factor C. Disease and Predation.

Disease

Little is known about disease in freshwater mussels. However, disease is believed to be a contributing factor in documented mussel die-offs in other parts of the United States (Neves 1987, pp. 11–12). Diseases have not been documented or observed during any studies of golden orb.

Predation

Raccoons will prey on freshwater mussels stranded by low waters or deposited in shallow water or on bars following flooding or low water periods (Howells 2010c, p. 12). Predation of golden orb by raccoons may be occurring occasionally but there is no indication it is a significant threat to the status of the species.

Some species of fish feed on mussels, such as common carp, freshwater drum, and redear sunfish, all of which are common throughout the range of golden orb (Hubbs *et al.* 2008, pp. 19, 45, 53). Common species of flatworms are voracious predators of newly metamorphosed juvenile mussels of many species (Zimmerman *et al.* 2003, p. 30). Predation is a normal factor influencing population dynamics of a healthy mussel population; however, predation may amplify declines in small populations primarily caused by other factors.

Summary of Factor C

Disease in freshwater mussels is poorly known, and we do not have any information indicating it is a threat to the golden orb. Additionally, predation is a natural ecological interaction and we have no information indicating the extent of any predation is a threat to populations of golden orb. Based upon the best scientific and commercial information available, we conclude that disease or predation is not a threat to the golden orb.

Factor D. The Inadequacy of Existing Regulatory Mechanisms.

Existing regulatory mechanisms that could have an effect on threats to the golden orb include State and Federal laws such as Texas Threatened and Endangered Species regulations and freshwater mussel sanctuaries, State and Federal sand and gravel mining regulations, and regulation of point and non-point source pollution. For more information on the effects of these regulations on the threats to freshwater mussels in central Texas, please refer to Factor D under *Five-Factor Evaluation for Texas Fatmucket*.

Summary of Factor D

Despite State and Federal laws protecting the species and water quality,

the golden orb continues to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. The regulatory measures described above have been insufficient to significantly reduce or remove the threats to the golden orb. Based upon our review of the best commercial and scientific data available, we conclude that the lack of existing regulatory mechanisms is an immediate threat of moderate magnitude to the golden orb.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Natural and manmade factors that threaten the golden orb include climate change, population fragmentation and isolation, and nonnative species.

Climate Change

For more general information on the effects of climate change on freshwater mussels in central Texas, please refer to “Climate Change” under Factor E in *Five-Factor Evaluation for Texas Fatmucket*. Because the range of the golden orb has been reduced to isolated locations, many with low population numbers in small rivers and streams, the golden orb is vulnerable to climatic changes that could decrease the availability of water.

The disjunct nature of the remaining golden orb populations, coupled with the limited ability of mussels to migrate, makes it unlikely that golden orb can adjust their range in response to changes in climate (Strayer 2008, p. 30). Climate change could affect the golden orb through the combined effects of global and regional climate change, along with the increased probability of long-term drought. Climate change exacerbates threats such as habitat degradation from prolonged periods of drought, increased water temperature, and the increased allocation of water for municipal, agricultural, and industrial uses. Climate change may be a significant stressor that exacerbates existing threats by increasing the likelihood of prolonged drought. As such, climate change, in and of itself, may affect the golden orb, but the magnitude and imminence of the effects remain uncertain. Based upon our review of the best commercial and scientific data available, we conclude that the effects of climate change in the future will likely exacerbate the current and ongoing threats of habitat loss and degradation caused by other factors, as discussed above.

Population Fragmentation and Isolation

For general information on the effects of population fragmentation and isolation on freshwater mussels in

central Texas, please refer to "Population Fragmentation and Isolation" under Factor E in *Five-Factor Evaluation for Texas Fatmucket*. As with many freshwater mussels, several of the remaining populations of the golden orb are small and geographically isolated and thus are more susceptible to genetic drift, inbreeding depression, and random or chance changes to the environment, such as toxic chemical spills (Watters and Dunn 1995, pp. 257–258) or dewatering. Historically, the golden orb was widespread throughout much of the Guadalupe River system and in portions of the Nueces-Frio River system when few natural barriers existed to prevent migration (via host species) among suitable habitats. The extensive impoundment of the Nueces, Guadalupe, and San Antonio River basins by the construction of dams has fragmented the few remaining golden orb populations throughout these river systems.

Small golden orb populations, including those in Lake Corpus Christi Reservoir, the upper Guadalupe River in Kerr County, and the San Antonio River in Victoria County, may now be below the minimum population size required to maintain population viability into the future, since they are less likely to be able to recover through recruitment from events that reduce but do not extirpate populations. Additionally, these small populations are more vulnerable to extirpation from stochastic events, as the lack of connectivity among populations does not permit nearby populations to recolonize areas affected by intense droughts, toxic spills, or other isolated events that result in significant mussel dieoffs. While the small, isolated populations do not represent an independent threat to the species, the situation does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Based upon our review of the best commercial and scientific data available, we conclude that fragmentation and isolation of small remaining populations of the golden orb are occurring and are ongoing threats to the species throughout all of its range.

Nonnative Species

For general information on the effects of nonnative species on freshwater mussels of central Texas, please refer to "Nonnative Species" under Factor E in *Five-Factor Evaluation for Texas Fatmucket*. Various nonnative aquatic species pose a threat to the golden orb, including golden algae, zebra mussels,

and black carp. Zebra mussels and black carp are not currently found within the range of golden orb, but they are likely to be introduced within its range in the future.

Based upon our review of the best commercial and scientific data available, we conclude that golden algae is an ongoing threat to the golden orb, and other nonnative species, such as zebra mussels and black carp, are a potential threat to the golden orb that is likely to increase as these exotic species expand their occupancy to include the range of the golden orb.

Summary of Factor E

The effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, and the small sizes and fragmented nature of the remaining populations render them more vulnerable to extirpation. In addition, nonnative species, such as golden algae, currently threaten the golden orb, and the potential introduction of zebra mussels and black carp are potential future threats. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors are immediate threats of moderate magnitude to the golden orb.

Finding for Golden Orb

As required by the Act, we considered the five factors in assessing whether the golden orb 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 the golden orb. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized golden orb experts and other Federal and State agencies.

This status review identifies threats to the golden orb attributable to Factors A, D, and E. The primary threat to the species is from habitat destruction and modification (Factor A) from impoundments, which scour riverbeds, thereby removing mussel habitat, decrease water quality, modify stream flows, and restrict fish host migration and distribution of freshwater mussels. Additional threats under Factor A include sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Also, most of these threats may be exacerbated by the current and projected effects of climate change, population fragmentation and isolation, and the anticipated threat of

nonnative species (discussed under Factor E). Threats to the golden orb are not being adequately addressed through existing regulatory mechanisms (Factor D). Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to lead to the extinction of the golden orb in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the golden orb under the Act is warranted. We will make a determination on the status of the species as threatened or endangered when we complete a proposed listing determination. When we complete a proposed listing determination, we will examine whether the species may be endangered or threatened throughout all of its range or whether the species may be endangered or threatened in a significant portion of its range. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the golden orb at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for the golden orb at this time, because we have not identified a threat or activity that poses a significant risk, such that losses to the species during the normal listing process would endanger the continued existence of the entire species. However, if at any time we determine that issuing an emergency regulation temporarily listing the golden orb is warranted, we will initiate this action at that time.

Listing Priority Number for Golden Orb

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning

priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned the golden orb a Listing Priority Number (LPN) of 8, based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants; other natural or manmade factors such as climate change, small, isolated populations, and nonnative species; and the fact that the threats to the species are not being adequately addressed by existing regulatory mechanisms. Our rationale for assigning the golden orb an LPN of 8 is outlined below.

Under the Service's guidelines, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority. We consider the threats that the golden orb faces to be moderate in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the golden orb, but several large populations remain, including one that was recently discovered, suggesting that the threats are not high in magnitude.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species facing actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. We consider the threats to the golden orb as described in Factors A, D, and E under the *Five-Factor Evaluation for Golden Orb* to be imminent because these threats are ongoing and will continue in the foreseeable future. Habitat loss and destruction has already occurred and will continue as the human population continues to grow in central Texas. Several golden orb populations may already be below the minimum viable population requirement, which would cause a reduction in the number of populations and an increase in the species' vulnerability to extinction. These threats are exacerbated by climate

change, which will increase the frequency and magnitude of droughts. Therefore, we consider these threats to be imminent.

The third criterion in our Listing Priority Number guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The golden orb is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned golden orb an LPN of 8.

We will continue to monitor the threats to the golden orb and the species' status on an annual basis, and should the magnitude or imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing the golden orb is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned the golden orb an LPN of 8, work on a proposed listing determination for the species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Five-Factor Evaluation for Smooth Pimpleback

Information pertaining to the smooth pimpleback in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

As discussed above, the decline of mussels in Texas and across the United States is primarily the result of habitat loss and degradation. Chief among the causes of decline of the smooth pimpleback in Texas are the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants.

Impoundments

For general information on the effects of impoundments on freshwater mussels, please refer to "Impoundments" under Factor A in *Five-Factor Evaluation for Texas Fatmucket*. As with golden orb, smooth pimpleback are able to tolerate some

impoundment conditions. Smooth pimpleback have been known to occur in three mainstem reservoirs on the Colorado River, although all but one population is likely extirpated (Howells 1997a, pp. 32–33; 1999, p. 16; 2005, p. 8; 2006, p. 67). Dams continue to fragment smooth pimpleback populations, and the downstream effects of dams are detrimental to smooth pimpleback habitat. There are 74 major reservoirs and numerous smaller impoundments within the historical and current range of the smooth pimpleback. Thirty-one of the 74 major reservoirs are located within the Colorado River basin and the remaining 43 reservoirs are located within the Brazos River basin. There are also eleven new reservoirs that have been recommended for development as feasible alternatives to meet future water needs within the Brazos River basin (Brazos G Regional Water Planning Group 2010, p. 4B.12–1). In addition, six new off-channel reservoirs are also being considered for future development (Brazos G Regional Water Planning Group 2010, p. 4B.13–2). At least one of the proposed reservoir sites on the Little River in Milam County is in the vicinity of where a single live smooth pimpleback was found in 2006 (Karatayev and Burlakova 2008, p. 6).

Dam construction fragments the range of smooth pimpleback, leaving remaining habitats and populations isolated by the structures as well as by extensive areas of deep, uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat that may be impacted by temporary but devastating events, such as severe drought, chemical spills, or unauthorized discharges. Dams impound river habitats throughout almost the entire range of the species. These impoundments have left short and isolated patches of remnant habitat, typically in between impounded reaches. Habitat downstream of dams may be impaired for many miles; in the Brazos River downstream of Possum Kingdom Reservoir, substrate was unstable for 150 km (240 mi) below the dam (Yeager 1993, p. 68).

For species such as smooth pimpleback that may be able to survive the initial inundation of reservoirs, conditions within the reservoir are likely to become uninhabitable. The deep water in reservoirs is very cold and often devoid of oxygen and necessary nutrients (Watters 2000, p. 264). Cold water (less than 11 °C (52 °F)) has been shown to stunt mussel growth (Hanson *et al.* 1988, p. 352). Because mussel reproduction is temperature dependent (Watters and O'Dee 1999, p. 455), it is

likely that individuals living in the constantly cold hypolimnion in these channels may never reproduce, or reproduce less frequently (Watters 2000, p. 264). Any smooth pimpleback that survived the initial inundation may have been unable to reproduce, eventually eliminating the species from large areas of the reservoir. The same would be true for mussels living in cold-water discharges downstream of large impoundments (Watters 2000, p. 264).

The widespread construction of dams throughout the range of smooth pimpleback has significantly altered stream habitat both upstream and downstream of the dams by changing fish assemblages, temperature, dissolved oxygen, and substrate. The effects of dams are ongoing, decades after construction. In addition, the construction of new reservoirs is also being considered within the species' range that could result in additional habitat loss. Because of this loss of habitat and its effects on the populations, we conclude that the effects of impoundments are a threat to the smooth pimpleback.

Sedimentation

For general information on the effects of sedimentation on freshwater mussels, please refer to "Sedimentation" under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the smooth pimpleback is also threatened by sedimentation. The dominant land use in the Colorado River basin is grazing (Hersh 2007, p. 11). Soil compaction from intensive grazing may reduce infiltration rates and increase runoff, and trampling of riparian vegetation increases the probability of erosion (Armour *et al.* 1994, p. 10; Brim Box and Mossa 1999, p. 103). Additionally, much of the Brazos River basin is grazed or farmed for row crops, which often contributes large amounts of sediment to the basin (Brazos River Authority 2007, p. 4). Reservoir construction in the upper portion of the basin has been attributed with the erosion and subsequent sedimentation of the lower river (USGS 2001, p. 30), as sediment-poor tailwaters scour the riverbanks below the dam and deposit sediment farther downstream. In 2004, sedimentation was high enough in the Brazos River below Possum Kingdom Reservoir to cause residents to raise concerns to the Brazos River Authority (Brazos River Authority 2006, p. 2), and elevated suspended sediment levels have been reported throughout the basin (Brazos River Authority 2006, p. 8).

Sedimentation may become an increasing threat to the smooth pimpleback in the Colorado and Brazos River basins as the Austin metropolitan area continues to expand. Activities associated with urbanization, such as road construction, increased impervious surfaces, and road construction can be detrimental to stream habitats (Couch and Hamilton 2002, p. 1). The City of Austin, population approximately 800,000 people (Austin City Connection 2011, p. 1) lies within the Colorado River basin, and 3.9 million people live within the Brazos River basin (Brazos River Authority 2007, p. 1). Both of these basins have undergone substantial urbanization providing sources of increased sediment runoff into habitats of the smooth pimpleback.

The range of the smooth pimpleback receives sediment from increasing levels of sedimentation from agriculture, urbanization, and sand and gravel mining; sedimentation is likely to continue to threaten the smooth pimpleback.

Dewatering

River dewatering can occur in several ways: Anthropogenic activities such as surface water diversions and groundwater pumping, and natural events, such as drought, which can result in mussels stranded in previously wetted areas. This is a particular concern for smooth pimpleback within and below reservoirs, where water levels are managed for various purposes that can cause water levels in the reservoir or downstream to rise or fall in very short periods of time, such as when hydropower facilities release water during peak energy demand periods. The three impoundments on the Colorado River with records of smooth pimpleback all experience periodic water level drawdowns, which may have contributed to the species' apparent extirpation from Inks Lake and Lake Marble Falls. In fact, smooth pimpleback have been found stranded (which leads to death) after drawdowns in both of these reservoirs (Howells 1996, p. 22; 1999, p. 16).

Drought can also severely impact smooth pimpleback populations. For example, the Little Brazos River, which once contained a diverse and numerous freshwater mussel community that included smooth pimpleback (Gentner and Hopkins 1966, p. 458), experienced a severe drought from about 1950 to 1956 that reduced the river to a series of small, stagnant pools. The results of this habitat degradation from the low water nearly eliminated the mussel community and killed many smooth pimpleback (Gentner and Hopkins 1966,

p. 458). Later, central Texas, including the Colorado and Brazos River basins, experienced a major drought in the late 1970s (Lewis and Oliveria 1979, p. 243). Near record dry conditions in 2008 followed by a pattern of below-normal rainfall during the winter and spring of 2009 led to one of the worst droughts in recorded history for most of central Texas, including the range of the smooth pimpleback (Nielsen-Gammon and McRoberts 2009, p. 2). This drought's severity was exacerbated by abnormally high air temperatures, a likely effect of climate change, which has already increased average air temperatures in Texas by at least 1 °C (1.8 °F) (Nielsen-Gammon and McRoberts 2009, p. 22). Instream flows throughout the Brazos River basin during this drought were significantly reduced (USGS 2011c, p. 1) and smooth pimpleback populations in areas with reduced water levels, such as in the middle Brazos River, may have been negatively affected. Central Texas is currently experiencing another extreme drought, with rainfall between October 2010 and July 2011 being the lowest on record during those months (LCRA 2011c, p. 1); the effects of this drought are being observed but are not yet fully known. Droughts result in a decrease in water depth and flow velocity in streams inhabited by smooth pimpleback, which reduces the availability of food and dissolved oxygen and reduces survivability. As droughts persist, mussels face hypoxia, elevated water temperature and, ultimately, death due to stranding (Golladay *et al.* 2004, p. 501).

Sand and Gravel Mining

For general information on the effects of sand and gravel mining on freshwater mussels, please refer to "Sand and Gravel Mining" under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

The Brazos River has a long history of sand mining, particularly in the lower river, and channel morphology changes have been attributed to destabilization due to instream sand mining in the area (USGS 2001, p. 27). The removal of sand from within the river creates sediment traps during periods of high flow, which causes scouring and erosion downstream (USGS 2001, p. 27). One gravel dredging operation in the Brazos River was documented depositing sediment as far as 1.6 km (1 mile) downstream (Forshage and Carter 1973, p. 697). Accelerated stream bank erosion and downcutting of streambeds are common effects of instream sand and gravel mining, as is the mobilization of fine sediments during sand and gravel extraction (Roell 1999, p. 7).

Within the range of the smooth pimpleback, TPWD has issued permits for four current sand mining activities within the Brazos River (Austin, Bosque, and Fort Bend Counties) (TPWD 2004, p. 1; 2007b, p. 1, 2008b, p. 1; 2010b, p. 1). The permits allow for the repeated removal of sand and gravel at various locations within the Brazos River. The lower Brazos River, where these mining activities occur, contains one of the more numerous populations of smooth pimpleback.

The smooth pimpleback population in the lower Brazos River may be currently affected by sand and gravel mining. These activities occur over a long period of time, destabilizing mussel habitat both upstream and downstream, which decreases the likelihood of recolonization after the activity has been completed. Therefore, the effects of sand and gravel mining are an ongoing threat to the smooth pimpleback and are expected to continue to occur throughout the range of the species.

Chemical Contaminants

For general information on the effects of chemical contaminants on freshwater mussels, please refer to "Chemical Contaminants" under Factor A in *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussels, the smooth pimpleback is also threatened by chemical contaminants. TCEQ data for 2010 indicated that 26 of the 98 assessed water bodies within Colorado River basin and 81 of approximately 124 assessed water bodies within Brazos River basin did not meet surface water quality standards and were classified as impaired water bodies (Texas Clean Rivers Program 2010a, p. 5; TCEQ 2010c, pp. 1–106). These water bodies were impaired with dissolved solids, nitrites, nitrates, bacteria, low dissolved oxygen, aluminum, sulfates, selenium, chloride, orthophosphorus, phosphorus, Chlorophyll a, and low pH associated with agricultural, urban, municipal, and industrial runoff. Of these, nitrites and low dissolved oxygen are known to be harmful to freshwater mussels. Agricultural pesticides and emerging contaminants are likely also present in streams inhabited by smooth pimpleback. There are 53 wastewater treatment plants permitted to discharge more than one million gallons per day into the Brazos River basin (Valenti and Brooks 2008, p. 12); the outfalls of these treatment plants have not been tested to determine if they contain contaminants of note.

Examples of the exposure of smooth pimpleback to chemical contaminants include an event in 1993 when an unknown substance was dumped into a

segment of the Little Brazos River upstream from a smooth pimpleback population. This site once supported an abundant and diverse number of mussel species, including the smooth pimpleback, but when it was revisited in 1993, a massive die-off of freshwater mussels had occurred (Howells 2010b, p. 11). In another instance in 2010, crude oil overflowed from a failed storage tank into Keechi Creek in Leon County, a tributary to the Navasota River (National Response Center 2010, p. 2). This location is near a small population of smooth pimpleback and upstream of one of the largest known populations of the species.

Numerous other spills have occurred within the range of the smooth pimpleback. These occurred from on-site accidents (storage tank or pipeline spills) or from tanker truck accidents within watersheds occupied by smooth pimpleback. For example, oil has spilled into the Brazos River a number of times. As much as 320,000 L (84,000 gal) of crude oil was spilled in the Brazos River in Knox County in 1991 (Associated Press 1991, p. 1). In June 2010, flooding of holding ponds adjacent to oil drilling operations leaked oil into Thompson Creek and subsequently into the Brazos River (Lewis 2010, p. 1). Also, in July 2010, oil pipelines burst and released approximately 165 barrels of crude oil into the upper Double Mountain Fork of the Brazos River in Garza County (Joiner 2010, p. 1). Although no analyses were conducted of the specific effects of these spills on smooth pimpleback, we expect that if the mussels are exposed to even moderate levels of toxic chemical contaminants, such as crude oil, adverse effects (both direct mortality and indirect effects to food source availability) are likely to occur.

Releases of chemical contaminants, such as oil, ammonia, copper, mercury, nutrients, pesticides, and other compounds into the habitat of the smooth pimpleback are an ongoing threat to the smooth pimpleback. The species is vulnerable to acute contamination from spills, as well as chronic contaminant exposure, which has occurred and is expected to continue to occur throughout the range of the smooth pimpleback.

Summary of Factor A

The reduction in numbers and range of the smooth pimpleback is primarily the result of the long-lasting effects of habitat alterations such as the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Impoundments occur throughout the

range of the species and have far-reaching effects to riverine habitat both upstream and downstream of the dams. Both the Colorado and Brazos River systems have experienced a large amount of sedimentation from agriculture, instream mining, and urban development. Sand and gravel mining affects smooth pimpleback habitat by increasing sedimentation and channel instability downstream and by causing headcutting upstream. Chemical contaminants exceeding the standards developed to support aquatic life have been documented throughout the range of the species and may represent a significant threat to the smooth pimpleback. However, the large populations in the San Saba River, lower Brazos River, Navasota River, Leon River, and Yegua Creek indicate that some smooth pimpleback populations are not currently as vulnerable to habitat loss as others. Therefore, based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate threat of moderate magnitude to the smooth pimpleback.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The smooth pimpleback is not a commercially valuable species and has never been harvested in Texas as a commercial mussel species (Howells 2010b, p.12). Some scientific collecting occurs but is not likely to be a significant threat to the species because it occurs only rarely. However, handling mussels can disturb gravid females and result in glochidial loss and subsequent reproductive failure. Additionally, handling has also been shown to reduce shell growth across mussel species, including several species of *Lampsilis* (Haag and Commens-Carson 2008, pp. 505–506). Repeated handling by researchers may adversely affect smooth pimpleback individuals, but these activities are occurring rarely and are not likely to be a threat to populations. Handling for scientific purposes contributes to the long-term conservation of the species.

We do not have any evidence of risks to the smooth pimpleback from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Based upon the best scientific and commercial information available, we conclude that overutilization for commercial, recreational, scientific, or educational

purposes does not pose a threat to the smooth pimpleback rangewide.

Factor C. Disease and Predation.

Disease

Little is known about disease in freshwater mussels. However, disease is believed to be a contributing factor in documented mussel die-offs in other parts of the United States (Neves 1987, pp. 11–12). Diseases have not been documented or observed during any studies of smooth pimpleback.

Predation

Raccoons will prey on freshwater mussels stranded by low waters or deposited in shallow water or on bars following flooding or low water periods (Howells 2010c, p. 12). Predation of smooth pimpleback by raccoons may be occurring occasionally, but there is no indication it is a significant threat to the status of the species.

Some species of fish feed on mussels, such as common carp, freshwater drum, and redear sunfish, all of which are common throughout the range of smooth pimpleback (Hubbs *et al.* 2008, pp. 19, 45, 53). Common species of flatworms are voracious predators of newly metamorphosed juvenile mussels of many species (Zimmerman *et al.* 2003, p. 30). Predation is a normal factor influencing the population dynamics of a healthy mussel population; however, predation may amplify declines in small populations primarily caused by other factors.

Summary of Factor C

Disease in freshwater mussels is poorly known, and we do not have any information indicating it is a threat to the smooth pimpleback. Additionally, predation is a natural ecological interaction and we have no information indicating the extent of any predation is a threat to populations of smooth pimpleback. Based upon the best scientific and commercial information available, we conclude that disease or predation is not a threat to the smooth pimpleback.

Factor D. The Inadequacy of Existing Regulatory Mechanisms.

Existing regulatory mechanisms that could have an effect on threats to the smooth pimpleback include State and Federal laws such as Texas Threatened and Endangered Species regulations and freshwater mussel sanctuaries, State and Federal sand and gravel mining regulations, and regulation of point and non-point source pollution. For more information on the effects of State and Federal laws on the threats to freshwater mussels in central Texas, please refer to

Factor D under *Five-Factor Evaluation for Texas Fatmucket*.

Summary of Factor D

Despite State and Federal laws protecting the species and water quality, the smooth pimpleback continues to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. The regulatory measures described under Factor D in the *Five-Factor Evaluation for Texas Fatmucket* have been insufficient to significantly reduce or remove the threats to the smooth pimpleback. Based upon our review of the best commercial and scientific data available, we conclude that the lack of existing regulatory mechanisms is an immediate and ongoing threat of moderate magnitude to the smooth pimpleback.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Natural and manmade factors that threaten the smooth pimpleback include climate change, population fragmentation and isolation, and nonnative species.

Climate Change

For general information on the effects of climate change on freshwater mussels of central Texas, please refer to “Climate Change” under Factor E in *Five-Factor Evaluation for Texas Fatmucket*. Because the range of the smooth pimpleback has been reduced to isolated locations, many with low population numbers, in small rivers and streams, the smooth pimpleback is vulnerable to climatic changes that could decrease the availability of water.

The disjoint nature of the remaining smooth pimpleback populations, coupled with the limited ability of mussels to migrate, makes it unlikely that smooth pimpleback can adjust their range in response to changes in climate (Strayer 2008, p. 30). Climate change exacerbates threats to the smooth pimpleback, such as habitat degradation from prolonged periods of drought; increased water temperature; and the increased allocation of water for municipal, agricultural, and industrial uses. The magnitude and imminence of these effects, however, remain uncertain. Based upon our review of the best commercial and scientific data available, we conclude that the effects of climate change in the future will likely exacerbate the current and ongoing threats of habitat loss and degradation caused by other factors, as discussed in Factor A.

Population Fragmentation and Isolation

For general information on the effects of population fragmentation and isolation on freshwater mussels of central Texas, please refer to “Population Fragmentation and Isolation” under Factor E in *Five-Factor Evaluation for Texas Fatmucket*. As with many freshwater mussels, several of the remaining populations of the smooth pimpleback are small and geographically isolated and thus are susceptible to genetic drift, inbreeding depression, and random or chance changes to the environment, such as toxic chemical spills (Watters and Dunn 1995, pp. 257–258), or dewatering. Historically, the smooth pimpleback was widespread throughout much of the Colorado and Brazos River systems when few natural barriers existed to prevent migration (via host species) among suitable habitats. The extensive impoundment of the Brazos and Colorado River basins has fragmented smooth pimpleback populations throughout these river systems.

Small smooth pimpleback populations, including those in Lake LBJ Reservoir and the middle Brazos, Little, and Little Brazos Rivers, may be below the minimum population size required to maintain population viability into the future, therefore making these populations more vulnerable to extirpation since they are less likely to be able to recover through recruitment from events that reduce but do not extirpate populations. Additionally, these small populations are more vulnerable to extirpation from stochastic events, as the lack of connectivity among populations does not permit nearby populations to recolonize areas affected by intense droughts, toxic spills, or other isolated events that result in significant mussel die-offs. While the small, isolated populations do not represent an independent threat to the species, the situation does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Based upon our review of the best commercial and scientific data available, we conclude that fragmentation and isolation of small remaining populations of the smooth pimpleback are occurring and are ongoing threats to the species throughout all of its range. Further, stochastic events may play a magnified role in extirpation of small, isolated populations.

Nonnative Species

For general information on the effects of nonnative species on freshwater mussels of central Texas, please refer to "Nonnative Species" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. As with other freshwater mussels, the smooth pimpleback is threatened by nonnative species. Various nonnative aquatic species pose a threat to the smooth pimpleback, including golden algae, zebra mussels, and black carp. Of these, golden algae has been responsible for killing more than eight million fish in the Brazos River since 1981 and more than two million fish in the Colorado River since 1989 (TPWD 2010a, p. 1). Although mussel kills due to golden algae have not been recorded, we expect golden algae to negatively affect mussel populations through loss of host fish and direct toxicity. Zebra mussels and black carp do not currently occur within the range of the smooth pimpleback, although both are found in Texas and could be introduced to the Brazos and Colorado Rivers in the foreseeable future. Based on population responses of other mussel species that overlap with zebra mussels and black carp in similar river conditions, we conclude that the introduction of zebra mussels or black carp into the range of smooth pimpleback would be devastating to the species.

Based upon our review of the best commercial and scientific data available, we conclude that golden algae is an ongoing threat to the smooth pimpleback, and other nonnative species, such as zebra mussels and black carp, are a potential threat to the smooth pimpleback that is likely to increase as these exotic species expand their occupancy to include the range of the smooth pimpleback.

Summary of Factor E

The effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, and the small sizes and fragmented nature of the remaining populations render them more vulnerable to extirpation. In addition, nonnative species, such as golden algae, currently threaten the Texas fatmucket, and the potential introduction of zebra mussels and black carp are potential future threats. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors are immediate and ongoing threats of moderate magnitude to the smooth pimpleback.

Finding for Smooth Pimpleback

As required by the Act, we considered the five factors in assessing whether the smooth pimpleback 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 the smooth pimpleback. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized smooth pimpleback experts and other Federal and State agencies.

This status review identifies threats to the smooth pimpleback attributable to Factors A, D, and E. The primary threat to the species is from habitat destruction and modification (Factor A) from impoundments, which scour riverbeds, thereby removing mussel habitat, decreases water quality, modifies stream flows, and restricts fish host migration and distribution of freshwater mussels. Additional threats under Factor A include sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Also, most of these threats may be exacerbated by the current and projected effects of climate change (discussed under Factor E). Threats to the smooth pimpleback are not being adequately addressed through existing regulatory mechanisms (Factor D). Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to lead to the extinction of the smooth pimpleback in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the smooth pimpleback under the Act is warranted. We will make a determination on the status of the species as threatened or endangered when we complete a proposed listing determination. When we complete a proposed listing determination, we will examine whether the species may be endangered or threatened throughout all of its range; or whether the species may be endangered or threatened in a significant portion of its range. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the smooth pimpleback at risk of extinction now such that issuing an emergency

regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for the smooth pimpleback at this time, because we have not identified a threat or activity that poses a significant risk, such that losses to the species during the normal listing process would endanger the continued existence of the entire species. However, if at any time we determine that issuing an emergency regulation temporarily listing the smooth pimpleback is warranted, we will initiate this action at that time.

Listing Priority Number for Smooth Pimpleback

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned the smooth pimpleback an LPN of 8, based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants; other natural or manmade factors such as climate change, small, isolated populations, and nonnative species; and the fact that the threats to the species are not being adequately addressed by existing regulatory mechanisms. Our rationale for assigning the smooth pimpleback an LPN of 8 is outlined below.

We consider the threats that the smooth pimpleback faces to be moderate in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the smooth pimpleback, but several large populations remain, including one that was recently discovered, indicating the threats are not high in magnitude.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. We consider the threats to the smooth pimpleback as described under “Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range,” “Factor D. The Inadequacy of Existing Regulatory Mechanisms,” and “Factor E. Other Natural Or Manmade Factors Affecting Its Continued Existence” under the *Five-Factor Evaluation for Smooth Pimpleback* to be imminent because these threats are ongoing and will continue in the foreseeable future. Habitat loss and destruction has already occurred and will continue as the human population continues to grow in central Texas. Several smooth pimpleback populations may already be below the minimum viable population requirement, which would cause a reduction in the number of populations and an increase in the species’ vulnerability to extinction. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Therefore, we consider these threats to be imminent.

Thirdly, the smooth pimpleback is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned smooth pimpleback an LPN of 8. We will continue to monitor the threats to the smooth pimpleback and the species’ status on an annual basis, and should the magnitude or imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing the smooth pimpleback is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned the smooth pimpleback an LPN of 8, work on a proposed listing determination for the species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Five-Factor Evaluation for Texas Pimpleback

Information pertaining to the Texas pimpleback in relation to the five factors

provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

As discussed above, the decline of mussels in Texas and across the United States is primarily the result of habitat loss and degradation. Chief among the causes of decline of the Texas pimpleback are the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants. These threats are discussed below.

Impoundments

For general information on the effects of impoundments on freshwater mussels, please refer to “Impoundments” in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the Texas pimpleback is also threatened by impoundments. There are 37 major reservoirs and numerous smaller impoundments within the historical and current range of the Texas pimpleback. There are 31 major reservoirs within the Colorado River basin, with another reservoir (Goldthwaite Reservoir) proposed for the Colorado River in San Saba County near a Texas pimpleback population; this reservoir was the number one recommendation in the water plan for the region (TWDB 2011, pp. 4–85). There are 29 reservoirs within the Guadalupe River basin and 34 within the San Antonio River basin, each with a storage capacity of 3,000 acre-feet or more, and many other smaller reservoirs (Exelon 2010, p. 2.3–4). The majority of the large dams were constructed for power generation, flood control, and water supply by the Lower Colorado River and Guadalupe-Blanco River Authorities beginning as early as 1935 (Guadalupe-Blanco River Authority 2011, p. 1; LCRA 2011a, p. 1). These and numerous smaller dams occur throughout the Colorado and Guadalupe River basins, fragmenting habitat and populations of Texas pimpleback.

There are no natural lakes within the range of the Texas pimpleback, nor has it ever been found in reservoirs. Historically, the Texas pimpleback could be found in areas of the Guadalupe River in Comal County (Randklev *et al.* 2010c, p. 4), but it has not been found in the area since the construction of Canyon Reservoir (Burlakova and Karatayev 2009, p. 6). We presume the species is extirpated from this reach because of the effects of the reservoir. Surveys of other reservoirs on the Guadalupe and Colorado Rivers

have been ongoing since at least 1992, and no evidence of live or dead Texas pimpleback has been found in any reservoir (Howells 1994, pp. 1–20; 1995, pp. 1–50; 1996, pp. 1–45; 1997a, pp. 1–58; 1998, pp. 1–30; 1999, pp. 1–34; 2000a, pp. 1–56; 2001, pp. 1–50; 2002a, pp. 1–28; 2003, pp. 1–42; 2004, pp. 1–48; 2005, pp. 1–23; 2006, pp. 1–106; Karatayev and Burlakova 2008, pp. 1–47; Burlakova and Karatayev 2010a, pp. 1–30; 2011, pp. 1–8), further indicating that this species is not tolerant of impoundments.

Texas pimpleback populations downstream of dams are affected as well. Cold water (less than 11 °C (52 °F)) has been shown to stunt mussel growth (Hanson *et al.* 1988, p. 352) and reduce or inhibit reproduction, because mussel reproduction is temperature dependent (Watters and O’Dee 1999, pp. 455). Texas pimpleback living in cold-water discharges downstream of large impoundments are unlikely to reproduce (Watters 2000, p. 264).

Dam construction also fragments the range of Texas pimpleback, leaving remaining habitats and populations isolated by the structures as well as by extensive areas of deep, uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat that may be impacted by temporary but devastating events, such as severe drought, chemical spills, or unauthorized discharges. Dams impound river habitats throughout almost the entire range of the species. These impoundments have left short and isolated patches of suitable habitat, typically in between impounded reaches.

The widespread construction of dams throughout the range of Texas pimpleback has significantly altered stream habitat both upstream and downstream of the dams by changing fish assemblages, temperature, dissolved oxygen, and substrate. The effects of dams are ongoing decades after construction. Because of this loss of habitat and its effects on the populations, we conclude that the effects of dams are a threat to the Texas pimpleback.

Sedimentation

For general information on the effects of sedimentation on freshwater mussels, please refer to “Sedimentation” in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the Texas pimpleback is affected by sedimentation. The dominant land use in the Colorado River basin is grazing (Hersh 2007, p. 11); soil compaction from intensive

grazing may reduce infiltration rates and increase runoff, and trampling of riparian vegetation increases the probability of erosion (Armour *et al.* 1994, p. 10; Brim Box and Mossa 1999, p. 103). Even in 1959, the Guadalupe River was noted as having high sedimentation rates from agricultural activities (Soil Conservation Service 1959, p. 59). Turbidity has also been recorded as high in the Guadalupe River near Victoria (Exelon 2010, p. 2.3–186), indicating a large amount of suspended sediment where a small Texas pimpleback population was recently found.

Streams occupied by Texas pimpleback are subject to increasing levels of sedimentation from agriculture, urbanization, and sand and gravel mining. Agriculture is a common land use in the Guadalupe and San Antonio River basins, and the city of San Antonio, the second largest city in Texas, continues to grow (City of San Antonio 2010, p. 5). Sedimentation from agriculture, urbanization, and sand and gravel mining will continue to threaten the Texas pimpleback in the foreseeable future.

Dewatering

River dewatering can occur in several ways: Anthropogenic activities such as surface water diversions and groundwater pumping, and natural events, such as drought, which can result in mussels stranded in previously wetted areas. This is a particular concern below reservoirs, whose water levels are managed for various purposes that can cause water levels in the reservoir or downstream to rise or fall in very short periods of time, such as when hydropower facilities release water during peak energy demand periods.

Drought can also severely impact Texas pimpleback populations. Central Texas, including the Colorado and Guadalupe River basins, experienced a major drought in the late 1970s (Lewis and Oliveria 1979, p. 243). Near record dry conditions in 2008 followed by a pattern of below-normal rainfall during the winter and spring of 2009 led to one of the worst droughts in recorded history for most of central Texas, including the range of the Texas pimpleback (Nielsen-Gammon and McRoberts 2009, p. 2). This drought's severity was exacerbated by abnormally high air temperatures, a likely effect of climate change, which has already increased average air temperatures in Texas by at least 1 °C (1.8 °F) (Nielsen-Gammon and McRoberts 2009, p. 22). Instream flows throughout the Colorado River basin during this drought were significantly reduced (USGS 2011c, p. 1)

and Texas pimpleback populations in areas with reduced water levels may have been negatively affected. Central Texas is currently experiencing another extreme drought, with rainfall between October 2010 and July 2011 being the lowest on record during those months (LCRA 2011c, p. 1); the effects of this drought are being observed but are not yet fully known. Droughts result in a decrease in water depth and flow velocity, which reduces food and oxygen delivery. As droughts persist, mussels face hypoxia, elevated water temperature and, ultimately, stranding (Golladay *et al.* 2004, p. 501).

We do not know the extent of the impacts of stream dewatering on the Texas pimpleback; however, because several populations are small and isolated, the loss of numerous individuals at a site can have dramatic consequences to the population. Hydropower facilities, diversions associated with construction, and drought are occurring throughout the range of the Texas pimpleback; therefore, the effects of dewatering are ongoing and unlikely to decrease, resulting in significant threats to the Texas pimpleback.

Sand and Gravel Mining

For general information on the effects of sand and gravel mining on freshwater mussels, please refer to “Sand and Gravel Mining” in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

In 1995, the reach of the Guadalupe River near Victoria, which contains a Texas pimpleback population, was described as having numerous current and abandoned sand and gravel mining areas (USACE 1995, p. 7). Currently, TPWD has permitted one sand mining activity within the current range of Texas pimpleback, in the Guadalupe River basin in Comal County (TPWD 2009b, p. 1); a small Texas pimpleback population occurs downstream of this area in the Guadalupe River. The permit allows for the repeated removal of sand and gravel at various locations within the stream.

Headcuts from sand and gravel mining operations have been documented in the San Antonio River basin in Karnes County from as early as 1967, with downstream channels having steep, eroded banks (Kennon *et al.* 1967, p. 22). There has been no evidence of Texas pimpleback in Karnes County in recent years (Howells 1997a, pp. 41–42), and the effects of sand mining may have been a factor in the species' extirpation.

The Texas pimpleback population in the Guadalupe River may be currently threatened by sand and gravel mining. These activities occur over a long period

of time, destabilizing habitat both upstream and downstream, which decreases the likelihood of recolonization after the activity has been completed. Therefore, the effects of sand and gravel mining are an ongoing threat to the Texas pimpleback.

Chemical Contaminants

For general information on the effects of chemical contaminants on freshwater mussels, please refer to “Chemical Contaminants” in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussels, the Texas pimpleback is affected by chemical contaminants. TCEQ data for 2010 indicated that 26 of the 98 assessed water bodies within the historical and current range of the Texas pimpleback did not meet surface water quality standards and were classified as impaired water bodies under the Clean Water Act (Texas Clean Rivers Program 2010a, p. 5). These water bodies were impaired with dissolved solids, nitrates, bacteria, low dissolved oxygen, aluminum, sulfates, selenium, chloride, and low pH associated with agricultural, urban, municipal, and industrial runoff. Additionally, the Concho River near Paint Rock has been repeatedly documented as having high nitrates (Texas Clean Rivers Program 2008, p. 2); a significant Texas pimpleback population occurs just upstream of this site. Nitrates and low dissolved oxygen pose the greatest threat to Texas pimpleback.

Within the range of Texas pimpleback, several streams have been listed as impaired due to high ammonia concentrations, including Elm Creek in the Guadalupe River basin (TCEQ 2010a, p. 294). Additionally, high copper concentrations have been recorded in the lower Guadalupe and San Antonio Rivers (Lee and Schultz 1994, p. 8), and mercury has been documented throughout the Guadalupe and San Antonio Rivers, with particularly high concentrations in fish in the upper reaches of both rivers (Lee and Schultz 1994, p. 8). Agricultural pesticides and emerging contaminants are likely also present in streams inhabited by Texas pimpleback.

Chemical contaminants, such as ammonia, copper, mercury, nutrients, pesticides, and other compounds are currently a threat to the Texas pimpleback. The species is vulnerable to acute contamination from spills as well as chronic contaminant exposure, which is occurring rangewide.

Summary of Factor A

The reduction in numbers and range of the Texas pimpleback is primarily the

result of the long-lasting effects of habitat alterations such as the effects of impoundments, sedimentation, sand and gravel mining, and chemical contaminants. Impoundments occur throughout the range of the species and have far-reaching effects both up and downstream. Both the Colorado and Guadalupe River systems have experienced a large amount of sedimentation from agriculture, instream mining, and urban development. Sand and gravel mining affects Texas pimpleback habitat by increasing sedimentation and channel instability downstream and causing headcutting upstream. Chemical contaminants have been documented throughout the range of the species and may represent a significant threat to the Texas pimpleback. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate threat of high magnitude to the Texas pimpleback.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Texas pimpleback was historically harvested occasionally but never experienced high levels of collecting pressure (Howells 2010e, p.10). Although levels were light enough that commercial harvest was likely not a threat to populations, all commercial collecting became illegal when Texas pimpleback was listed as threatened by TPWD; therefore, commercial harvest is not a current threat to Texas pimpleback. Some scientific collecting occurs but is not likely to be a significant threat to the species because it occurs only rarely. However, handling mussels can disturb gravid females and result in glochidial loss and subsequent reproductive failure. Additionally, handling has been shown to reduce shell growth across mussel species, including several species of *Lampsilis* (Haag and Commens-Carson 2008, pp. 505–506). Repeated handling by researchers may adversely affect Texas pimpleback individuals, but these activities are occurring rarely and are not likely to be a threat to populations. Handling for scientific purposes contributes to the long-term conservation of the species.

We do not have any evidence of risks to the Texas pimpleback from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Based upon the best scientific and commercial

information available, we conclude that overutilization for commercial, recreational, scientific, or educational purposes does not pose a significant threat to the Texas pimpleback rangewide.

Factor C. Disease and Predation.

Disease

Little is known about disease in freshwater mussels. However, disease is believed to be a contributing factor in documented mussel die-offs in other parts of the United States (Neves 1987, pp. 11–12). Diseases have not been documented or observed during any studies of Texas pimpleback.

Predation

Raccoons will prey on freshwater mussels stranded by low waters or deposited in shallow water or on bars following flooding or low water periods (Howells 2010c, p. 12). Predation of Texas pimpleback by raccoons may be occurring occasionally but there is no indication it is a significant threat to the status of the species.

Some species of fish feed on mussels, such as common carp, freshwater drum, and redear sunfish, all of which are common throughout the range of Texas pimpleback (Hubbs *et al.* 2008, pp. 19, 45, 53). Common species of flatworms are voracious predators of newly metamorphosed juvenile mussels of many species (Zimmerman *et al.* 2003, p. 30). Predation is a normal factor influencing the population dynamics of a healthy mussel population; however, predation may amplify declines in small populations primarily caused by other factors.

Summary of Factor C

Disease in freshwater mussels is poorly known, and we do not have any information indicating it is a threat to the Texas pimpleback. Additionally, predation is a natural ecological interaction and we have no information indicating the extent of any predation is a threat to populations of Texas pimpleback. Based upon the best scientific and commercial information available, we conclude that disease or predation is not a threat to the Texas pimpleback.

Factor D. The Inadequacy of Existing Regulatory Mechanisms.

Existing regulatory mechanisms that could have an effect on threats to the Texas pimpleback include State and Federal laws such as Texas Threatened and Endangered Species regulations and freshwater mussel sanctuaries, State and Federal sand and gravel mining regulations, and regulation of point and non-point source pollution. For more

information on the effects of State and Federal laws on the threats to freshwater mussels in central Texas, please refer to Factor D under *Five-Factor Evaluation for Texas*

Fatmucket

Summary of Factor D

Despite State and Federal laws protecting the species and water quality, the Texas pimpleback continues to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. The regulatory measures described above have been insufficient to significantly reduce or remove the threats to the Texas pimpleback. Based upon our review of the best commercial and scientific data available, we conclude that the lack of existing regulatory mechanisms is an immediate threat of moderate magnitude to the Texas pimpleback.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Natural and manmade factors that threaten the Texas pimpleback include climate change, population fragmentation and isolation, and nonnative species.

Climate Change

For general information on the effects of climate change on freshwater mussels of central Texas, please refer to “Climate Change” in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. Because the range of the Texas pimpleback has been reduced to isolated locations with low population numbers in small rivers and streams, the Texas pimpleback is vulnerable to climatic changes that could decrease the availability of water.

The disjunct nature of the remaining Texas pimpleback populations, coupled with the limited ability of mussels to migrate, makes it unlikely that Texas pimpleback can adjust their range in response to changes in climate (Strayer 2008, p. 30). Climate change could affect the Texas pimpleback through the combined effects of global and regional climate change, along with the increased probability of long-term drought. Climate change exacerbates threats such as habitat degradation from prolonged periods of drought, increased water temperature, and the increased allocation of water for municipal, agricultural, and industrial use. Climate change may be a significant stressor that exacerbates existing threats by increasing the likelihood of prolonged drought. As such, climate change, in and of itself, may affect the Texas

pimpleback, but the magnitude and imminence of the effects remain uncertain. Based upon our review of the best commercial and scientific data available, we conclude that the effects of climate change in the future will likely exacerbate the current and ongoing threats of habitat loss and degradation caused by other factors, as discussed above.

Population Fragmentation and Isolation

For more information on the effects of population fragmentation and isolation on freshwater mussels of central Texas, please refer to "Population Fragmentation and Isolation" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. As with many freshwater mussels, most of the remaining populations of the Texas pimpleback are small and geographically isolated and thus are susceptible to genetic drift, inbreeding depression, and random or chance changes to the environment, such as toxic chemical spills (Watters and Dunn 1995, pp. 257–258) or dewatering. Historically, the Texas pimpleback was once widespread throughout much of the Colorado and Guadalupe River systems when few natural barriers existed to prevent migration (via host species) among suitable habitats. The extensive impoundment of the Colorado and Guadalupe River basins has fragmented Texas pimpleback populations throughout these river systems.

Small Texas pimpleback populations, including those in the lower Guadalupe River, mainstem Colorado River, and San Marcos River, may be below the minimum population size required to maintain population viability into the future. These populations are more vulnerable to extirpation since they are less likely to be able to recover through recruitment from events that reduce but do not extirpate populations. Additionally, these small populations are more vulnerable to extirpation from stochastic events, as the lack of connectivity among populations does not permit nearby populations to recolonize areas affected by intense droughts, toxic spills, or other isolated events that result in significant mussel die-offs. While the small, isolated populations do not represent an independent threat to the species, the situation does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Based upon our review of the best commercial and scientific data

available, we conclude that fragmentation and isolation of small remaining populations of the Texas pimpleback are occurring and are ongoing threats to the species throughout all of its range. Further, stochastic events may play a magnified role in extirpation of small, isolated populations.

Nonnative Species

For general information on the effects of nonnative species on freshwater mussels of central Texas, please refer to "Nonnative Species" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. As with other freshwater mussels, the Texas pimpleback is threatened by nonnative species. Various nonnative aquatic species pose a threat to the Texas pimpleback, including golden algae, zebra mussels, and black carp. Of these, golden algae has been responsible for killing more than two million fish in the Colorado River since 1989 (TPWD 2010a, p. 1). Although mussel kills due to golden algae have not been recorded, we expect golden algae to negatively affect mussel populations through loss of host fish and direct toxicity. Zebra mussels and black carp do not currently occur within the range of the Texas pimpleback, although both are found in Texas and could be introduced to the Colorado and Guadalupe Rivers in the foreseeable future. Their introduction into the range of Texas pimpleback would be devastating.

Based upon our review of the best commercial and scientific data available, we conclude that golden algae is an ongoing threat to the Texas pimpleback and other nonnative species, such as zebra mussels and black carp, are a potential threat to the Texas pimpleback that is likely to increase as these exotic species expand their occupancy within the range of the Texas pimpleback.

Summary of Factor E

The effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, and the small sizes and fragmented nature of the remaining populations render them more vulnerable to extirpation. In addition, nonnative species, such as golden algae, currently threaten the Texas fatmucket, and the potential introduction of zebra mussels and black carp are potential future threats. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors are

immediate threats of moderate magnitude to the Texas pimpleback.

Finding for Texas Pimpleback

As required by the Act, we considered the five factors in assessing whether the Texas pimpleback 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 the Texas pimpleback. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Texas pimpleback experts and other Federal and State agencies.

This status review identifies threats to the Texas pimpleback attributable to Factors A, D, and E. The primary threat to the species is from habitat destruction and modification (Factor A) from impoundments, which scour riverbeds, thereby removing mussel habitat, decrease water quality, modify stream flows, and restrict fish host migration and distribution of freshwater mussels. Additional threats under Factor A include sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Also, most of these threats may be exacerbated by the current and projected effects of climate change (discussed under Factor E). Threats to the Texas pimpleback are not being adequately addressed through existing regulatory mechanisms (Factor D). Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to lead to the extinction of the Texas pimpleback in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the Texas pimpleback under the Act is warranted. We will make a determination on the status of the species as threatened or endangered when we complete a proposed listing determination. When we complete a proposed listing determination, we will examine whether the species may be endangered or threatened throughout all of its range or whether the species may be endangered or threatened in a significant portion of its range. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the Texas

pimpleback at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for the Texas pimpleback at this time, because we have not identified a threat or activity that poses a significant risk, such that losses to the species during the normal listing process would endanger the continued existence of the entire species. However, if at any time we determine that issuing an emergency regulation temporarily listing the Texas pimpleback is warranted, we will initiate this action at that time.

Listing Priority Number for Texas Pimpleback

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned the Texas pimpleback an LPN of 2, based on our finding that the species faces threats that are of high magnitude and are imminent. These threats include habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants; other natural or manmade factors such as climate change, small, isolated populations, and nonnative species; and the fact that the threats to the species are not being adequately addressed by existing regulatory mechanisms. Our rationale for assigning the Texas pimpleback an LPN of 2 is outlined below.

We consider the threats that the Texas pimpleback faces to be high in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas pimpleback and profoundly affect its habitat, and remaining populations are

small, isolated, and highly vulnerable to stochastic events.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. We consider the threats to the Texas pimpleback as described under Factors A, D, and E in the *Five-Factor Evaluation for Texas Pimpleback* section to be imminent because these threats are ongoing and will continue in the foreseeable future. Habitat loss and destruction has already occurred and will continue as the human population continues to grow in central Texas. The Texas pimpleback populations may already be below the minimum viable population requirement, which would cause a reduction in the number of populations and an increase in the species' vulnerability to extinction. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Therefore, we consider these threats to be imminent.

Thirdly, the Texas pimpleback is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned Texas pimpleback an LPN of 2. We will continue to monitor the threats to the Texas pimpleback and the species' status on an annual basis, and should the magnitude or imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing the Texas pimpleback is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expeditious Progress section below. Because we have assigned the Texas pimpleback an LPN of 2, work on a proposed listing determination for the species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2010. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Five-Factor Evaluation for Texas Fawnsfoot

Information pertaining to the Texas fawnsfoot in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

As discussed above, the decline of mussels in Texas and across the United States is primarily the result of habitat loss and degradation. Chief among the causes of decline of the Texas fawnsfoot in Texas are the effects of impoundments, sedimentation, dewatering, sand and gravel mining, and chemical contaminants. These threats are discussed below.

Impoundments

For general information on the effects of impoundments on freshwater mussels, please refer to "Impoundments" in Factor A under *Five-Factor Evaluation for Texas Fatmucket*. Impoundments and numerous smaller dams occur throughout the Colorado and Guadalupe River basins, fragmenting habitat and populations of Texas fawnsfoot. There are 74 major reservoirs and numerous smaller impoundments within the historical and current range of the smooth pimpleback. Thirty-one of the 74 major reservoirs are located within the Colorado River basin and the remaining 43 reservoirs are located within the Brazos River basin. There are also eleven new reservoirs that have been recommended for development as feasible alternatives to meet future water needs within the Brazos River basin (Brazos G Regional Water Planning Group 2010, p. 4B.12-1). In addition, six new off-channel reservoirs are also being considered for future development (Brazos G Regional Water Planning Group 2010, p. 4B.13-2).

There are no natural lakes within the range of the Texas fawnsfoot, nor has it ever been found in reservoirs. Surveys of the reservoirs on the Brazos and Colorado Rivers have been ongoing since at least 1992, and no evidence of live or dead Texas pimpleback has been found in any reservoir (Howells 1994, pp. 1-20; 1995, pp. 1-50; 1996, pp. 1-45; 1997a, pp. 1-58; 1998, pp. 1-30; 1999, pp. 1-34; 2000a, pp. 1-56; 2001, pp. 1-50; 2002a, pp. 1-28; 2003, pp. 1-42; 2004, pp. 1-48; 2005, pp. 1-23; 2006, pp. 1-106; Karatayev and Burlakova 2008, pp. 1-47; Burlakova and Karatayev 2010a, pp. 1-30; 2011, pp. 1-8), further indicating that this species is not tolerant of impoundments.

Texas fawnsfoot populations downstream of dams are affected as well. Cold water (less than 11 °C (52 °F)) has been shown to stunt mussel growth (Hanson *et al.* 1988, p. 352) and reduce or inhibit reproduction, because mussel reproduction is temperature dependent (Watters and O'Dee 1999, pp. 455). Texas fawnsfoot living in cold-water discharges downstream of large

impoundments are unlikely to reproduce (Watters 2000, p. 264).

Dam construction also fragments the range of Texas fawnsfoot, leaving remaining habitats and populations isolated by the structures as well as by extensive areas of deep, uninhabitable, impounded waters. These isolated populations are unable to naturally recolonize suitable habitat that may be impacted by temporary but devastating events, such as severe drought, chemical spills, or unauthorized discharges. Dams impound river habitats throughout almost the entire range of the species. These impoundments have left short and isolated patches of remnant habitat, typically in between impounded reaches. Habitat downstream of dams may be impaired for many miles; in the Brazos River downstream of Possum Kingdom Reservoir, substrate was unstable for 150 km (240 mi) below the dam (Yeager 1993, p. 68).

The widespread construction of dams throughout the range of Texas fawnsfoot has significantly altered stream habitat both upstream and downstream of the dams by changing fish assemblages, temperature, dissolved oxygen, and substrate. The effects of dams are ongoing decades after construction. Because of this loss of habitat and its effects on the populations, we conclude that the effects of dams are a threat to the Texas fawnsfoot.

Sedimentation

For general information on the effects of sedimentation on freshwater mussels, please refer to "Sedimentation" in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

As with other freshwater mussel species, the Texas fawnsfoot is also threatened by sedimentation. The dominant land use in the Colorado River basin is grazing (Hersh 2007, p. 11); soil compaction from intensive grazing may reduce infiltration rates and increase runoff, and trampling of riparian vegetation increases the probability of erosion (Armour *et al.* 1994, p. 10; Brim Box and Mossa 1999, p. 103). Additionally, much of the Brazos River basin is grazed or farmed for row crops, which can contribute large amounts of sediment to the basin (Brazos River Authority 2007, p. 4). Reservoir construction in the upper portion of the basin has been attributed with the erosion and subsequent sedimentation of the lower river (USGS 2001, p. 30), as sediment-poor tailwaters scour the riverbanks below the dam and deposit sediment farther downstream. In 2004, sedimentation was high enough in the Brazos River below Possum Kingdom Reservoir to cause residents to

raise concerns to the Brazos River Authority (Brazos River Authority 2006, p. 2). Elevated suspended sediment levels have been reported throughout the basin (Brazos River Authority 2006, p. 8).

The LCRA TSC is proposing to construct two new 345-kV electric transmission line facilities between Tom Green (in the Colorado River basin near San Angelo) and Kendall Counties (in the Guadalupe River basin north of San Antonio) to provide electrical power to accommodate increased demand (Clary 2010, p. 1). One of the proposed project lines would cross the San Saba River, which contains one of the more numerous Texas fawnsfoot populations. The proposed project could negatively affect Texas fawnsfoot habitat by clearing land within the riparian zone and may increase sediment runoff into the San Saba River (Clary 2010, p. 9). Similar activities to accommodate Texas population growth and demands are expected to be undertaken across the species' range and will likely lead to additional sources of sediment in the streams inhabited by the Texas fawnsfoot.

The City of Austin lies within the Colorado River basin, and 3.9 million people live within the Brazos River basin (Brazos River Authority 2007, p. 1). The range of the Texas fawnsfoot receives sediment from agriculture, urbanization, and sand and gravel mining. Sedimentation will continue to threaten the Texas fawnsfoot in the foreseeable future.

Dewatering

River dewatering can occur in several ways: anthropogenic activities such as surface water diversions and groundwater pumping, and natural events, such as drought, which can result in mussels stranded in previously wetted areas. This is a particular concern below reservoirs, whose water levels are managed for various purposes that can cause water levels in the reservoir or downstream to rise or fall in very short periods of time, such as when hydropower facilities release water during peak energy demand periods.

Drought can also severely impact Texas fawnsfoot populations. Central Texas, including the Colorado and Brazos River basins, experienced a major drought in the late 1970s (Lewis and Oliveria 1979, p. 243). Near record dry conditions in 2008 followed by a pattern of below-normal rainfall during the winter and spring of 2009 led to one of the worst droughts in recorded history for most of central Texas, including the range of the Texas fawnsfoot (Nielsen-Gammon and

McRoberts 2009, p. 2). This drought's severity was exacerbated by abnormally high air temperatures, a likely effect of climate change, which has already increased average air temperatures in Texas by at least 1 °C (1.8 °F) (Nielsen-Gammon and McRoberts 2009, p. 22). Instream flows throughout the Colorado River basin during this drought were significantly reduced (USGS 2011c, p. 1), and Texas fawnsfoot populations in areas with reduced water levels may have been negatively affected. Central Texas is currently experiencing another extreme drought, with rainfall between October 2010 and July 2011 being the lowest on record during those months (LCRA 2011c, p. 1); the effects of this drought are being observed but are not yet fully known. Droughts result in a decrease in water depth and flow velocity, which reduces food and oxygen delivery. As droughts persist, mussels face hypoxia, elevated water temperature and, ultimately, stranding (Golladay *et al.* 2004, p. 501).

We do not know the extent of the impacts of stream dewatering on the Texas fawnsfoot; however, because several populations are small and isolated, the loss of numerous individuals at a site can have dramatic consequences to the population. Hydropower facilities, construction, and drought are occurring throughout the range of the Texas fawnsfoot; therefore, the effects of dewatering are ongoing and unlikely to decrease, resulting in significant threats to the Texas fawnsfoot.

Sand and Gravel Mining

For general information on the effects of sand and gravel mining on freshwater mussels, please refer to "Sand and Gravel Mining" in Factor A under *Five-Factor Evaluation for Texas Fatmucket*.

The Brazos River has a long history of sand mining, particularly in the lower river, and channel morphology changes have been attributed to destabilization due to instream sand mining in the area (USGS 2001, p. 27). The removal of sand from within the river creates sediment traps during periods of high flow, which causes scouring and erosion downstream (USGS 2001, p. 27). A gravel dredging operation in the Brazos River has been documented as depositing sediment as far as 1.6 km (1 mile) downstream (Forshage and Carter 1973, p. 697). Accelerated stream bank erosion and downcutting of streambeds are common effects of instream sand and gravel mining, as is the mobilization of fine sediments during sand and gravel extraction (Roell 1999, p. 7).

Within the current range of Texas fawnsfoot, TPWD has issued permits for four sand mining activities in the Brazos River basin (Austin, Bosque, and Fort Bend Counties) (TPWD 2004, p. 1; 2007b, p. 1; 2008b, p. 1; 2010b, p. 1). All of the permits allow for the repeated removal of sand and gravel at various locations within a stream. The lower Brazos River, near where these mining activities are occurring, contains a small Texas fawnsfoot population.

The Texas fawnsfoot population in the lower Brazos River is likely threatened by sand and gravel mining. These activities occur over a long period of time, destabilizing habitat both upstream and downstream, which decreases the likelihood of recolonization after the activity has been completed. Therefore, the effects of sand and gravel mining are an ongoing threat to the Texas fawnsfoot.

Chemical Contaminants

For general information on the effects of chemical contaminants on freshwater mussels, please refer to "Chemical Contaminants" under Factor A under Five-Factor Evaluation for Texas Fatmucket.

As with other freshwater mussels, the Texas fawnsfoot is also affected by chemical contaminants. TCEQ data for 2010 indicated that 26 of the 98 assessed water bodies within Colorado River basin and 81 of approximately 124 assessed water bodies within Brazos River basin did not meet surface water quality standards and were classified as 303(d) impaired Water Bodies (Texas Clean Rivers Program 2010a, p. 5; TCEQ 2010c, pp. 1–106). These water bodies were impaired with dissolved solids, nitrites, nitrates, bacteria, low dissolved oxygen, aluminum, sulfates, selenium, chloride, orthophosphorus, phosphorus, Chlorophyll a, and low pH associated with agricultural, urban, municipal, and industrial runoff. Of these, nitrates and low dissolved oxygen pose a threat to Texas fawnsfoot, as discussed above.

In 2010, crude oil overflowed into Keechi Creek in Leon County, a tributary to Navasota River (National Response Center 2010, p. 2). This location is upstream of one of the few remaining Texas fawnsfoot populations. Numerous other spills have occurred within the range of the Texas fawnsfoot. These can occur from on site accidents (tank, pipeline spills) or from tanker truck accidents within watersheds occupied by Texas fawnsfoot. For example, oil has spilled into the Brazos River a number of times. As much as 320,000 L (84,000 gal) of crude oil was spilled in the Brazos River in 1991 (Associated Press 1991, p. 1). In June

2010, flooding of holding ponds adjacent to oil drilling operations leaked oil into Thompson Creek and subsequently into the Brazos River. Also, in July 2010, oil pipelines burst and released approximately 165 barrels of crude oil into the upper Brazos River (Joiner 2010, p. 1).

Agricultural pesticides and emerging contaminants are likely also present in streams inhabited by Texas fawnsfoot. There are 53 wastewater treatment plants permitted to discharge into the Brazos River basin (Valenti and Brooks 2008, p. 12); the outfalls from these treatment plants have not been tested to determine if they contain contaminants of note.

Chemical contaminants, such as oil, ammonia, copper, mercury, nutrients, pesticides, and other compounds are currently a threat to the Texas fawnsfoot. The species is vulnerable to acute contamination from spills as well as chronic contaminant exposure, which is occurring rangewide.

Summary of Factor A

The reduction in numbers and range of the Texas fawnsfoot is primarily the result of the long-lasting effects of habitat alterations such as the effects of impoundments, sedimentation, sand and gravel mining, and chemical contaminants. Impoundments occur throughout the range of the species and have far-reaching effects both up- and downstream. Both the Colorado and Brazos River systems have experienced a large amount of sedimentation from agriculture, sand and gravel mining, and urban development. Sand and gravel mining affects Texas fawnsfoot habitat by increasing sedimentation and channel instability downstream and causing headcutting upstream. Chemical contaminants have been documented throughout the range of the species and may represent a significant threat to the Texas fawnsfoot. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an immediate and ongoing threat of high magnitude to the Texas fawnsfoot.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.

The Texas fawnsfoot is not a commercially valuable species and has never been harvested in Texas as a commercial mussel species (Howells 2010d, pp. 9–10). Some scientific collecting occurs but is not likely to be a significant threat to the species because it occurs only rarely. However, handling mussels can disturb gravid

females and result in glochidial loss and subsequent reproductive failure. Additionally, handling has been shown to reduce shell growth across mussel species, including several species of *Lampsilis* (Haag and Commens-Carson 2008, pp. 505–506). Repeated handling by researchers may adversely affect Texas fawnsfoot individuals, but these activities are occurring rarely and are not likely to be a threat to populations. Handling for scientific purposes contributes to the long-term conservation of the species.

We do not have any evidence of risks to the Texas fawnsfoot from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Based upon the best scientific and commercial information available, we conclude that overutilization for commercial, recreational, scientific, or educational purposes does not pose a significant threat to the Texas fawnsfoot rangewide.

Factor C. Disease and Predation.

Disease

Little is known about disease in freshwater mussels. However, disease is believed to be a contributing factor in documented mussel die-offs in other parts of the United States (Neves 1987, pp. 11–12). Diseases have not been documented or observed during any studies of Texas fawnsfoot.

Predation

Raccoons will prey on freshwater mussels stranded by low waters or deposited in shallow water or on bars following flooding or low water periods (Howells 2010c, p. 12). Predation of Texas fawnsfoot by raccoons may be occurring occasionally but there is no indication it is a significant threat to the status of the species.

Some species of fish feed on mussels, such as common carp, freshwater drum, and redear sunfish, all of which are common throughout the range of Texas fawnsfoot (Hubbs *et al.* 2008, pp. 19, 45, 53). Common species of flatworms are voracious predators of newly metamorphosed juvenile mussels of many species (Zimmerman *et al.* 2003, p. 30). Predation is a normal factor influencing the population dynamics of a healthy mussel population; however, predation may amplify declines in small populations primarily caused by other factors.

Summary of Factor C

Disease in freshwater mussels is poorly known, and we do not have any information indicating it is a threat to

the Texas fawnsfoot. Additionally, predation is a natural ecological interaction and we have no information indicating the extent of any predation is a threat to populations of Texas fawnsfoot. Based upon the best scientific and commercial information available, we conclude that disease or predation is not a threat to the Texas fawnsfoot.

Factor D. The Inadequacy of Existing Regulatory Mechanisms.

Existing regulatory mechanisms that could have an effect on threats to the Texas fawnsfoot include State and Federal laws such as Texas Threatened and Endangered Species regulations and freshwater mussel sanctuaries, State and Federal sand and gravel mining regulations, and regulation of point and non-point source pollution. For more information on the effects of State and Federal laws on the threats to freshwater mussels in central Texas, please refer to Factor D under *Five-Factor Evaluation for Texas Fatmucket*.

Summary of Factor D

Despite State and Federal laws protecting the species and water quality, the Texas fawnsfoot continues to decline due to the effects of habitat destruction, poor water quality, contaminants, and other factors. The regulatory measures described in Factor D under *Five-Factor Evaluation for Texas Fatmucket* have been insufficient to significantly reduce or remove the threats to the Texas fawnsfoot. Based upon our review of the best commercial and scientific data available, we conclude that the lack of existing regulatory mechanisms is an immediate threat of moderate magnitude to the Texas fawnsfoot.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence.

Natural and manmade factors that threaten the Texas fawnsfoot include climate change, population fragmentation and isolation, and nonnative species.

Climate Change

For general information on the effects of climate change on freshwater mussels in central Texas, please refer to "Climate Change" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. Because the range of the Texas fawnsfoot has been reduced to isolated locations, many with low population numbers, in small rivers and streams, the Texas fawnsfoot is vulnerable to climatic changes that could decrease the availability of water.

The disjunct nature of the remaining Texas fawnsfoot populations, coupled

with the limited ability of mussels to migrate, makes it unlikely that Texas fawnsfoot can adjust their range in response to changes in climate (Strayer 2008, p. 30). Climate change could affect the Texas fawnsfoot through the combined effects of global and regional climate change, along with the increased probability of long-term drought. Climate change exacerbates threats such as habitat degradation from prolonged periods of drought, increased water temperature, and the increased allocation of water for municipal, agricultural, and industrial use. Climate change may be a significant stressor that exacerbates existing threats by increasing the likelihood of prolonged drought. As such, climate change, in and of itself, may affect the Texas fawnsfoot, but the magnitude and imminence of the effects remain uncertain. Based upon our review of the best commercial and scientific data available, we conclude that the effects of climate change in the future will likely exacerbate the current and ongoing threats of habitat loss and degradation caused by other factors, as discussed above.

Population Fragmentation and Isolation

For general information on the effects of population fragmentation and isolation on freshwater mussels in central Texas, please refer to "Population Fragmentation and Isolation" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. As with many freshwater mussels, most of the remaining populations of the Texas fawnsfoot are small and geographically isolated and thus are susceptible to genetic drift, inbreeding depression, and random or chance changes to the environment, such as toxic chemical spills (Watters and Dunn 1995, pp. 257–258) or dewatering. Historically, the Texas fawnsfoot was once widespread throughout much of the Colorado and Brazos River systems when few natural barriers existed to prevent migration (via host species) among suitable habitats. The extensive impoundment of the Colorado and Brazos River basins has fragmented Texas fawnsfoot populations throughout these river systems.

Small Texas fawnsfoot populations, including those in the Brazos River, Clear Fork Brazos River, Navasota River, and Deer Creek, may be below the minimum population size required to maintain population viability into the future. These populations are more vulnerable to extirpation since they are less likely to be able to recover through recruitment from events that reduce but do not extirpate populations.

Additionally, these small populations are more vulnerable to extirpation from stochastic events, as the lack of connectivity among populations does not permit nearby populations to recolonize areas affected by intense droughts, toxic spills, or other isolated events that result in significant mussel dieoffs. While the small, isolated populations do not represent an independent threat to the species, the situation does substantially increase the risk of extirpation from the effects of all other threats, including those addressed in this analysis, and those that could occur in the future from unknown sources.

Based upon our review of the best commercial and scientific data available, we conclude that fragmentation and isolation of small remaining populations of the Texas fawnsfoot are occurring and are ongoing threats to the species throughout all of its range; these threats will continue. Further, stochastic events may play a magnified role in extirpation of small, isolated populations.

Nonnative Species

For general information on the effects of nonnative species on freshwater mussels in central Texas, please refer to "Nonnative Species" in Factor E under *Five-Factor Evaluation for Texas Fatmucket*. As with other freshwater mussels, the Texas fawnsfoot is threatened by nonnative species. Various nonnative aquatic species pose a threat to the Texas fawnsfoot, including golden algae, zebra mussels, and black carp. Of these, golden algae has been responsible for killing more than two million fish in the Colorado River since 1989 (TPWD 2010a, p. 1). Although mussel kills due to golden algae have not been recorded, we expect golden algae to negatively affect mussel populations through loss of host fish and direct toxicity. Zebra mussels and black carp do not currently occur within the range of the Texas fawnsfoot, although both are found in Texas and could be introduced to the Brazos and Colorado Rivers in the future. Based on population responses of other mussel species that overlap with zebra mussels and black carp in similar river conditions, we conclude that the introduction of zebra mussels or black carp into the range of smooth pimpleback would be devastating to the species.

Based upon our review of the best commercial and scientific data available, we conclude that golden algae is an ongoing threat to the Texas fawnsfoot, and other nonnative species, such as zebra mussels and black carp,

are a potential threat to the Texas fawnsfoot that is likely to increase as these exotic species expand their occupancy within the range of the Texas fawnsfoot.

Summary of Factor E

The effects of climate change, while difficult to quantify at this time, are likely to exacerbate the current and ongoing threat of habitat loss caused by other factors, and the small sizes and fragmented nature of the remaining populations render them more vulnerable to extirpation. In addition, nonnative species, such as golden algae, currently threaten the Texas fatmucket, and the potential introduction of zebra mussels and black carp are potential future threats. Based upon our review of the best commercial and scientific data available, we conclude that other natural or manmade factors are immediate threats of moderate magnitude to the Texas fawnsfoot.

Finding for Texas Fawnsfoot

As required by the Act, we considered the five factors in assessing whether the Texas fawnsfoot 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 the Texas fawnsfoot. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Texas fawnsfoot experts and other Federal and State agencies.

This status review identifies threats to the Texas fawnsfoot attributable to Factors A, D, and E. The primary threat to the species is from habitat destruction and modification (Factor A) from impoundments, which scour riverbeds, thereby removing mussel habitat, decrease water quality, modify stream flows, and restrict fish host migration and distribution of freshwater mussels. Additional threats under Factor A include sedimentation, dewatering, sand and gravel mining, and chemical contaminants. Also, most of these threats may be exacerbated by the current and projected effects of climate change (discussed under Factor E). Threats to the Texas fawnsfoot are not being adequately addressed through existing regulatory mechanisms (Factor D). Because of the limited distribution of this endemic species and its lack of mobility, these threats are likely to lead to the extinction of the Texas fawnsfoot in the foreseeable future.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the

Texas fawnsfoot under the Act is warranted. We will make a determination on the status of the species as threatened or endangered when we complete a proposed listing determination. When we complete a proposed listing determination, we will examine whether the species may be endangered or threatened throughout all of its range or whether the species may be endangered or threatened in a significant portion of its range. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and progress is being made to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the Texas fawnsfoot at risk of extinction now such that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act is warranted. We determined that issuing an emergency regulation temporarily listing the species is not warranted for the Texas fawnsfoot at this time, because we have not identified a threat or activity that poses a significant risk, such that losses to the species during the normal listing process would endanger the continued existence of the entire species. However, if at any time we determine that issuing an emergency regulation temporarily listing the Texas fawnsfoot is warranted, we will initiate this action at that time.

Listing Priority Number for Texas Fawnsfoot

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered and Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled "Endangered and Threatened Species Listing and Recovery Priority Guidelines" address the immediacy and magnitude of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates).

As a result of our analysis of the best available scientific and commercial information, we have assigned the Texas fawnsfoot an LPN of 2, based on our finding that the species faces threats that are of high magnitude and are

imminent. These threats include habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants; other natural or manmade factors such as climate change, small, isolated populations, and nonnative species; and the fact that the threats to the species are not being adequately addressed by existing regulatory mechanisms. Our rationale for assigning the Texas fawnsfoot an LPN of 2 is outlined below.

We consider the threats that the Texas fawnsfoot faces to be high in magnitude. Habitat loss and degradation from impoundments, sedimentation, sand and gravel mining, and chemical contaminants are widespread throughout the range of the Texas fawnsfoot and profoundly affect its habitat. Remaining populations are small, isolated, and highly vulnerable to stochastic events.

Under our LPN guidelines, the second criterion we consider in assigning a listing priority is the immediacy of threats. We consider the threats to the Texas fawnsfoot as described under Factors A, D, and E in the *Five-Factor Evaluation for Texas Fawnsfoot* section to be imminent because these threats are ongoing and will continue in the foreseeable future. Habitat loss and destruction has already occurred and will continue as the human population continues to grow in central Texas. The Texas fawnsfoot populations may already be below the minimum viable population requirement, which would cause a reduction in the number of populations and an increase in the species' vulnerability to extinction. These threats are exacerbated by climate change, which will increase the frequency and magnitude of droughts. Therefore, we consider these threats to be imminent.

Thirdly, the Texas fawnsfoot is a valid taxon at the species level and, therefore, receives a higher priority than subspecies, but a lower priority than species in a monotypic genus. Therefore, we assigned Texas fawnsfoot an LPN of 2. We will continue to monitor the threats to the Texas fawnsfoot and the species' status on an annual basis, and should the magnitude or imminence of the threats change, we will revisit our assessment of the LPN.

While we conclude that listing the Texas fawnsfoot is warranted, an immediate proposal to list this species is precluded by other higher priority listings, which we address in the Preclusion and Expedition Progress section below. Because we have assigned the Texas fawnsfoot an LPN of 2, work on a proposed listing

determination for the species is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing

determinations for those species that were proposed for listing with funds from Fiscal Year (FY) 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual "resubmitted" petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day

finding is \$39,276; for a 12-month finding, \$100,690; for a proposed rule with critical habitat, \$345,000; and for a final listing rule with critical habitat, \$305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105-163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107-103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing

activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97-304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were "not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise." Although that statement appeared to refer specifically to the "to the maximum extent practicable" limitation on the 90-day deadline for making a "substantial information" finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112-10), which provides funding through September 30, 2011. The Service has \$20,902,000 for the listing program. Of that, \$9,472,000 is being used for determinations of critical habitat for already listed species. Also \$500,000 is appropriated for foreign species listings under the Act. The Service thus has \$10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the

Service’s listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service is only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using \$1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only \$500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service’s FY 2011 Allocation Table (part of our record).

For the above reasons, funding proposed listing determinations for the Texas fatmucket, golden orb, smooth pimpleback, Texas pimpleback, and Texas fawnsfoot is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (*i.e.*, candidate species with LPNs of 1).

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1

to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (“Top 40”). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protections of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to

reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our “precluded” finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed delisting rules for three species.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR Pages
10/6/2010	Endangered Status for the Altamaha Spiny mussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690
10/7/2010	12-Month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting)	75 FR 66481–66552
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered	Proposed Listing Endangered	75 FR 67551–67583

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
11/4/2010	12-Month Finding on a Petition to List <i>Cirsium wrightii</i> (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944
12/14/2010	Endangered Status for Dunes Sagebrush Lizard	Proposed Listing Endangered	75 FR 77801–77817
12/14/2010	12-Month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146
12/15/2010	12-Month Finding on a Petition to List <i>Astragalus microcymbus</i> and <i>Astragalus schmolliae</i> as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies <i>Calidris canutus roselaari</i> as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679
2/17/2011	90-Day Finding on a Petition to List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 9309–9318
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692
2/22/2011	12-Month Finding on a Petition to List <i>Solanum conocarpum</i> (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003
2/23/2011	12-Month Finding on a Petition to List <i>Astragalus hamiltonii</i> , <i>Penstemon flowersii</i> , <i>Eriogonum soredium</i> , <i>Lepidium ostleri</i> , and <i>Trifolium friscanum</i> as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 12683–12690
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–13122
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 18138–18143
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701
4/5/2011	90-Day Finding on a Petition to List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 18701–18706
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488
4/13/2011	90-Day Finding on a Petition to List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 20613–20622
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 20911–20918
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 23256–23265

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799
5/25/2011	90-Day Finding on a Petition to List the Spot-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 30082–30087
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (<i>Capra falconeri jerdoni</i>) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 31903–31906
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 31920–31926
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929
6/9/2011	12-Month Finding on a Petition to List <i>Abronia ammophila</i> , <i>Agrostis rossiae</i> , <i>Astragalus proimanthus</i> , <i>Boechera (Arabis) pusilla</i> , and <i>Penstemon gibbensii</i> as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053
6/21/2011	Revised 90-Day Finding on a Petition to Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068
6/28/2011	12-Month Finding on a Petition to List <i>Castanea pumila</i> var. <i>ozarkensis</i> as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 38095–38106
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 40868–40871
7/19/2011	12-Month Finding on a Petition to List <i>Pinus albicaulis</i> as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654
7/19/2011	Petition to List Grand Canyon Cave Pseudoscorpion ..	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658
7/26/2011	12-Month Finding on a Petition to List the Giant Palouse Earthworm (<i>Drilolerius americanus</i>) as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44547–44564
7/26/2011	12-Month Finding on a Petition to List the Frigid Ambersnail as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 44566–44569
7/27/2011	Determination of Endangered Status for <i>Ipomopsis polyantha</i> (Pagosa Skyrocket) and Threatened Status for <i>Penstemon debilis</i> (Parachute Beardtongue) and <i>Phacelia submutica</i> (DeBeque Phacelia).	Final Listing Endangered, Threatened	76 FR 45054–45075
7/27/2011	12-Month Finding on a Petition to List the Gopher Tortoise as Threatened in the Eastern Portion of its Range.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 45130–45162
8/2/2011	Proposed Endangered Status for the Chupadera Springsnail (<i>Pyrgulopsis chupaderae</i>) and Proposed Designation of Critical Habitat.	Proposed Listing Endangered	76 FR 46218–46234
8/2/2011	90-Day Finding on a Petition to List the Straight Snowfly and Idaho Snowfly as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 46238–46251
8/2/2011	12-Month Finding on a Petition to List the Redrock Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	76 FR 46251–46266
8/2/2011	Listing 23 Species on Oahu as Endangered and Designating Critical Habitat for 124 Species.	Proposed Listing Endangered	76 FR 46362–46594
8/4/2011	90-Day Finding on a Petition to List Six Sand Dune Beetles as Endangered or Threatened.	Notice of 90-day Petition Finding, Not substantial and substantial.	76 FR 47123–47133
8/9/2011	Endangered Status for the Cumberland Darter, Rush Darter, Yellowcheek Darter, Chucky Madtom, and Laurel Dace.	Final Listing Endangered	76 FR 48722–48741
8/9/2011	12-Month Finding on a Petition to List the Nueces River and Plateau Shiners as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 48777–48788

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR Pages
8/9/2011	Four Foreign Parrot Species [crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo].	Proposed Listing Endangered and Threatened; Notice of 12-month petition finding, Not warranted.	76 FR 49202–49236
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered Similarity of Appearance.	76 FR 49408–49412
8/10/2011	90-Day Finding on a Petition to List the Saltmarsh Topminnow as Threatened or Endangered Under the Endangered Species Act.	Notice of 90-day Petition Finding, Substantial	76 FR 49412–49417
8/10/2011	Proposed Listing of the Miami Blue Butterfly as Endangered, and Proposed Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Proposed Listing Endangered and Similarity of Appearance.	76 FR 49408–49412
8/10/2011	Emergency Listing of the Miami Blue Butterfly as Endangered, and Emergency Listing of the Cassius Blue, Ceraunus Blue, and Nickerbean Blue Butterflies as Threatened Due to Similarity of Appearance to the Miami Blue Butterfly.	Emergency Listing Endangered and Similarity of Appearance.	76 FR 49542–49567
8/11/2011	Listing Six Foreign Birds as Endangered Throughout Their Range.	Final Listing Endangered	76 FR 50052–50080
8/17/2011	90-Day Finding on a Petition to List the Leona’s Little Blue Butterfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 50971–50979
9/01/2011	90-Day Finding on a Petition to List All Chimpanzees (<i>Pan troglodytes</i>) as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 54423–54425
9/6/2011	12-Month Finding on Five Petitions to List Seven Species of Hawaiian Yellow-faced Bees as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 55170–55203
9/8/2011	12-Month Petition Finding and Proposed Listing of <i>Arctostaphylos franciscana</i> as Endangered.	Notice of 12-month petition finding, Warranted; Proposed Listing Endangered.	76 FR 55623–55638
9/8/2011	90-Day Finding on a Petition to List the Snowy Plover and Reclassify the Wintering Population of Piping Plover.	Notice of 90-day Petition Finding, Not substantial.	76 FR 55638–55641
9/13/2011	90-Day Finding on a Petition to List the Franklin’s Bumble Bee as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR
9/13/2011	90-Day Finding on a Petition to List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered with Critical Habitat.	Notice of 90-day Petition Finding, Substantial and Not substantial.	76 FR

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet

statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with

a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) ⁵	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw) ⁵ .	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions with Statutory Deadlines	
Casey’s june beetle	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
Ozark hellbender ⁴	Final listing determination.
Altamaha spiny mussel ³	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Loggerhead sea turtle (assist National Marine Fisheries Service) ⁵	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) ⁵	Final listing determination.
CA golden trout ⁴	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard ¹	12-month petition finding.
Kokanee—Lake Sammamish population ¹	12-month petition finding.
Cactus ferruginous pygmy-owl ¹	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Platte River caddisfly (from 206 species petition) ⁵	12-month petition finding.
3 Texas moths (<i>Ursia furtiva</i> , <i>Sphingicampa blanchardi</i> , <i>Agapema galbina</i>) (from 475 species petition).	12-month petition finding.
3 South Arizona plants (<i>Erigeron piscaticus</i> , <i>Astragalus hypoxylus</i> , <i>Amoreuxia gonzalezii</i>) (from 475 species petition).	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Mohave Ground Squirrel ¹	12-month petition finding.
Western gull-billed tern	12-month petition finding.
OK grass pink (<i>Calopogon oklahomensis</i>) ¹	12-month petition finding.
Ashy storm-petrel ⁵	12-month petition finding.
Honduran emerald	12-month petition finding.
Eagle Lake trout ¹	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) ¹	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
404 Southeast species	90-day petition finding.
American eel ⁴	90-day petition finding.
Aztec gilia ⁵	90-day petition finding.
White-tailed ptarmigan ⁵	90-day petition finding.
San Bernardino flying squirrel ⁵	90-day petition finding.
Bicknell's thrush ⁵	90-day petition finding.
Sonoran talussnail ⁵	90-day petition finding.
2 AZ Sky Island plants (<i>Graptopetalum bartrami</i> & <i>Pectis imberbis</i>) ⁵	90-day petition finding.
I'iwi ⁵	90-day petition finding.
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (<i>Zapada glacier</i>)	90-day petition finding.
Thermophilic ostracod (<i>Potamocypis hunteri</i>)	90-day petition finding.
Sierra Nevada red fox ⁵	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population) ⁵	90-day petition finding.
Alexander Archipelago wolf ⁵	90-day petition finding.

High-Priority Listing Actions

20 Maui-Nui candidate species ² (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)) ⁴ .	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) ⁴	Proposed listing.
Grotto sculpin (LPN = 2) ⁴	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) ⁴	Proposed listing.
Diamond darter (LPN = 2) ⁴	Proposed listing.
Gunnison sage-grouse (LPN = 2) ⁴	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) ⁵	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)) ³ .	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)) ³ .	Proposed listing.
2 Texas plants (Texas golden gladeceess (<i>Leavenworthia texana</i>) (LPN = 2), Neches River rose-mallow (<i>Hibiscus dasycalyx</i>) (LPN = 2)) ³ .	Proposed listing.
4 AZ plants (<i>Acuna cactus</i> (<i>Echinomastus erectocentrus</i> var. <i>acunensis</i>) (LPN = 3), Fickeisen plains cactus (<i>Pediocactus peeblesianus fickeiseniae</i>) (LPN = 3), Lemmon fleabane (<i>Erigeron lemmonii</i>) (LPN = 8), Gierisch mallow (<i>Sphaeralcea gierischii</i>) (LPN = 2)) ⁵ .	Proposed listing.
FL bonneted bat (LPN = 2) ³	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (<i>Consolea corallicola</i>) (LPN = 2), shellmound applecactus (<i>Harrisia</i> (= <i>Cereus</i>) <i>aboriginum</i> (= <i>gracilis</i>)) (LPN = 2), Cape Sable thoroughwort (<i>Chromolaena frustrata</i>) (LPN = 2)) ⁵ .	Proposed listing.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
21 Big Island (HI) species ⁵ (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (<i>Thomomys mazama</i> ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)) ³ .	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2)) ⁵	Proposed listing.
Jemez Mountain salamander (LPN = 2) ⁵	Proposed listing.

¹ Funds for listing actions for these species were provided in previous FYs.
² Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
³ Partially funded with FY 2010 funds and FY 2011 funds.
⁴ Funded with FY 2010 funds.
⁵ Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Texas fatmucket, golden orb, smooth pimpleback, Texas pimpleback, and Texas fawnsfoot will be added to the list of candidate species upon publication of this 12-month finding. We will continue to evaluate these species as new information becomes available.

Continuing review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing determination for Texas fatmucket, golden orb, smooth pimpleback, Texas pimpleback, and Texas fawnsfoot will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request

from the Clear Lake Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this notice are the staff members from the Southwest Region of the U.S. Fish and Wildlife Service.

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 26, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011-25471 Filed 10-5-11; 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; 12-Month Finding on a Petition To List the Mohave Ground Squirrel as Endangered or Threatened; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2010-0006;
92210-1111-0000-B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Mohave Ground Squirrel as Endangered or Threatened

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 Mohave ground squirrel (*Spermophilus mohavensis*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that listing the Mohave ground squirrel is not warranted at this time. However, we ask the public to continue to submit to us any new information that becomes available concerning the threats to the Mohave ground squirrel or its habitat at any time.

DATES: The finding announced in this document was made on October 6, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2010-0006 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. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: Michael McCrary, Listing and Recovery Program Coordinator, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES**); by telephone at 805-644-1766; or by facsimile at 805-644-3958. If you use a telecommunications device for the deaf (TDD), 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 may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, 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 December 13, 1993, the Service received a petition dated December 6, 1993, from Dr. Glenn R. Stewart of California Polytechnic State University, Pomona, California, requesting the Service list the Mohave ground squirrel as a threatened species. At that time, the species was a category 2 candidate (November 15, 1994; 59 FR 58982), and was first included in this category on September 18, 1985. Category 2 included taxa for which information in the Service's possession indicated that listing the species as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed listing rule. On September 7, 1995, we published our 90-day petition finding, which determined that the 1993 petition did not present substantial information indicating that the petitioned action may be warranted (60 FR 46569).

On September 5, 2005, we received a petition, dated August 30, 2005, from the Defenders of Wildlife and Dr. Glenn R. Stewart to list the Mohave ground squirrel as an endangered species in accordance with section 4 of the Act. It also requested that critical habitat be designated concurrent with the listing of the Mohave ground squirrel. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a).

On April 27, 2010, the Service made its 90-day finding (75 FR 22063), concluding that the petition presented substantial scientific or commercial

information to indicate that listing the Mohave ground squirrel may be warranted, announced the initiation of a status review of this species, and solicited comments and information to be provided in connection with the status review by June 28, 2010. This notice constitutes our 12-month finding regarding the petition to list the Mohave ground squirrel.

Species Information

Species Description

The Mohave ground squirrel is a medium-sized squirrel. Total length, including the tail, is about 9 inches (in) (23 centimeters (cm)), tail length is about 2.5 in (6.4 cm), and weight is about 3.5 ounces (104 grams). The upper body is grayish brown, pinkish gray, cinnamon gray, and pinkish cinnamon, without stripes or fleckings. The underparts of the body and the tail are silvery white and the tail is bushy (Grinnell and Dixon 1918, p. 667). The skin is darkly pigmented and dorsal hair tips are multi-banded. The Mohave ground squirrel has a winter and summer pelage (coat). In summer the pelage is coarser and shorter, the sides of the face paler, and the underbelly whiter than the winter pelage. The two sexes appear to be alike in color and measurements (Grinnell and Dixon 1918, p. 667).

Two other species of small ground squirrels occur within the range of the Mohave ground squirrel, the antelope ground squirrel (*Ammospermophilus leucurus*) and the round-tailed ground squirrel (*Xerospermophilus tereticaudus*). The three species are different in appearance. Although similar in size to the Mohave ground squirrel, the antelope ground squirrel is grayish brown in color, with a white side stripe and a black band on the underside of the tail near the tip (Ingles 1965, pp. 169-171). The round-tailed ground squirrel has a unicolored tail that is cylindrical or round and not bushy, and a larger body than the Mohave ground squirrel (Ingles 1965, p. 171). However, its skull is significantly smaller than that of the Mohave ground squirrel in 18 of 20 cranial characteristics (Best 1995, p. 508). Mohave and antelope ground squirrels occur sympatrically (occupying the same or overlapping geographic areas without interbreeding) in the same habitat (Aardahl and Roush 1985, p. 20), while round-tailed ground squirrels overlap only along the eastern edge of the Mohave ground squirrel's range (see "Nomenclature and Taxonomy" section below).

Nomenclature and Taxonomy

The scientific name of the Mohave ground squirrel was changed from *Spermophilus mohavensis* to *Xerospermophilus mohavensis* with the publication of a review of the available research on morphological, genetic, cytogenetic, ecological, and behavioral attributes in the genus *Spermophilus* (Helgen *et al.* 2009, p. 273).

The Mohave ground squirrel is a distinct, full species with no recognized subspecies. It was discovered in 1886 by Frank Stephens (Grinnell and Dixon 1918, p. 667) and described by Merriam (1889, p. 15). The type specimen is from near Rabbit Springs, San Bernardino County, California, about 15 miles (mi) (24.1 kilometers (km)) east of Hesperia (Grinnell and Dixon 1918, p. 667).

The closest relative of the Mohave ground squirrel is the round-tailed ground squirrel (Bell *et al.* 2009, p. 5; Helgen *et al.* 2009, p. 293). Until 1977, the ranges of these two species were thought to be adjacent to each other but not overlapping (Hall and Kelson 1959, p. 358). However, Wessman (1977, p. 10) determined that the eastern edge of the geographic range of the Mohave ground squirrel overlapped the western edge of the round-tailed ground squirrel (Wessman 1977, pp. 12–13). He identified several areas of contact between the two species and identified one area near Helendale, San Bernardino County, California, as a possible zone of hybridization between the species. He observed morphological characteristics of both species exhibited in a few of the squirrels captured there (*e.g.*, long, narrow tail with white on the underside) (Wessman 1977, p. 13). However, in 2009, Bell *et al.* (p. 11) found no evidence of mitochondrial DNA introgression between the Mohave ground squirrel and the round-tailed ground squirrel, including the three individuals identified as backcross individuals based on allozyme (form of an enzyme that differs in amino acid sequence) and karyotypic (the shape, type, number, and order of a species' chromosomes) data from Hafner and Yates (1983). We are not aware of any information that would indicate hybridization occurs with the sympatric antelope ground squirrel.

Range and Distribution

The Mohave ground squirrel is endemic to the western part of the Mojave Desert, in portions of Inyo, Kern, Los Angeles, and San Bernardino Counties, California. It has one of the smallest ranges of any species of ground squirrel in North America (Hoyt 1972, p. 3). We define range as the geographical

area within which a species may be found.

Aspects of the Mohave ground squirrel's biology and behavior make individuals of the species difficult to observe, trap, and count, which in part explains why the range of the species has increased over time (see below). Mohave ground squirrels are only active and above ground for part of the year (generally February through August) and therefore can only be trapped and observed during this time. They spend much of the year underground and in a state of dormancy (see "Active Season and Dormancy" section). The length of the active season and movements of Mohave ground squirrels may also be affected by rainfall amounts. The number of individuals in an area appears to decline during dry years, and movements and home range size shrink (Harris and Leitner 2004, p. 521). Thus, if traps are set during a dry year, the reduced movements of Mohave ground squirrels and reduced densities or local extirpations make it less likely that the traps are located when and where they will capture Mohave ground squirrels. Conversely, if traps are set during a wet year when home ranges are larger, the Mohave ground squirrel may avoid the baited traps because of the increased availability of forage.

Because most surveys for the Mohave ground squirrel have been only 1 year in duration, this limited survey duration makes it difficult to assess population trend for a species whose numbers, movements, and "trapability" can fluctuate greatly among years (Brooks and Matchett 2002, p. 171). These factors in combination have made it difficult to determine the boundaries of the species' range, its distribution within the range, and population trends (see "Abundance and Trends" section). This has been further complicated because the vast majority of the information currently available on the distribution and abundance of Mohave ground squirrels is based on the California Department of Fish and Game (CDFG) survey protocol, which has been known to not detect squirrels when other methods have shown them to be present (see "Abundance and Trend" section below).

In 1938, Howell (1938, p. 184) published a map of the range of the Mohave ground squirrel that included the western Antelope Valley to an area 15 mi (25.2 km) west of Barstow. In 1977, Wessman surveyed for the Mohave ground squirrel along much of its eastern boundary and found the species' range extended 1,152,000 ac (466,200 ha) farther east and south than

previously reported (Wessman 1977, p. 4).

For this 12-month finding, the Service is defining the range of the Mohave ground squirrel as about 5,319,000 acres (ac) (2,152,532 hectares (ha)) (Service calculations) (see Map 1). The range is bounded on the south and west by the San Bernardino, San Gabriel, Tehachapi, and Sierra Nevada mountain ranges, although the species occurs in canyons in the eastern foothills of the Sierra Nevada up to 5,600 feet (ft) (1,706 meters (m)) (Gustafson 1993, pp. 56–57; Laabs 1998, p. 1). The range is bounded on the north and east by Owens Lake and the Mojave River/Lucerne Valley, respectively (Leitner 2008, p. 18). Howell (1938, p. 184) and Aardahl and Roush (1985, p. 3) included the Antelope Valley west of Palmdale and Lancaster in the range of the Mohave ground squirrel (see Map 1).

The range map in the petition did not include the western Antelope Valley because there are no definite records of the species in that area. However, for several reasons, we included the western Antelope Valley in our range of the Mohave ground squirrel. First, older reports and scientific papers on the Mohave ground squirrel included this area in the range of the species (*e.g.*, Howell 1938, p. 184; Aardahl and Roush 1985, p. 3). Second, although portions of this area are now used for agriculture and livestock grazing, suitable habitat still remains and may be connected to currently occupied habitat to the east. Third, early museum collections of the Mohave ground squirrel did not record precise locality data and often used the closest town for reference such as "near Palmdale." Frequently, the closest town was several miles away and the locality information vague. Fourth, recent visual observations of Mohave ground squirrels occurred southwest of Mojave (see Map 1) (Leitner 2008, p. 7). Thus, there is some indication that the Mohave ground squirrel may have occurred, and may continue to occur, in the western portion of the Antelope Valley. Although areas of natural habitat within the range of the Mohave ground squirrel have been lost or degraded from human activity (see Factor A), the boundary of the current range is larger than reported by Howell in 1938.

The range of the Mohave ground squirrel may be larger than defined by the Service, as there have been recent sightings beyond the area defined by the Service as the range of the Mohave ground squirrel. Although the Mohave ground squirrel has previously been reported at elevations up to 5,600 ft (1,706 m) in the canyons in the eastern foothills of the Sierra Nevada that open

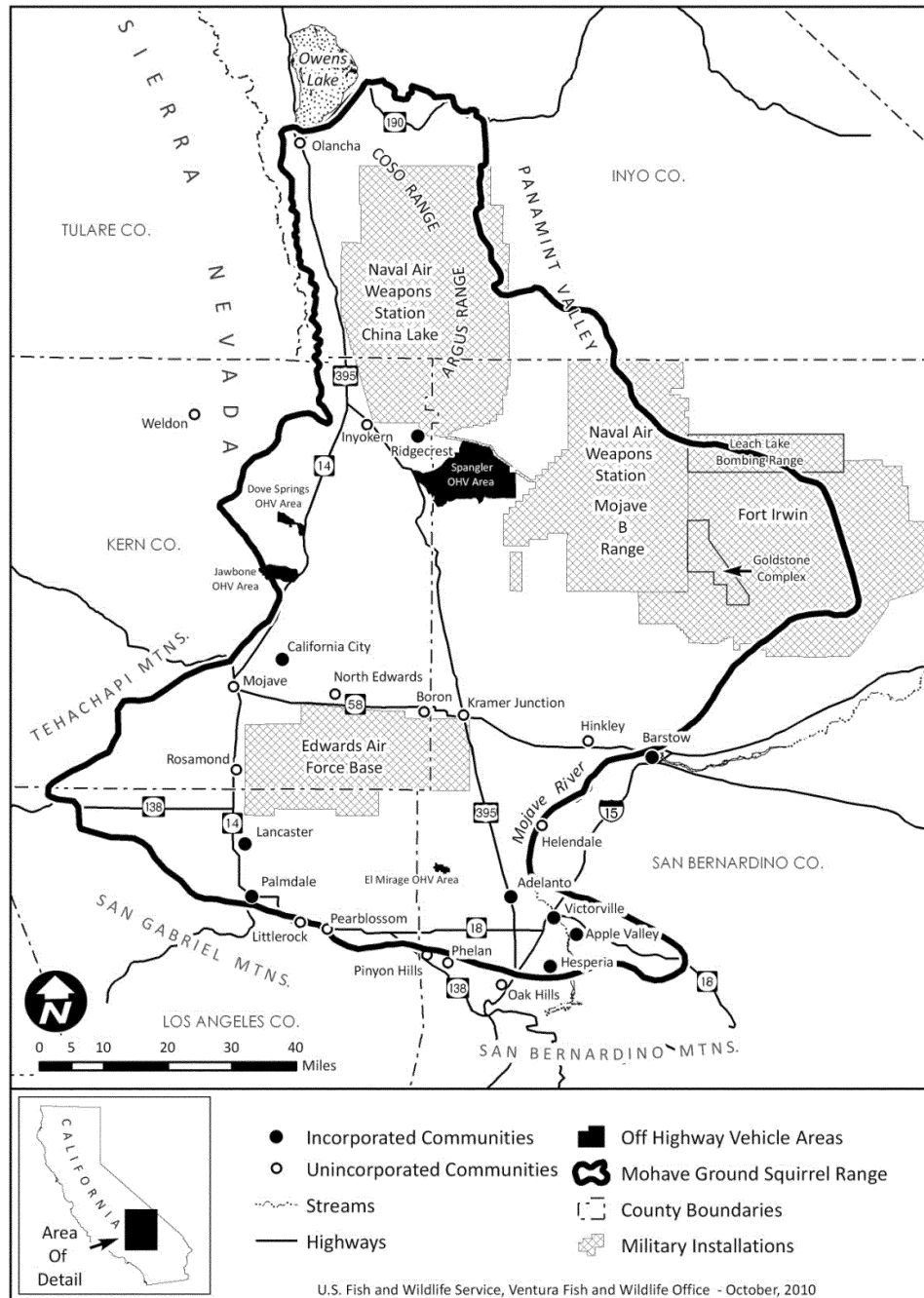
to the Mojave Desert (Gustafson 1993, pp. 56-57; Laabs 1998, p. 1), a biologist recently reported a Mohave ground squirrel about 10 mi (16.1 km) south of Weldon (see Map 1) in an interior valley

in the Tehachapi Mountains (California Natural Diversity Database 2007). Another biologist sighted a Mohave ground squirrel in the Panamint Valley, which is about 5 mi (8 km) outside the

northeastern edge of the range (see Map 1) (Threlloff 2007 *in litt.*, p.1), whereas Aardahl

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Map 1. Place names, major roads, military bases, and off-highway vehicle areas in the range of the Mohave ground squirrel (calculated by the Service).



and Roush were unsuccessful in capturing a squirrel here in 1985 (Gustafson 1993, p. 56). We are not using these two sightings in our range calculations because they are anecdotal and fall outside the areas previously published about the range of the Mohave ground squirrel. Although we have not included these two sightings, they indicate that the range of the Mohave ground squirrel may actually be larger than previously indicated on range maps or currently defined by the Service.

Within its range, the Mohave ground squirrel has a patchy distribution (Hoyt 1972, p. 7), likely caused by differences in rainfall, terrain (Zembal and Gall 1980, p. 348), elevation, temperature (Gustafson 1993, pp. 56–57), and soils and vegetation (Harris and Leitner 2005, p. 189). The habitat requirements of the Mohave ground squirrel for feeding, breeding, and sheltering are not uniformly spaced throughout its range.

Leitner (2008, pp. i–A2) collected and analyzed 1,236 unpublished observations, field studies, and surveys from 1998 to 2007, including both positive and negative findings of trapping efforts using the CDFG survey

protocol. These surveys were usually performed in association with proposed development, because the Mohave ground squirrel is listed as threatened under the California Endangered Species Act (CESA) (see Factor D, “State Laws and Regulations”). The survey effort has been heavily weighted to the southernmost portion of the species’ range (Leitner 2008, p. 5), where most of the development in the range of the Mohave ground squirrel has occurred and is occurring (see Factor A, “Urban and Rural Development”).

Approximately 67 percent of the surveys were conducted south of State Route 58 (SR–58) (see Map 1), and almost half of all surveys were in two areas in the southernmost part of the range of the Mohave ground squirrel: The Lancaster-Palmdale area and the Adelanto area. Almost all recorded observations of Mohave ground squirrels from 1998 to 2007 have been from Edwards Air Force Base (EAFB), which is south of SR–58 (see Map 1), or from the central and northern portion of the squirrel’s range; only a few were observed in the southern end of the squirrel’s range. However, much of the

range of the Mohave ground squirrel has not been surveyed (Leitner 2008, p. 9).

Leitner (2008, p. 10) identified four areas that he labels as “core” areas for the Mohave ground squirrel. “Core” areas have the following criteria:

(1) The species has been present for a substantial period;

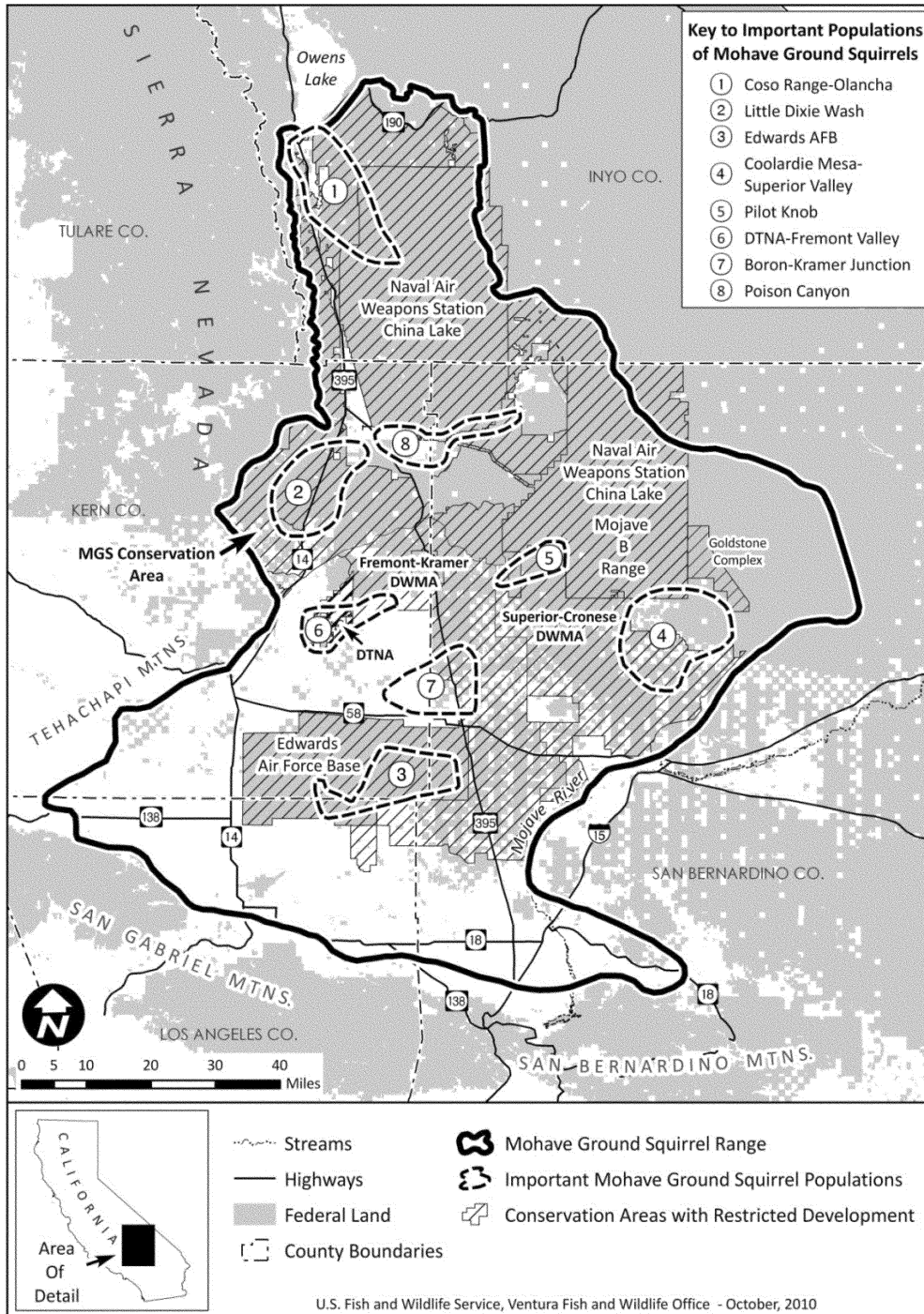
(2) The species is currently found at multiple locations; and

(3) There is a substantial number of adults representing a viable reproductive population.

Four areas that meet the above criteria are: (1) Coso Range-Olancho; (2) Little Dixie Wash; (3) EAFB; and (4) Coolgardie Mesa-Superior Valley (see Map 2). Leitner (2008, p. 1) also described four other population areas with multiple recent records of the species, although these areas are not known to have Mohave ground squirrels present for a substantial period: Pilot Knob, the Desert Tortoise Natural Area-Fremont Valley, Boron-Kramer Junction, and Poison Canyon (Leitner 2008, p. 34). Together these eight important population areas comprise about 606,000 ac (245,240 ha), or 11.4 percent of the species’ range.

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Map 2. Important Mohave ground squirrel population areas with restricted development in the range of the Mohave ground squirrel (calculated by the Service).



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Leitner has emphasized the importance of protecting and maintaining connectivity between these eight areas for the conservation of the Mohave ground squirrel (2008, p. 12). It should be noted, however, that these

areas have been identified using the data available from limited surveys for the Mohave ground squirrel. Much of the range has not been surveyed (Leitner 2008, p. 9); therefore, unsurveyed areas may support additional important

population areas for the Mohave ground squirrel. As an example of a recent discovery of an important population area, the Poison Canyon area was discovered during a 2006 survey for a proposed drainage improvement project

along a State highway (Sapphos 2006, p. 3–1).

Abundance and Trends

Data on population abundance and trend for the Mohave ground squirrel are limited (Leitner 2008, p. 8). The behavioral characteristics of the Mohave ground squirrel make it difficult to determine its presence or abundance as it spends much of the year underground (see “Active Season and Dormancy” section below). Based on his observations, Burt (1936, p. 222) estimated the density of Mohave ground squirrels in the southern part of their range at 15 to 20 animals per square mi (5 to 8 animals per square km). Most subsequent studies cannot be readily compared with Burt (1936) because they did not estimate density of animals (*i.e.*, they either reported the number of animals trapped or compared numbers trapped to individual trapping efforts (Hoyt 1972, p. 6; Recht 1977, p. 4; Wessman 1977, p. 4; Leitner 1980, pp. IV–26; Aardahl and Roush 1985, pp. 11–13; Scarry *et al.* 1996, pp. 12–17; Leitner 2001, pp. 13–18, 30–32).

The only location we are aware of where a population of Mohave ground squirrels has been studied in detail for several years is in the Coso Region in the northern portion of the species’ range (Leitner 2005, p. 3). Trapping surveys for the Mohave ground squirrel at this location were conducted from 1989 to 1996 and from 2001 to 2005. However, the estimated population density was only reported for 1990 and for the period from 1992 to 1996 because of limited sample size in other years (Leitner and Leitner 1998, pp. A–3, A–6, A–8, A–9, A–12, A–15, A–18, and A–22). The number of Mohave ground squirrels that were captured varied from year to year, ranging from 10 squirrels trapped in 2003 to 78 in 1994 (Leitner 2005, p. 3). The number of adult Mohave ground squirrels trapped was higher per year during the period 1990–1996 than during the period 2001–2004 (Leitner 2005, p. 3).

Researchers have suggested that trends in protocol survey data over time could be used to evaluate the status of the species. Brooks and Matchett (2002) analyzed the data from 19 reported studies on the Mohave ground squirrel in 1918 and during the period 1970–2001. They suggested that the Mohave ground squirrel may be undergoing a long-term decline as indicated by the decreased trapping success since the mid-1980s (Brooks and Matchett 2002, p. 176). One possible reason for decline is that Mohave ground squirrel populations appear to be sensitive to both seasonal and annual rainfall

patterns; for example, in dry years, reproduction the following spring may be unsuccessful, and population numbers and the area occupied by the species may decrease (Leitner and Leitner 1998, pp. 29–31; Harris and Leitner 2005, p. 520).

Gustafson (1993, p. 22) reported that prolonged periods of drought may result in the loss of Mohave ground squirrels in local areas, because no young may be born for one up to several years, and adult survivability is reduced by poor habitat conditions to the point where the population dies out. In general, the population dynamics of the Mohave ground squirrel appear to follow a contraction and expansion pattern, *i.e.*, there are local extirpations of squirrel populations following drought years and recolonization of these areas with consecutive wet years (Harris and Leitner 2005, p. 189). During the last few decades, more consecutive years in the western Mojave Desert have been dry versus wet (Brooks and Matchett 2002, p. 175), suggesting a trend weighted toward extirpations rather than recolonizations. However, Brooks and Matchett (2002, p. 176) suggest that factors other than, or in addition to, rainfall amount and timing seem to be affecting Mohave ground squirrel abundance, such as trapping characteristics, trapping protocols, weather conditions, or site (habitat) characteristics.

Leitner (2001, pp. 30–31) conducted a similar comparison of trapping results at 11 sites in 1980, 1999, and 2000, and at 19 sites in 2004 (Leitner 2005, p. 5). The first study showed a positive correlation between rainfall and trapping success prior to 1991, but no correlation after that. Both studies reported that trapping success has declined and concluded that this indicated a possible decline in the distribution and abundance of the Mohave ground squirrel during this period, despite periods of above-normal precipitation (Leitner 2001, p. 32; Brooks and Matchett 2002, p. 176).

However, the survey protocol is subject to potential inaccuracies, such as yielding false negative results or undersampling the population (see also Factor D, “State Laws and Regulations” section). Mohave ground squirrels are difficult to trap (Hoyt 1972, p. 7), and they have been observed approaching traps but not entering them (Leitner 2009, pers. comm.). For example, in 2009, only one Mohave ground squirrel was trapped during two surveys conducted in the Fort Irwin western expansion area (Delaney and Leitner 2009, p. 9). However, the detection rate for a video detection system, which was used at the same time as the trapping

was conducted, was much higher; the video system recorded nine Mohave ground squirrels compared to the one that was trapped (Delaney 2009, pp. 13–14).

Food Habits

The diet of the Mohave ground squirrel consists of leaves (Recht 1977, p. 75), flowers, fruits, and seeds (Leitner and Leitner 1992, p. 12; Gustafson 1993, pp. 77–83) from a variety of plants; they also feed on fungi (Burt 1936, p. 223) and arthropods (caterpillars) when available (Zemba and Gall 1980, p. 345). When available in spring, new, tender, green vegetation makes up nearly all of the diet of the Mohave ground squirrel (Best 1995, p. 6). The Mohave ground squirrel is also known to eat alfalfa (Best 1995, p. 5).

The Mohave ground squirrel forages on the ground, in the branches of shrubs, and, where present, in *Yucca brevifolia* (Joshua trees) (Johnson no date, p. 1). It caches food in its burrow for future use (Johnson no date, p. 1). It obtains water from its diet, but will drink water if available (Johnson no date, p. 1).

Recht (1977, p. 80) categorized the foraging strategy of the Mohave ground squirrel as a facultative specialist. Because the availability of food resources fluctuates seasonally and annually in the Mojave Desert, the Mohave ground squirrel specializes in certain food species for short periods, but changes the foods it consumes as their availability changes. For example, in March 1994, the diet of the Mohave ground squirrel in the northern part of its range was 90 percent shrubs, 10 percent forbs (*i.e.*, any herbaceous plant that is not grass or grasslike), and less than 1 percent nonnative annual grasses (*Schismus* and *Bromus*) (Leitner *et al.* 1995, p. 45). By April, the Mohave ground squirrel’s diet had changed to 60 percent shrubs, 35 to 40 percent forbs, and 2 percent grasses (Leitner *et al.* 1995, p. 48).

The quantity, variety, and nutritional quality of plant food sources available ultimately depend on the amount of rainfall from the preceding fall and winter (Aardahl and Roush 1985, p. 22). During drought years, there are few-to-no herbaceous native annual forbs available, and Mohave ground squirrels must then depend on shrub foliage for water and nutrition (Leitner and Leitner 1998, p. 20).

This foraging strategy provides efficiency and flexibility to maximize nutritional and water intake in a changing desert habitat (Recht 1977, p. 80). These abilities are needed, as the Mohave ground squirrel must increase

its body weight in spring and early summer to sustain itself during the dormant period of mid-summer through winter (Leitner and Leitner 1998, p. 33).

Reproduction

Female Mohave ground squirrels can breed at 1 year of age if environmental conditions are favorable (Leitner and Leitner 1998, p. 28), while males do not breed until 2 years of age or older (Leitner and Leitner 1998, p. 36).

The Mohave ground squirrel mating season occurs from mid-February to mid-March (Harris and Leitner 2004, p. 1). Mohave ground squirrel males typically emerge from dormancy in February, up to 2 weeks before females (Recht pers. comm., as cited in Gustafson 1993, p. 83). Male Mohave ground squirrels defend a territory, which females enter for mating (Recht pers. comm., as cited in Gustafson 1993, pp. 83–84). Three to four females mate and remain in the male's territory for a day or so, before returning to their respective home ranges. After a gestation period of 29 to 30 days, the young are born in the female's burrow (natal burrow) from March to May, with a peak in April. Average litter size is about six (Burt 1936, p. 224; Recht pers. comm., as cited by Leitner *et al.* 1991, p. 63) and ranges from four to nine (Best 1995, p. 3). Parental care continues through mid-May, with juveniles emerging above ground at 10 days to 2 weeks of age (Gustafson 1993, p. 84). By early May, the juveniles are active above ground and can be captured in live traps.

Reproductive success appears to be strongly influenced by rainfall. In dry years, the Mohave ground squirrel's survival strategy appears to be to forego reproductive activity and concentrate on gaining weight and fat reserves in the spring and early summer to better survive the dormant period (Leitner and Leitner 1998, p. 32). For example, Mohave ground squirrels in the Coso Range failed to reproduce successfully in 1989, 1990, and 1994, which correlated with low fall and winter precipitation and a low standing crop of annual forbs. In each of the 3 years, precipitation during the period when it normally occurs in the region (September 1 to March 31) was lower than the long-term average for the same period (average of 3.3 in (8.5 cm) versus the average of 5 in (12.7 cm), respectively) (Leitner and Leitner 1998, pp. 18–19, 21, and 29). In years when reproduction does occur, females of all age classes (including yearlings) produce young (Leitner and Leitner 1998, p. 28).

Mortality and Predation

Mohave ground squirrels can live up to 5 years or longer (Leitner and Leitner 1998, p. 28). Mortality for juveniles is high during the first year and is disproportionately higher for males than females. As a result, the juvenile population contains significantly more females than males, and the adult female-to-male ratio averages about 2.6:1, but was reported to be as high as 7:1 in one population (Leitner and Leitner 1998, p. 36).

Information on the causes of mortality in the Mohave ground squirrel is limited. We are not aware of any information on diseases in the species. Although not based on direct observation, predators are believed to include coyote (*Canis latrans*), American badger (*Taxidea taxus*), golden eagle (*Aquila chrysaetos*), red-tailed hawk (*Buteo jamaicensis*), prairie falcon (*Falco mexicanus*), common raven (*Corvus corax*), and rattlesnake (*Crotalus* sp.) (Boarman 1993, p. 2; Gustafson 1993, p. 88; Harris, pers. comm., as cited in Defenders of Wildlife and Stewart 2005, p. 15).

Mortality may also be caused by extended periods of low amounts of winter rainfall, which results in reduced availability of forage and water and increases the species' vulnerability to malnutrition, disease, and starvation. Gustafson (1993, p. 22) indicated that prolonged periods of drought result in the extirpation of Mohave ground squirrels in local areas as adult survival is reduced by poor forage conditions.

Active Season and Dormancy

The Mohave ground squirrel lives in burrows which it digs (Gustafson 1993, p. ix), and remains in burrows in a state of dormancy throughout much of the year. For the Mohave ground squirrel, dormancy is a physiological state that includes a reduced frequency of breathing, or apnea, reduced oxygen consumption, reduced body temperature (Bartholomew and Hudson 1960, pp. 195–197), and a reduced heart rate (Ingles 1965, p. 177). Mohave ground squirrels may be active from February to August (Bartholomew and Hudson 1960, p. 194), with dormancy usually beginning in July or August; emergence dates vary with elevation (Johnson no date, p. 1). In years when reproduction occurs, most adults are active through June, but all have entered dormancy by the end of July; in years with no reproduction, adults may enter dormancy as early as the end of April. In contrast, juvenile Mohave ground squirrels begin to forage outside their natal burrows by mid-May and do not

enter dormancy until July at the earliest and as late as the end of August (Leitner and Leitner 1998, pp. 32, 38).

The period when dormancy begins varies annually. Dormancy does not appear to be an adaptation to avoid low temperatures; rather it appears to be an adaptation to seasonally restricted food and water (Bartholomew and Hudson 1960, p. 202). The initiation of dormancy appears to correspond to either the absence of available green vegetation or its abundance (Aardahl and Roush 1985, pp. 20–21). For the latter, the Mohave ground squirrel enters dormancy earlier as food abundance allows the animal to meet energy needs to sustain it through dormancy earlier (Harris and Leitner 2004, p. 521).

The principal source of energy for the Mohave ground squirrel during dormancy is stored body fat, although food is stored in burrows and may be consumed during the dormant period (Ingles 1965, p. 177; Recht 1977, p. 85; Johnson no date, p. 1). During more severe drought years, Mohave ground squirrels may enter dormancy with relatively low body weight, which likely affects survivorship of Mohave ground squirrels, especially juveniles, to the following spring (Leitner and Leitner 1998, p. 32).

Home Range and Movements

In general, juvenile Mohave ground squirrels have larger home ranges (at least twice as large) than adults, and adult males have larger home ranges than females (Aardahl and Roush 1985, p. 11; Best 1995, p. 6). Mohave ground squirrels are territorial and, throughout much of their active period, there is little overlap between home ranges (Recht 1977, p. 20). Best (1995, p. 6) observed that home ranges are separate until late June, with little evidence of territorial behavior. The home ranges are not static and may shift during the active season, and from year to year, in response to changes in food quality and quantity (Best 1995, p. 6; Harris and Leitner 2004, p. 520). Home ranges of juveniles form a cluster around the home range of an adult (Best 1995, p. 6), and adults exclude juveniles from those portions of the habitat with the densest vegetation (Best 1995, p. 6). Adult Mohave ground squirrels gain weight twice as fast as most juveniles, likely due to differences in resource quality between adult and juvenile home ranges (Recht 1977, p. 82).

Home range size varies with the reproductive period and rainfall levels and food availability (Harris and Leitner 2004, p. 1). During the mating season, the median male home range is much

larger than the female home range, 16.6 ac (6.73 ha) compared to 1.8 ac (0.74 ha) (Harris and Leitner 2004, pp. 521–522). The females' home ranges are non-overlapping and noncontiguous, and each individual exhibits a high degree of site fidelity (Harris and Leitner 2004, p. 522). During the post-mating period, male home range size varies from 3.7 to 26.7 ac (1.5 to 10.8 ha), while female home range size varies from 0.72 to 4.69 ac (0.29 to 1.90 ha) (Harris and Leitner 2004, pp. 517, 521). Female post-mating home range size is larger than the mating season home range (Harris and Leitner 2004, p. 520).

An evaluation of different sequential survey results indicated that juvenile Mohave ground squirrels moved farther than adults (Aardahl and Roush 1985, p. 11), and long-distance movements were greater in males than in females. Among juveniles, the greatest long-distance movements between two sites for males (n = 15) was a mean of 4,987 ft (1,520 m) (range 360–20,440 ft (110–6,230 m)), and for females (n = 21) 1,657 ft (505 m) (range 344–12,670 ft (105–3,862 m)) (Harris and Leitner 2005, p. 188).

Both adult male and female Mohave ground squirrels vocalize during their active season, and have multiple types of calls (Delaney 2009, pp. 15–17). The purpose of these calls is unknown but may be linked to identifying home ranges.

Habitat Requirements

The Mohave ground squirrel occurs in a wide variety of habitats in the western Mojave Desert (Wessman, as cited in Aardahl and Roush 1985, p. 22). They include Mojave creosote bush scrub, Mojave mixed woody scrub, desert saltbush scrub, blackbrush scrub, Mojave desert wash scrub, Joshua-tree woodland, and shadescale scrub (Gustafson 1993, pp. ix, 81; Bureau of Land Management (BLM) 1998, p. 1); Mojave creosote bush scrub is the preferred habitat of the Mohave ground squirrel (Aardahl and Roush 1985, pp. 22, 23). The Mohave ground squirrel has also been found in some areas used for agriculture (Gustafson 1993, pp. ix, 81; BLM 1998, p. 1).

Habitat features considered most suitable for the Mohave ground squirrel include areas with relatively flat topography, often located in large alluvial-filled valleys, containing fine-to-medium-textured soil with little or no rocks, and with the presence of a variety of native shrubs, including *Larrea tridentata* (creosote bush), *Ambrosia dumosa* (white bursage), and *Atriplex* spp. (saltbush) (Aardahl and Roush 1985, p. 9).

Soil characteristics are important, as the Mohave ground squirrel constructs burrows to escape temperature and humidity extremes and predators, and to give birth (Aardahl and Roush 1985, p. 23). The species is absent from very rocky areas and playas (*i.e.*, a sandy, salty, or mud-caked flat floor of a desert drainage basin that is periodically covered with water) (Wessman 1977, pp. 7–9; Zembal and Gall 1980, p. 348). Rainfall must be adequate as it affects the quality and quantity of forage (Gustafson 1993, p. 57). Plant species diversity and the availability of native annual forbs are important to population stability and reproduction (Aardahl and Roush 1985, p. 22). The presence of a variety of shrubs that provide a reliable food source during drought years may be critical for a population to persist (Charis 2005, pp. 3–75).

The Mohave ground squirrel is considered to be absent, or nearly so, from dry lakebeds, lava flows, and steep, rocky slopes, although juveniles may disperse through such areas (Leitner, pers. comm., as cited in Laabs 1998, p. 3). Harris and Leitner (2005, p. 193) found that Mohave ground squirrels travelled through habitats considered marginal for permanent occupancy (*e.g.*, contained rocky or gravelly soils, and elevation changes of hundreds of feet) but did not cross a playa barren of vegetation. Long-distance movement by juveniles through marginal areas may be critical for connecting local populations and recolonizing sites after local, drought-related extirpations (Harris and Leitner 2005, p. 1).

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 12-month finding, information pertaining to the Mohave ground squirrel in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In making our 12-month finding on a petition to list the Mohave ground squirrel, we considered and evaluated the best available scientific and commercial information. To ensure that this finding is based on the latest scientific information, we contacted species experts; land managers within the range of the Mohave ground squirrel; the CDFG; and others with expertise on the species, its habitat, and threats occurring, or likely to occur, within the range of the species. We conducted a search of the available published literature on the Mohave ground squirrel and collected unpublished reports on the species from resource agencies and others. Unpublished reports included regional field studies by State and Federal agencies and conservation groups, results of presence/absence surveys conducted prior to proposed development, and incidental observations reported by field biologists. In addition, we accessed information in the California Natural Diversity Database. This information, information provided by the public, and additional information and data in our files provided the basis for the status review for the Mohave ground squirrel. In making our 12-month finding, we considered and evaluated all scientific and commercial information in our files, including information received during the public comment period that ended June 28, 2010. The analysis of potential threats to the Mohave ground squirrel discussed below includes those identified in the petition and those identified in the information sources listed above.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must

include evidence sufficient to suggest that the potential threat has the capacity (*i.e.*, it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The following potential threats that may affect the habitat or range of the Mohave ground squirrel are discussed in this section: (1) Urban and rural development, (2) off-highway vehicle (OHV) recreational use, (3) transportation infrastructure, (4) military operations, (5) energy development, (6) livestock grazing, (7) agriculture, (8) mining, and (9) climate change. Climate change is discussed under Factor A because, although climate change may affect Mohave ground squirrels directly by creating physiological stress, the primary impact of climate change on the species is expected to be through changes to the availability and distribution of Mohave ground squirrel habitat. In addition, commercial filming occurs on private and Bureau of Land Management (BLM) lands in the western Mojave Desert. The activities for creating motion pictures, television shows, and commercials may require travelling on unpaved roads and trails or cross-country use. However, in our review of the best available scientific and commercial information, we did not find information that indicates these filming activities have occurred, are presently occurring, or are likely to occur in the future within Mohave ground squirrel habitat, and therefore, we have determined that they are not a threat to the species.

Urban and Rural Development

The present and projected future growth of urban areas in the western Mojave Desert could adversely affect the Mohave ground squirrel. About 136,900 ac (55,426 ha), or 2.6 percent of the 5,319,000 ac (2,152,532 ha) range of the Mohave ground squirrel (see Background section), has been lost to urban and rural development (Defenders of Wildlife and Stewart 2005, pp. 19, 38). Loss of Mohave ground squirrel habitat has occurred from the construction of residential homes, commercial and industrial complexes, shopping malls, golf courses, airports and associated commercial and industrial development, roads, landfills, wastewater treatment facilities, prisons, flood management structures, and other facilities.

Most urban and rural development has occurred in valleys, flats, and gently sloping areas, which are the same types of areas most often used by Mohave ground squirrels. The greatest losses of Mohave ground squirrel habitat have occurred in, and adjacent to, cities including Palmdale, Lancaster, Victorville, Adelanto, Hesperia, Apple Valley, Barstow, and Ridgecrest, California (see Map 1). Smaller areas have also been lost at the towns of Hinkley, Boron, North Edwards, California City, Mojave, Rosamond, Inyokern, and Littlerock, and the unincorporated communities of Pearblossom, Phelan, and Pinyon Hills, California (see Map 1).

Most of this urban development has occurred in the southernmost portion of the Mohave ground squirrel's range on private land, generally south of SR-58 (see Map 1). More than 62 percent of the private land within the range of the Mohave ground squirrel is south of SR-58. The three cities with the largest developed areas within the range of the squirrel (*i.e.*, Lancaster, Palmdale, and Victorville) occur in this area, as do several of the smaller towns listed above (see Map 1). Some of this area has also been converted to agriculture (see "Agriculture" section below), and there are areas that do not contain suitable habitat for the squirrel (*e.g.*, dry lake beds). We estimate the portion of the range of the Mohave ground squirrel south of SR-58 to be 1,690,797 ac (684,244 ha), or about 31.8 percent of the range of the Mohave ground squirrel (see Background section for our range analysis). Urbanization in this area is mainly concentrated along the southern edge of the squirrel's range, and much of the area south of SR-58 is undeveloped.

Trapping results in the southern portion of the Mohave ground squirrel's range have generally been negative, especially in areas that are most heavily developed (Leitner 2008, p. 5). Mohave ground squirrels are currently known to occur in several areas south of SR-58, including one of the largest concentrations of squirrels on EAFB (see below). Recent records of the Mohave ground squirrel south of SR-58 and outside EAFB include two in the Victor Valley-Lucerne Valley area (Jones pers. comm., as cited in Defenders of Wildlife and Stewart 2005, p. 8), four records near Adelanto (Leitner 2008, p. 7), three records west and south of Barstow (Leitner 2008, pp. 7-8), and two records southwest of the town of Mojave (Leitner 2008, pp. 7-8).

The fact that trapping results south of SR-58 have generally been negative does not necessarily mean that the

Mohave ground squirrel is absent from the area or the area does not provide habitat for the species (Leitner 2008, p. 9). Negative trapping results can occur for various reasons, including trap location, time of trapping, and food availability (Brooks and Matchett 2002, p. 172; Leitner 2008, p. 9) (see "Range and Distribution" section and Factor D, "State Laws and Regulations," for further discussion of the survey protocol).

As discussed in the Background section, trapping surveys south of SR-58 have most often been conducted in areas where the squirrel has already been extirpated due to extensive urbanization, such as the Palmdale-Lancaster area in the southwestern portion of the range (Leitner 2008, p. 3). More importantly, large areas south of SR-58 have either never been surveyed or have been surveyed only 1-2 times (Leitner 2008, pp. 5, 9, 25). In addition, the trapping protocol that was used may not be the most effective method to determine the presence or absence of Mohave ground squirrels. Some scientists have identified potential problems with the protocol that raise questions about the accuracy of the current survey technique (Brooks and Matchett 2002, p. 172) (see Factor D, "State Laws and Regulations," for further discussion of the survey protocol).

Federal lands comprise 28.5 percent of the area south of SR-58 (9.3 percent of the total range of the Mohave ground squirrel). One of the more important concentrations of Mohave ground squirrels south of SR-58 is on EAFB. The 307,435 ac (124,468 ha) EAFB encompasses about 18 percent of the area south of SR-58 (5.8 percent of the range of the Mohave ground squirrel) and contains one of the eight important population areas for the Mohave ground squirrel (Leitner 2008, p. 10; see Map 2 and Background section). EAFB is used primarily for testing and evaluating aircraft, and the impacts to Mohave ground squirrel habitat from urban and rural development are primarily confined to the small cantonment areas (see "Military Operations" section below for details).

In addition to the Federal lands on EAFB, there are more than 175,000 ac (70,820 ha) of Federal land managed by the BLM south of SR-58, all of which is not subject to the direct impacts of urbanization. These BLM lands include the southern part of the Fremont-Kramer Desert Wildlife Management Area (DWMA), which is managed for Mohave ground squirrel habitat. Urban and rural development will not occur on these lands (however, see "Off-Highway

Vehicle Recreational Use,” “Military Operations,” and “Energy Development” sections below for a discussion on other activities that may affect these areas managed by EAFB and the BLM).

We expect that further urbanization of privately owned lands south of SR–58 will occur in the future. The population of the western Mojave Desert is projected to grow from 795,000 (in 2000) to more than 1.5 million people by 2035 (BLM *et al.* 2005, p. 244). Most incorporated cities and communities in the western Mojave Desert have general or community plans that describe their growth and development for the next 20 years or more. We estimate that about 475,000 ac (192,226 ha), or about 8.9 percent of the entire range of the Mohave ground squirrel, is incorporated. The majority (about 70 percent) of the incorporated land south of SR–58 occurs within the cities of Palmdale, Lancaster, Victorville, Apple Valley, Hesperia, Adelanto, and Barstow. Although these areas are already extensively urbanized, not all of the incorporated lands south of SR–58 are developed, and future growth is expected to occur in these areas. Under a worst-case scenario, all areas within the incorporated boundaries could be developed in the future.

We did not find any information on major proposed urban developments or new communities being planned in the unincorporated and rural lands south of SR–58, although the existing unincorporated communities will likely continue to grow. However, we expect that future development will most likely occur in areas that are already incorporated because of proximity to existing infrastructure. Although we cannot predict with any certainty what areas will be developed or when they may be developed in the next 20–30 years, even if all incorporated lands south of SR–58 were developed, more than 475,000 ac (161,875 ha) would likely remain under Federal ownership south of SR–58. Much of this land is in the Fremont-Kramer DWMA, which the BLM designated for management of Mohave ground squirrel habitat, and

includes the important population area for the Mohave ground squirrel at EAFB (Leitner 2008, p. 10) (see Map 2). Except for possibly minor additions to the cantonment areas of EAFB, the Federal land south of SR–58 is not subject to urban and rural development.

About 3,648,830 ac (1,476,635 ha) or 68.6 percent of the range of the Mohave ground squirrel is north of SR–58. This area comprises the central and northern portions of the range of the Mohave ground squirrel. Most of this land has not experienced urban development; rather, urbanization is limited and concentrated mainly around Ridgecrest and California City. About 144,000 ac (58,275 ha), or 3.9 percent of the Mohave ground squirrel’s range north of SR–58, is incorporated, almost all of which (90 percent) is within California City (BLM *et al.* 2005, chapter 3, p. 2). California City was incorporated in 1965, and although it is the third largest city in California in area, the population has grown to only about 14,120 in the 46 years since it was incorporated. Additionally, most of the incorporated area remains undeveloped. Given the slow growth rate of California City, we believe that much of the land within its incorporated boundaries will likely remain undeveloped.

Federal lands managed by the BLM and Department of Defense (DOD) make up about 80 percent (2,109,326 ac (853,617 ha)) of the range of the Mohave ground squirrel north of SR–58 (39.7 percent of the entire range). The BLM manages 438,364 ac (177, 400 ha), while the DOD manages 1,670,962 ac (676,217 ha). Most of the 1,110,443-ac (449,382-ha) China Lake Naval Air Weapons Station (NAWS) and the 33,359-ac (13,500-ha) Goldstone Deep Space Communications Complex (Goldstone Complex), managed by the National Aeronautical and Space Administration (NASA), experience little habitat disturbance. Seven of the eight Mohave ground squirrel important population areas are located north of SR–58, occur mostly or entirely on Federal land (see Map 2), and are not subject to urban development on Federal land. We do not expect any urbanization to occur on

BLM land. Because of their missions, we anticipate minimal future urban development on the military bases; any development will likely be limited to the cantonment areas (see “Military Operations” section).

In summary, we recognize that some Mohave ground squirrel habitat has been lost to development within the range of the squirrel. Currently, about 2.6 percent of the range of the Mohave ground squirrel has been lost to development, and we expect that more of the range will be lost in the future, most likely adjacent to existing urban areas. A worst-case scenario would be that all incorporated land (about 8.9 percent (475,000 ac (192,226 ha)) within the range of the squirrel is developed. Although unlikely because of the expected slow growth of California City, even if this were to occur, 62 percent (3,300,000 ac (1,335,468 ha)) of the squirrel’s range is federally owned, very little of which is subject to urban development. We estimate that about 57 percent of the Federal lands (EAFB, NAWS, Goldstone Complex, DWMA, and Mohave Ground Squirrel Conservation Areas (MGSCA)) are managed, at least in part, for Mohave ground squirrel habitat (see Map 2, Table 1, and Factor D, “Federal Laws and Regulations”). The eight important population areas for the Mohave ground squirrel occur mostly or entirely within Federal lands managed in part for the Mohave ground squirrel, and are therefore not threatened with urban development. In addition, Leitner (2008, p. 9) has stated that additional populations of the Mohave ground squirrel may well exist because much of the range of the squirrel has never been surveyed or has only been surveyed 1–2 times, which may not be sufficient to determine the presence of the squirrel (Leitner 2008, p. 25). We conclude, based on this assessment, that urban and rural development does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

TABLE 1—FEDERAL LANDS MANAGED FOR THE MOHAVE GROUND SQUIRREL OR ITS HABITAT, AND THE PERCENT OF THE SPECIES’ RANGE ¹

Management areas for the Mohave ground squirrel	Percent of Mohave ground squirrel range		
	Federal ownership	State/private ownership ² with-in management area	Total area within management area boundary
Mohave Ground Squirrel Conservation Area ³	16.7	7.9	24.6
Department of Defense—Limited Use/Protected	27.0	0	27.0

TABLE 1—FEDERAL LANDS MANAGED FOR THE MOHAVE GROUND SQUIRREL OR ITS HABITAT, AND THE PERCENT OF THE SPECIES' RANGE¹—Continued

Management areas for the Mohave ground squirrel	Percent of Mohave ground squirrel range		
	Federal ownership	State/private ownership ² within management area	Total area within management area boundary
Bureau of Land Management ACECs ⁴ (Fremont-Kramer Desert Wildlife Management Area, Superior-Cronese Desert Wildlife Management Area, Desert Tortoise Research Natural Area) ³	13.6	8.5	22.1
Total	57.3	16.4	73.7

¹ Species' range is 5,319,000 ac (2,152,532 ha) as calculated by the Service.

² State/private ownership is not specifically managed for the Mohave ground squirrel.

³ Land ownership within designated boundary includes Federal, State, and privately-owned lands.

⁴ Area of Critical Environmental Concern.

Off-Highway Vehicle Recreational Use

Off-highway vehicle (OHV) use is any use that includes driving a motorized vehicle off a paved road, including driving cross country and on existing dirt roads. OHV use has the potential to adversely affect the Mohave ground squirrel by crushing individuals (see Factor E, "Direct Mortality") and their burrows (Bury *et al.* 1977, p. 16), damaging or destroying native vegetation, and compacting soils. Burrows are essential to the survival of the Mohave ground squirrel, as they provide protection from predation and the temperature extremes of the desert, are likely used to store food, and provide a safe location for reproduction and rearing young. Impacts to vegetation increase the exposure of the Mohave ground squirrel to predators, decrease available shade for thermoregulation, and increase soil temperature extremes, which adversely affect plant germination, growth (Boarman 2002, p. 47), and food availability. Compacted soils reduce the infiltration rate of rain, which means there is less water available for plants and seed germination (Boarman 2002, p. 46), reduce the root growth of established plants, and make it harder for seedlings to survive (Lovich and Bainbridge 1999, p. 316). With soil compaction, soil erosion from wind and water increases, nitrogen fixation is reduced, less organic material is available for plant growth, and seedling establishment is reduced (Lovich and Bainbridge 1999, pp. 315–316; Boarman 2002, pp. 45–46).

OHVs also transport nonnative annual seeds and plant parts from other locations. Their roads, trails, and tracks act as dispersal corridors for invasive annual plant species (Lovich and Bainbridge 1999, p. 313). These nonnative species suppress the growth of native annual forbs (Brooks 2000, p. 105), which are a source of food and

water for the Mohave ground squirrel. Many native annual plants have a higher percentage of water and protein than nonnative plants (Oftedal *et al.* 2002, p. 344); however, we have no information on the Mohave ground squirrel's nutritional needs and their use of nonnative plants.

Other potential impacts of OHV use include: Noise, which can cause hearing loss in rodents (Lovich and Bainbridge 1999, p. 316) and may interfere with the Mohave ground squirrel's ability to detect predators and establish and maintain territories (Bury *et al.* 1977, p. 16); littering and dumping of garbage (BLM 2003, p. 31), which can attract Mohave ground squirrel predators (see Factor C, "Predation"); and increased fire sources (BLM 2003, p. 32), such as campfires and cigarettes, which can result in fires that destroy Mohave ground squirrel habitat.

In the western Mojave Desert, the BLM manages its lands for OHV recreation. The BLM has designated four open areas (*i.e.*, OHV management areas) within the range of the Mohave ground squirrel as open to all OHV use, including cross-country use (BLM *et al.* 2005, chapter 3, pp. 242–243). The four OHV management areas within the range of the Mohave ground squirrel are: (1) Dove Springs (3,840 ac (1,554 ha)); (2) El Mirage (25,600 acres (10,360 ha)); (3) Jawbone Canyon (3,827 ac (9,642 ha)); and (4) Spangler Hills (62,080 acres (25,123 ha)) (BLM *et al.* 2005, chapter 3, pp. 243, 244; Service GIS data) (see Map 2). These four areas comprise 95,347 ac (38,586 ha) (BLM 2003, p. 31), or 1.8 percent of the range of the Mohave ground squirrel. Outside of these four areas, the BLM restricts OHV use to specific existing roads and trails, and cross-country use is prohibited (BLM *et al.* 2005, chapter 3, pp. 264–273). We are not aware of any plans on the part

of the BLM to designate new OHV management areas in the future.

The impacts from OHV use to the Mohave ground squirrel and its habitat vary depending on the type of OHV activity, the designated land use, and the level of enforcement. The impacts to the Mohave ground squirrel and its habitat are greatest in open areas and high-OHV-use areas (*e.g.*, staging areas for OHV events, camping areas), and less in areas where activities are confined to existing roads and trails.

Cross-country OHV use is restricted to the four management areas; however, the occurrence of off-route OHV use tends to extend or spill over into areas immediately adjacent to the management areas. Although the impacts to Mohave ground squirrels likely diminish with distance from the management areas, the BLM estimates that these "spill-over" zones, some of which are on private land, encompass an additional 150,239 ac (60,800 ha) (BLM *et al.* 2005, chapter 3, pp. 131, 132), or 2.8 percent of the range of the Mohave ground squirrel. This area, combined with the four designated OHV management areas, constitutes about 4.6 percent of the range of the Mohave ground squirrel.

The BLM has documented other areas not associated with the designated management areas where OHV use of designated routes is more frequent. The BLM estimates that these high-use areas include about 107,520 ac (43,512 ha), or 2 percent of the range of the Mohave ground squirrel (BLM *et al.* 2005, chapter 3, p. 133). When combined with the management areas and spill-over zones, about 6.6 percent of the squirrel's range is intensively used for OHV recreation. One of the more extensive high-use areas is the Rand Mountains area. To reduce OHV impacts in part of the Rand Mountains area, the BLM expanded the Western Rand Mountain

Area of Critical Environmental Concern (ACEC) from 17,877 ac (7,235 ha) to 32,050 ac (12,970 ha), and closed the ACEC to OHV use except for 129 mi (208 km) of designated open routes, a 90-percent reduction in miles of open routes (BLM *et al.* 2005, chapter 3, p. 8). This resulted in a reduction of more than 14,000 acres (5,666 ha) of the high-use area in the Rand Mountains.

Although we are not aware of any estimates, the intensive and widespread OHV activity that occurs within the management and high-use areas has likely resulted in extensive loss and degradation of potential habitat for the squirrel. However, the status of the Mohave ground squirrel within these areas is not well known. Mohave ground squirrels have been trapped in the Dove Springs OHV Area, but not the Spangler Hills OHV Area (Leitner 2010, *in litt.*). Leitner suggests that the negative trapping results at the Spangler Hills OHV Area may be from an inadequate trapping effort in this large area. Thus, we cannot confirm that the Mohave ground squirrel occurs or does not occur at the Spangler Hills OHV Area. We are not aware of any information on the status of the Mohave ground squirrel in the other two management areas or the high-use areas.

In addition to the management areas and high-use areas, there are numerous single unpaved roads and trails within the range of the Mohave ground squirrel that are used by OHVs, including utility corridors. The potential direct and indirect impacts of roads are described above; however, road density and OHV use of these roads are much lower than in management areas. This lower use likely means potential impacts to the Mohave ground squirrel are less than in management and high-use areas.

We were unable to find information on the total number of miles of unpaved roads within the range of the Mohave ground squirrel. Based on a 2001–2002 inventory, the BLM estimated that 5,054 linear mi (8,134 km) of roads (including paved roads, unpaved roads, and trails) occur on BLM land in the western Mojave Desert. However, subsequent to that inventory, the BLM permanently closed 2,260 mi (3,637 km), or 45 percent of the roads and trails (BLM 2003, pp. 4–9). Most closures occurred in the DWMA in Mohave ground squirrel habitat (BLM 2003, p. 396). DWMA are ACECs where the BLM can limit or exclude surface disturbance, including use of roads and trails (see Factor D). In addition, the West Mojave (WEMO) Plan commits the BLM to an aggressive program of closed route rehabilitation (BLM *et al.* 2005, chapter 4, p. 7). The WEMO Plan is the BLM's

resource management plan for the western Mojave Desert and amends the California Desert Conservation Area (CDCA) Plan. It also implements the Rand Mountains Fremont Valley Management Plan that reduces the number of open routes in the Rand Mountains by 90 percent (BLM *et al.* 2005, chapter 3, p. 8).

The BLM has implemented minimization measures to ensure that the different types of OHV uses occur within the appropriate designated management areas, roads, and trails, and thereby avoid the loss of additional Mohave ground squirrel habitat. These measures also allow for the eventual restoration of the habitat in areas where the roads and trails have been closed to OHV use (although restoration time from these impacts is believed to take several decades (Bury *et al.* 1977, p. 16; Lovich and Bainbridge 1999, p. 316)). These measures include signing closed routes, obscuring closed routes with vertical mulching, increasing public education, installing fencing and barriers, and increasing law enforcement (BLM *et al.* 2005, chapter 2, pp. 156–157, 163). In 2011, BLM is signing open routes, implementing a monitoring plan to determine compliance with route closures and whether any new illegal routes are being created, and implementing additional enforcement capability for the route network in the WEMO Plan area (U.S. District Court 2011, pp. 13–15). By 2014, the BLM will be preparing a revised OHV route network that complies with the Federal Land Policy and Management Act's (FLPMA) requirement to minimize damage to public resources and harassment and disruption of wildlife and habitat (U.S. District Court 2011, pp. 2, 13). These measures should reduce the impacts from OHV use on BLM land near management areas and on designated roads and trails in the range of the Mohave ground squirrel. However, the BLM's management actions for OHV use only apply to lands that they manage; they do not apply to State or private lands.

Part or all of 14 designated Wilderness areas (BLM *et al.* 2005, chapter 3, p. 9) are in the range of the Mohave ground squirrel. Under the Wilderness Act of 1964, roads, new structures, commercial activities, and use of motorized vehicles or equipment are prohibited within designated wilderness areas (BLM *et al.* 2005, chapter 3, p. 9). The acreage of wilderness area within the range of the Mohave ground squirrel and therefore closed to vehicle access and other forms of surface disturbance is about 253,000

ac (102,386 ha), or 4.6 percent of the range of the Mohave ground squirrel. Although portions of the wilderness areas include steep slopes and rocky substrates that would not provide suitable habitat for the Mohave ground squirrel, most of the wilderness areas are within the elevational range of the Mohave ground squirrel (BLM *et al.* 2005, chapter 3, p. 138) and provide connectivity among squirrel habitat.

DOD lands are closed to public access, and only persons with business on the military installations may enter. Because of the research, development, testing, and evaluation missions of EAFB and NAWS (see "Military Operations" below), vehicle access is restricted almost entirely to existing roads in those areas (EAFB 2008a, p. 102). However, EAFB has designated a 10,387 ac (4,203 ha) OHV recreation area on the base for use by base personnel (EAFB 2008a, p. 104), and Fort Irwin has an 82 ac (33 ha) OHV recreation area (Department of the Army 2003, p. 1). Although these activities may impact the Mohave ground squirrel and its habitat, the two areas comprise only 0.2 percent of the squirrel's range.

There are no State Vehicular Recreation Areas (SVRAs) in the range of the Mohave ground squirrel. SVRAs are operated and managed by the Off-Highway Motor Vehicle Recreation Division of California State Parks and provide trails, tracks, and other OHV recreational opportunities; interpretive and educational activities and publications promoting safe and responsible OHV recreation; public safety, including law enforcement and first aid; and resource management designed to sustain OHV opportunities and protect and enhance wildlife habitat, erosion control, revegetation, *etc.* (California State Parks 2011, unpublished information).

OHV recreation also occurs on private lands. Unauthorized OHV use on private lands includes illegal trespass, off-trail riding, illegal operation of non-street legal vehicles, and vandalism (Ciani 2011, p. 1). The Kern County Sheriff's Department is proposing to reduce unauthorized OHV use on private lands by expanding and enhancing current safety and enforcement efforts (Ciani 2011, p. 1). However, there is no information quantifying the degree or extent of the areas impacted by this unauthorized use, either in Kern County or anywhere else in the range of the Mohave ground squirrel. Additionally, although some authorized OHV activity may occur on private lands, we are unaware of any information on the degree or extent of

impacts for authorized OHV activity on private lands.

OHV recreational use is likely to continue to increase in the future. The State's population is projected to grow from 34 million in 2000 to 46 million by 2020 (BLM *et al.* 2005, chapter 3, p. 244). The demand for OHV recreational opportunities is increasing, along with California's growing population (BLM *et al.* 2005, p. 244). However, the BLM has reduced the number of roads and trails available for OHV use and has not indicated that it has plans to designate additional OHV management or high-use areas in the range of the Mohave ground squirrel, and the expected increase in OHV use will mainly be limited to existing management or high-use areas.

In summary, OHV use is a popular recreational activity within portions of the range of the Mohave ground squirrel. Potential impacts of OHV use vary from none in wilderness areas, to substantial in management or high-use areas, depending on the type and intensity of OHV activity, the designated land use, and the level of enforcement. About 6.6 percent of the range of the Mohave ground squirrel, including BLM, DOD, and private lands, is classified as management areas, spillover zones, or high-use areas. Although Mohave ground squirrels have been reported in one of the four management areas, we have no information that indicates that the impacts from OHV use in these areas constitute a barrier to their movement. We presume the management areas are extensively degraded and provide little value to supporting populations of Mohave ground squirrels now or in the future; however, these areas occur in less than 7 percent of the range of the Mohave ground squirrel. Additionally, we have no information indicating that additional management areas will be designated for OHV use in the future.

In addition, the BLM has:

(1) No plans to designate additional high-use areas or roads and trails for the next few decades,

(2) Closed 45 percent of the roads and trails in the DWMA's and 90 percent in the western Rand Mountains, and

(3) Implemented actions to restore habitat in these areas (BLM *et al.* 2005 chapter 2, p. 167) and monitor compliance (such as increasing enforcement and minimizing damage to public resources and harassment/disruption of wildlife and habitat).

Areas of lesser use, such as existing unpaved roads and trails, can result in the loss of habitat, and vehicle activity can crush Mohave ground squirrels and their burrows; however, the significance

of such losses is undocumented for the Mohave ground squirrel. Although miles of roads and trails exist, the habitat loss is essentially a narrow, linear band, the impacts of which are minor compared to that of a management or high-use area. Unpaved roads and trails do not result in the total fragmentation of habitat as they are not barriers to Mohave ground squirrel movement (Leitner 2010, *in litt.*).

OHV use of unpaved roads and trails also occurs on private land, and most of this use is probably not authorized by the land owner. However, we found no information on the extent of this type of OHV use on private lands. At least one county in the range of the Mohave ground squirrel has identified unauthorized OHV activities on private land as a natural resource and public safety problem and is seeking ways to reduce these activities through enforcement (Kern County Sheriff 2011, unpublished information).

Using the best available information, we have determined that OHV use is not a significant threat to the Mohave ground squirrel. We found no information that the transport and expansion of nonnative vegetation or potential impacts of noise and other indirect impacts are adversely affecting the Mohave ground squirrel. The impact of OHV use to the habitat of the squirrel mainly occurs in management, spillover, and high-use areas, which comprise less than 7 percent of the range of the Mohave ground squirrel. Recreational OHV use is of minimal concern on DOD land due to restrictions, and because only 0.2 percent of the species' range overlaps with DOD recreational use areas. The BLM has closed a substantial number of roads and trails in the squirrel's range and is implementing measures to monitor and enforce these closures and to restore habitat in the closed areas. The BLM has no plans to establish additional areas for OHV use in the range of the Mohave ground squirrel. Therefore, we find that OHV recreational use on BLM land is not a significant threat to the Mohave ground squirrel. Although we do not have an exact estimate, less than 2 percent of the high-use area is on private land, and one county is pursuing enforcement options to address this unauthorized OHV use and its impacts on natural resources. In the future, we expect that OHV use will likely increase but will be limited to existing management areas and designated roads and trails. Therefore, based on our evaluation of the best available scientific and commercial data, we conclude that OHV recreational use does not currently pose a significant

threat to the Mohave ground squirrel in relation to the destruction, modification, or curtailment of habitat or range, nor do we anticipate OHV recreational use posing a threat in the future.

Transportation Infrastructure

Transportation infrastructure is a network of paved highways and roads. Although we were unable to find studies on the effects of transportation infrastructure on the Mohave ground squirrel, research on other animals has found that the presence of roads in an area may have a positive, negative, or no effect on animal abundance (Fahrig and Rytwinski 2009, p. 21).

Potential positive effects of roads include greater availability of forage plants adjacent to the roadway caused by precipitation runoff from the roadway and fewer predators near roadways because of the negative effects of roadways on larger mammals (Garland and Bradley 1984, p. 47; Fahrig and Rytwinski 2009, p. 21). Potential negative impacts from construction and operation may include mortality (see Factor E, "Direct Mortality"), barriers to movement and fragmentation (see Factor E, "Fragmentation"), and habitat loss and degradation (Gustafson 1993, pp. 23, 26; BLM 2003, p. 30; Leitner, pers. comm., as cited in Defenders of Wildlife and Stewart 2005, p. 22).

Mohave ground squirrels may be crushed by vehicles, and the presence of trash and other animals that are run over by vehicles ("road kill") may attract common ravens and other predators to the road and nearby areas, thereby increasing the likelihood that Mohave ground squirrels adjacent to these sites would be vulnerable to predation (see Factor C, "Predation"). Some studies showed that roads produce an ecological "road-effect zone," a zone over which significant ecological effects extend outward from a road (Forman and Deblinger 2000, p. 37). Besides road kill and loss of habitat, indirect effects of roads in the road-effect zone may include traffic noise, which many species avoid, and barriers to movements within a population, with potential demographic and genetic consequences (see Factor E, "Fragmentation").

Roads alter habitat upslope and downslope by causing hydrologic and erosion effects (Foreman and Alexander 1998, p. 217), and promote the invasion of nonnative annual plant species (Brooks 2007, p. 154). Thus, the road-effect zone may interrupt horizontal ecological flows (*e.g.*, animal movements, hydrology), alter landscape spatial patterns (*i.e.*, the number, size, and arrangement of ecological pattern

and ecological function and process), and change species distribution and abundance (Forman and Alexander 1998, p. 1). The interruption of hydrologic flows may have both positive and negative impacts on the habitat of the Mohave ground squirrel. The interruption may provide more water to upslope habitat, thereby increasing the amount and availability of forage. Conversely, the interruption may impede or prevent surface flow from reaching downslope areas, thereby decreasing the amount and availability of forage.

One major highway is planned within the range of the Mohave ground squirrel, the High Desert Transportation Corridor. This 63-mi (101.4-km) long east-west corridor would connect SR-14 in Palmdale with US-395 (Adelanto) and I-15 (Victorville), and would terminate on the southeast side of Apple Valley at SR-18 (see Map 1) (San Bernardino County 2011, unpublished information). The corridor would contain a highway with all, or portions, composed of freeway/expressway/tollway, and it may contain a high-speed rail line (Caltrans 2010a, p. 1). We estimate this project would result in the loss of 7,634 ac (3,089 ha), or 0.14 percent of the range of the Mohave ground squirrel.

The new highway would be located in the southern portion of the range of the Mohave ground squirrel, and south of the important population area on EAFB. The highway is planned to include areas currently developed for urban and rural use and agriculture, and thus, the loss of Mohave ground squirrel habitat would likely be less than the footprint of the proposed corridor. The project proponent may be required to mitigate for the loss of Mohave ground squirrel habitat as part of the permitting process under CESA (Jones 2011, *in litt.*) (see Factor D, "State Laws and Regulations") and the WEMO Plan (see Factor D, *Bureau of Land Management*).

Although the new highway will likely have some effect on the habitat of the Mohave ground squirrel beyond what will be removed during road construction, we are not aware of any study on the extent of a potential road-effect zone or whether such a zone will have a positive or negative impact on Mohave ground squirrel populations, or how any impacts might change with variables, such as road width, traffic rates, and location. The extent of the road-effect zone varies, depending on the species being affected, location, habitat, road width, traffic density, and other factors. For example, the road-effect zone along one road in Massachusetts that passes through an

area with many swamps and ponds varied from greater than 328 ft (100 m) to greater than 3,280 ft (1,000 m), and averaged 1,968 ft (600 m) (Forman and Deblinger 2000, p. 1). However, working in the high desert of southwestern Utah, which is similar to the environment in the west Mojave Desert, Bissonette and Rosa (2009, p. 27) found no clear road-effect zone for small mammals.

Although they did not conduct their study in desert areas, Adams and Geis (1983, p. 1) found instances where population abundance of some small mammal species was greater near roads because of their use of the adjacent habitat created or enhanced by the roadway (*e.g.*, water collection, increased vegetation). In a creosote bush community in southern Nevada, Garland and Bradley (1984, p. 47) found the effects of roads on small mammals may differ in deserts when compared with mesic habitats. Roadsides receive runoff from pavement, which supports lush vegetation compared to adjacent habitat. They also found that round-tailed ground squirrels, a close relative of the Mohave ground squirrel, were more common near roadways (Garland and Bradley 1984, p. 54). In a review of the literature on the effects of roads on wildlife, Fahrig and Rytwinski (2009, p. 3) found that small mammals generally showed either a slightly positive effect from roads or no effect.

With so little known about the effects of roads on the Mohave ground squirrel and so many variations in the road-effect zone reported in the scientific literature, we employ a worst-case approach to our assessment of the impact of the new highway, in which we assume that there will be a road-effect zone associated with the new highway and that the impacts would be so severe as to eliminate all Mohave ground squirrel habitat within the zone. If such a zone were twice or even three times the width of the proposed highway, then at most the zone would result in the loss of an additional 22,902 ac (9,268 ha) of habitat, or an additional 0.43 percent of the range of the squirrel.

In total, construction of the proposed highway could result in the loss of less than 0.6 percent of the range of the Mohave ground squirrel, which includes potential impacts associated with a road-effect zone. However, the actual loss of habitat will likely be less because some areas have already been developed and mitigation will likely be required for the loss of habitat under the WEMO Plan and CESA (see Factor D, *Bureau of Land Management* and "State Laws and Regulations"). Within the DWMA, the mitigation ratio is 5:1 (see "Energy Development" section below).

In addition to the proposed highway, two existing highways within the range of the squirrel are planned to be modified. Areas of US-395 may be realigned and portions of SR-58 and US-395 would be widened within the range of the Mohave ground squirrel (Caltrans District 8 website, 2010b, unpublished information). For US-395, the proposed widening and realignment projects extend from the southern terminus at I-15 north to Kramer Junction (see Map 1). The US-395 projects occur within the southern portion of the range of the Mohave ground squirrel, well outside any of the important population areas for the squirrel. Some of the areas where the road will be widened have already been developed (*e.g.*, Adelanto, Victorville, Kramer Junction, *etc.*) and would therefore not result in any additional loss of habitat. However, a portion is located in the Fremont-Kramer DWMA, which is managed for the Mohave ground squirrel (see Map 2). We estimate the proposed highway widening would directly impact an additional 1,600 ac (647 ha), or 0.03 percent of the range of the Mohave ground squirrel including the areas that have already been developed. If a road-effect zone exists for the Mohave ground squirrel, under a worst-case scenario, up to an additional 4,800 ac (1,942 ha) of habitat could be lost, or an additional 0.09 percent of the range of the squirrel.

For SR-58, the proposed widening projects extend from near Boron east to 7.5 mi (12.1 km) east of Kramer Junction (see Map 1). The project would occur in the southern portion of the range of the Mohave ground squirrel, well outside any important squirrel population area. Most of the proposed highway widening is located in the Fremont-Kramer DWMA (see Map 2); however, in the Kramer Junction area, impacts to the Mohave ground squirrel have already occurred from existing urban and rural development. The proposed highway widening is estimated to directly impact an additional 273 ac (110 ha), or less than 0.01 percent of the range of the Mohave ground squirrel, which includes the areas that have already been developed. Again, under a worst-case scenario, up to an additional 819 ac (331 ha) could be lost within the road-effect zone.

In total, road widening would result in the loss of about 7,492 ac (3,032 ha), or about 0.14 percent of the range of the Mohave ground squirrel, which includes potential impacts associated with a road-effect zone. However, the actual loss of habitat will likely be less because some areas have already been developed and mitigation will likely be

required for the loss of habitat under the WEMO Plan and CESA (see Factor D, *Bureau of Land Management* and “State Laws and Regulations”); within the DWMA, the mitigation ratio is 5:1 (see “Energy Development” section below).

In summary, there are a few major highways and numerous roads within the range of the Mohave ground squirrel. There are plans to build a new east-west highway across the southern portion of the range of the Mohave ground squirrel and widen two existing highways, none of which will affect any of the important squirrel population areas. Combined, these projects would result in the direct loss of about 9,507 ac (3,738 ha) of habitat, or about 0.18 percent of the range of the squirrel. The actual amount would be less because some areas have already been developed and no additional habitat would be lost, and mitigation for loss of habitat would be required.

We acknowledge that roads may affect habitat beyond that lost during construction. This road-effect zone can have varying degrees of both positive and negative impacts on a species and its habitat, and the zone can extend various distances from the road depending on factors, such as the species being affected, location, habitat, road width, and traffic density. For squirrels and other small mammals, the road-effect zone tends to be neutral to slightly positive (Fahrig and Rytwinski 2009, p. 13). Although we do not have any information that such a zone exists for the Mohave ground squirrel or whether the impacts within the zone would be positive or negative, based on a worst-case scenario, an additional 28,521 ac (11,542 ha) of habitat or about 0.54 percent of the range of the squirrel could be lost. Therefore, based on a review of the best available scientific and commercial data, we find that transportation infrastructure projects likely to occur in the future could affect at most 0.74 percent of the range of the Mohave ground squirrel, and therefore do not pose a significant threat to the Mohave ground squirrel in relation to the destruction, modification, or curtailment of habitat or range. Note that other impacts that may be associated with roads, including mortality and habitat fragmentation, are discussed under Factor E.

Military Operations

The DOD manages about one-third of the range of the Mohave ground squirrel. Within the species' range, there are three major military bases—Fort Irwin and the National Training Center (NTC), EAFB, and NAWS.

Fort Irwin has three major management units; the National Training Center (NTC), the Goldstone Deep Space Communications Complex, and the Leach Lake Bombing Range. Fort Irwin's primary mission is training ground forces for combat, including the use of tanks, other tracked vehicles, and wheeled vehicles. Impacts from the training of ground forces and associated use of wheeled and tracked vehicles would be similar to impacts in OHV management areas (see “Off-Highway Vehicle Recreational Use” section above). In addition, Fort Irwin has a small cantonment area, which contains offices, housing, shops, restaurants, utilities, and other facilities. The impacts to the Mohave ground squirrel from the cantonment area would be similar to those described above under “Urban and Rural Development,” but on a very small scale. The Army has a proposal for both solar (14,000 ac (5,666 ha)) and wind (49 ac (20 ha)) (Department of the Army 2009, p. 33) energy projects within the boundaries of Fort Irwin (which also potentially includes the Goldstone Complex).

The NTC is about 642,558 ac (260,035 ha), with approximately 435,978 ac (176,435 ha) within the range of the Mohave ground squirrel. Located on the eastern edge of the range of the Mohave ground squirrel, we estimate that 8.2 percent of the range of the species is within the NTC boundary, which includes a recent expansion of Fort Irwin's southwestern boundary of 75,300 ac (29,745 ha) into an area that is within the range of the Mohave ground squirrel (see Factor D, *Department of Defense*, for additional discussion on the expansion area). Ground forces training is usually located on the flats and lower slopes of the NTC, which are the preferred habitat of the Mohave ground squirrel.

Prior to 1977, the Mohave ground squirrel was not known to occur on Fort Irwin. From 1977 to the early 1990s, Fort Irwin conducted surveys and found Mohave ground squirrels 40 mi (64 km) farther east than previously documented occurrences (Wessman 1977, pp. 11, 12). Krzysik (1994, p. 29) documented the impacts of ground forces training on the habitat of the Mohave ground squirrel, which included extensive losses of shrub cover, soil layers, and cryptobiotic soil crusts. Cryptobiotic soil crusts are collections of symbiotic bacteria, algae, fungi, and lichen that live on or slightly below the soil's surface and create a semipermeable soil surface or crust. They reduce soil erosion, promote and control water infiltration, regulate soil temperatures, catch and convert atmospheric nitrogen,

accumulate organic matter, and facilitate native seedling establishment and growth (Boarman 2002, pp. 46 and 47), and thus aid in the maintenance of high-quality forage and habitat for the squirrel.

In the future, the 75,300 ac (29,745 ha) expansion area, some of which is likely Mohave ground squirrel habitat, will be used for ground forces training; impacts to the expansion area are expected to be the same as areas currently used for ground forces training. However, the entire area within the NTC is not used for ground forces training, as some of the terrain is not suitable for training and some areas are set aside as buffer zones to shield the training activities from civilian uses on lands adjacent to the base's boundary. Human access to the NTC is restricted, which precludes the use of the land for other forms of surface disturbance (e.g., OHV recreational use, urban and rural development, mining). Thus, while some areas are intensively used for ground forces training, others are not and remain undisturbed. Therefore, the estimated 8.2 percent of the range of the Mohave ground squirrel that is within the NTC is an overestimate of the portion of the species' range impacted by military training activities. In addition, Fort Irwin and the NTC have implemented mitigation measures for the Mohave ground squirrel to offset the impacts from the expansion area (see Factor D, *Department of Defense*). The location of the NTC does not appear to have an adverse effect on the movement of the Mohave ground squirrel between the Coolgardie Mesa and the EAFB important population areas (Bell 2006, pp. 43, 72) (see Map 2 and *Significant Portion of the Range Analysis*).

The 33,359-ac (13,500-ha) Goldstone Deep Space Communications Complex, which is operated by the National Aeronautics and Space Administration (NASA) for tracking and communication for space missions, is off limits to Army training activities, although a tank trail constructed in 1985 bisects most of the Complex. Little or no OHV use occurs within the Goldstone Complex, because there is no public access; personal staff vehicles are confined to paved and dirt maintenance roads, and military vehicles are restricted to the tank trail. Therefore, the Mohave ground squirrels within the Goldstone Complex are essentially protected from military training activities. This is 0.6 percent of the range of the Mohave ground squirrel.

The 91,182 ac (36,900 ha) Leach Lake Bombing Range is managed by the Air Force for live-bomb practice, and is off

limits for ground use because of the high risk of unexploded ordnance. This area is 1.7 percent of the range of the Mohave ground squirrel; however, only a small portion of it is used for bombing practice. The remainder is managed as a buffer from human development in case a bomb misses its intended target. Although there are likely patches of Mohave ground squirrel habitat in the Bombing Range, their size, spatial arrangement, and degree of habitat quality are unknown because there is no ground access.

The 307,435 ac (124,468 ha) EAFB (see Map 1) is primarily used to test and evaluate aircraft. Additional activities include conducting and supporting tests of aerospace vehicles, evaluating flight and recovery of research vehicles, participating in developmental test and evaluation programs for the DOD and other government agencies, and operating the Air Force Test Pilot School (EAFB 2008b, pp. iii, 19). Because the emphasis at EAFB is training and testing in the air, the impacts to Mohave ground squirrel habitat are minimal and localized. Large areas of the base remain undeveloped and accommodate testing activities and buffers for these activities. These undisturbed and “off-limits” areas allow EAFB to conserve natural resources and minimize impacts to Mohave ground squirrel habitat.

Between 1993 and 2007, about 652 ac (264 ha) (about 0.2 percent of the base) of permanent land disturbance (e.g., urban development within the cantonment area) occurred at EAFB. EAFB recently announced plans to construct more than 3,000 ac (1,214 ha) of solar panels in the northwestern portion of the base to be energy self-sufficient; however, there is no timeframe for this project. Although this project would result in the loss of more Mohave ground squirrel habitat than has occurred in the past at EAFB (EAFB 2008b, p. iv), it is less than 0.06 percent of the range of the Mohave ground squirrel and has been sited to avoid: (1) The EAFB important population area; (2) areas with recorded occurrences of Mohave ground squirrels on EAFB; and (3) areas with likely connectivity to the south, east, and north where other important populations of Mohave ground squirrel are present (see Map 2). OHV use is strictly confined to designated areas on the base (see “Off-Highway Vehicle Recreational Use” section), while other activities that may affect Mohave ground squirrel habitat (e.g., livestock grazing and agriculture) are not allowed (EAFB 2008a, p. 73). The southeast portion of the base is designated critical habitat for the

federally threatened desert tortoise, and the east boundary abuts the Fremont-Kramer DWMA, providing connectivity to this and other areas managed for the Mohave ground squirrel (see Factor D, *Bureau of Land Management*, and Factor E, “Fragmentation”). The Air Force has an active program on EAFB to minimize ground disturbing activities in desert tortoise habitat, which also benefits the Mohave ground squirrel (EAFB 2008a, p. 74).

The Air Force has conducted Mohave ground squirrel presence/absence surveys on EAFB since 1988, concentrating on 60 study plots distributed throughout the base that were established to monitor long-term trends of habitat quality and species diversity (EAFB 2008a, p. 74). Annual trapping studies have occurred since the mid-1990s based on funding availability (EAFB 2008a, p. 73). Mohave ground squirrels have been trapped in all years when trapping was conducted; these results indicate that the Mohave ground squirrel is relatively widespread on the base except for the northwest portion. Most observations have occurred in the east and south portions of EAFB (EAFB 2008a, p. 75). Although densities are not available with the methodology used on EAFB, one of the Mohave ground squirrel important population areas was designated here because the area meets the three criteria for a “core” area (Leitner 2008, p. 12) (see Map 2).

The 1,110,443 ac (440,695 ha) NAWS is located in the northern portion of the range of the Mohave ground squirrel (NAWS 2002, p. 6). The primary function of NAWS is to research, develop, test, and evaluate weapons systems for Navy, Air Force, Army, Joint Service, commercial, and foreign military weapons systems. NAWS also develops and tests airborne electronic warfare systems and performs aircraft weapons integration (NAWS 2002, p. 1). The Mohave ground squirrel has been studied for several years at the Coso Range in the northwest area of NAWS (see “Abundance and Trend” section) and has been documented at other locations throughout the base.

Impacts to the Mohave ground squirrel and its habitat on NAWS are similar to those described for EAFB in both type and magnitude. Similar to EAFB, large areas of NAWS remain undeveloped to accommodate aerial testing activities and to serve as buffers for testing activities. For example, NAWS tests unmanned aerial vehicles for which they need large areas of open space to fly these vehicles and test their control capabilities and buffers to ensure the safety of civilians outside the base. These large undisturbed and “off-

limits” areas allow NAWS to conserve natural resources, including Mohave ground squirrel habitat, on much of the base.

Cattle grazing under BLM grazing leases no longer occurs on the base (BLM *et al.* 2005, chapter 4, p. 98). Feral burros and wild horses occur on NAWS. Impacts from burros and horses include loss of annual and woody perennial vegetation used by Mohave ground squirrels for forage, loss of cover from predators and thermal shade, and soil compaction from trailing (NAWS 2002, p. B-97) (see “Grazing” section below). However, NAWS and the BLM have an extensive burro removal program that has substantially reduced the impact of burros (BLM *et al.* 2005, chapter 2, p. 81).

In summary, Mohave ground squirrel habitat has been lost to military operations primarily from ground forces training. The largest area of loss is in the NTC, including the expansion area, with about 8.2 percent of the range of the Mohave ground squirrel within the NTC boundary. However, the NTC is on the eastern edge of the range of the Mohave ground squirrel (see Factor E, “Fragmentation”), and not all of the area within the NTC is impacted by ground forces training. Other locations on DOD land, such as the Goldstone Complex and much of EAFB and NAWS (more than 1,745,000 ac (706,180 ha)), are undeveloped and receive little-to-no surface impacts from military operations. Because of military security and the need for large areas of open space to test aircraft and weapon systems and buffer areas around the test areas, these areas become *de facto* conservation areas for Mohave ground squirrel habitat.

We found no information that the DOD is proposing to change its mission in the future and no information on proposals that would impact additional lands within military boundaries. The DOD manages about one third of the range of the Mohave ground squirrel. Although about 9 percent of the range of the squirrel is used for training and testing to meet the military’s mission, we estimate that 27 percent of the range is managed under limited use or *de facto* habitat conservation for the Mohave ground squirrel (see Table 1). Therefore, after reviewing the best available scientific and commercial information, we conclude that military operations do not currently pose a significant threat to the Mohave ground squirrel in relation to the destruction, modification, or curtailment of habitat or range of the species, nor do we anticipate military operations posing a threat in the future.

Energy Development

Energy development includes two components, the power plant where energy production or generation occurs, and the transmission line that transports the energy to users. In the western Mojave Desert, power plants currently generate energy using both non-renewable sources (*e.g.*, natural gas, *etc.*) and renewable sources (*e.g.*, solar, wind, and geothermal) with several proposals to generate additional energy using renewable sources.

Power Generation

A total of 22 non-renewable and renewable energy power plants have been constructed within or near the range of the Mohave ground squirrel, including solar, wind, and geothermal facilities. These facilities are located in or near cities and communities in the range of the Mohave ground squirrel, including Little Lake, Tehachapi, Mojave, Cantil, Argus, Trona, Boron, Hinkley, Hesperia, Victorville, Oro Grande, Barstow, Daggett, and Newberry Springs (California Energy Commission (CEC) 2011 Web site). These non-renewable and renewable power plants produce energy by using water, geothermal, natural gas, biomass, wind, solar thermal, and coal, and they have ancillary facilities that require ongoing maintenance (such as pipelines, transmission lines, and roads). Impacts from the construction and operation of these existing facilities to the Mohave ground squirrel are similar to those described below for new renewable energy projects.

In addition, several applications have been submitted to Federal, State, and local agencies for the construction and operation of new renewable energy projects (*e.g.*, solar, wind, and geothermal) and associated transmission lines, and for the expansion of existing renewable energy projects in the range of the Mohave ground squirrel.

Various Federal and State directives foster the increase in proposed renewable energy projects. The Energy Policy Act of 2005 requires the Department of the Interior to approve at least 10,000 megawatts (MW) of renewable energy on public lands by 2015. The American Recovery and Reinvestment Act of 2009 provides monetary incentives for utility-level renewable energy development that occurs through December 2011. Executive Order 13514 declares the reduction of greenhouse gases as a priority for Federal agencies, and Executive Order 13212 requires Federal agencies to expedite review of energy project applications. In addition, the

Governor of California's Executive Order S-14-08 requires California electric utilities to obtain 33 percent of their power from renewable energy by 2020. These laws and directives mean that renewable energy projects will likely be located in the Mojave Desert in the future and possibly in the range of the Mohave ground squirrel.

The Department of the Interior has and continues to receive applications for utility-scale renewable energy projects on public lands, primarily in the western United States. As of November 2010 (Miller 2010, *in litt.*), the BLM had received 23 applications for solar and wind renewable energy projects in the CDCA, of which part or all of each project would be located in the range of the Mohave ground squirrel. These applications that are entirely or partly within the squirrel's range encompass an estimated 204,200 ac (82,637 ha) of BLM land. However, this is only a rough approximation, because at this point in the application process we cannot determine with any accuracy what areas fall inside or outside the range of the squirrel. Some proposed projects are located on both BLM and private land, but the amount on private land is not available at this time, and the location, size, and status of many of these proposed energy projects changes frequently. In addition, it is not likely that all of these proposed projects will be permitted (see discussion below under *Solar Projects*).

In addition to those applications on BLM-managed lands, several applications for solar and wind energy and transmission projects have been submitted to other agencies that manage lands in the Mojave Desert or that are privately owned. These include the DOD, Department of Energy, CEC, California Public Utilities Commission, and County planning agencies. At least a portion of many of these projects may fall within the range of the Mohave ground squirrel.

In response to the Federal and State initiatives to encourage renewable energy development and the several applications for permits for renewable energy projects, the Renewable Energy Action Team (REAT) was formed. Its members include the CEC, CDFG, BLM, Service, California Public Utilities Commission, California Independent System Operators, National Park Service, U.S. Environmental Protection Agency, and DOD. The REAT is developing the Desert Renewable Energy Conservation Plan (DRECP), which was mandated by California Executive Order S-14-08. This plan is a joint State Natural Communities Conservation Plan (NCCP) and Federal

planning effort that will identify and provide measures necessary to conserve and manage natural biological diversity within the plan area while allowing compatible and appropriate economic development, growth, and other human uses (California Fish and Game Code section 2805(g)). This includes mitigation measures that will offset impacts to sensitive species that are addressed in the DRECP, including the Mohave ground squirrel.

Solar Projects

Solar energy projects require a large, clear area for placing and maintaining photovoltaic panels or mirrors to produce energy and ancillary structures, including distribution lines to transport the generated energy to a high-voltage transmission line and provide power to the administration and operation facilities at the site; pipelines to supply water for administration and operation facilities and for the production of energy (*e.g.*, washing mirrors and panels, generating steam to produce energy); and roads to access the project site, distribution line route, and pipeline route(s). Some of these ancillary structures are tens of miles long. In addition, some projects are obligated to provide energy on cloudy days. Therefore, a backup energy system may be constructed within the project site that uses non-renewable energy sources, such as natural gas or propane, to produce energy, which may require the construction of a pipeline to deliver the hydrocarbon fuel to the project site.

Solar energy projects are likely the most destructive renewable energy projects to Mohave ground squirrel habitat. Based on the past construction and operation of both solar thermal and photovoltaic solar energy projects in the Mojave Desert, the footprint of the project site is usually a large area, most of which is cleared and maintained free of vegetation, and the right-of-way for the transmission line and pipeline(s) includes a maintained access road for operation and maintenance. Solar energy projects are usually located on level or slightly sloping ground, which is characteristic Mohave ground squirrel habitat.

Adverse effects to the Mohave ground squirrel from construction and operation of solar plants include crushing animals and their burrows; loss of habitat for foraging, cover, and reproduction; increased levels of vehicle traffic that potentially result in the increased mortality of squirrels and increased predation; introduction of nonnative plants, especially along pipelines, transmission lines, and access roads; and altering habitat upslope and

downslope, causing hydrologic and erosion effects.

There are two existing solar thermal power plants in the range of the Mohave ground squirrel, one near Kramer Junction and the second near Harper Dry Lake. These two facilities, both of which are located on private land, use solar trough or mirror technology, with backup natural gas as an energy source to produce power at night and on cloudy days. They cover an estimated 3,600 ac (1,457 ha), or 0.07 percent of the range of the Mohave ground squirrel, plus additional area for transmission lines, pipelines, and access roads. We are unaware of any information documenting impacts of these facilities on the Mohave ground squirrel population.

It is difficult to quantify the impacts of proposed solar energy projects on the habitat of the Mohave ground squirrel because of the uncertainty about their potential number, size, location, and jurisdiction. The DOD has proposed the development of 14,000 ac (5,666 ha) for solar energy production on Fort Irwin and 3,000 ac (1,214 ha) on EAFB. Although the average size of a solar project proposed on BLM land is about 7,000 ac (2,832 ha), the combined size of the three applications BLM has received that fall within the range of the Mohave ground squirrel was originally 9,686 ac (3,920 ha) (Miller 2010 *in litt.*). However, one of the three, the 3,883 ac (1,571 ha) Solar Millennium project, was recently cancelled after 2 years of environmental planning. It should be noted, however, that the cancellation of this project does not preclude another project proponent from submitting an application for solar development at the same site. The sizes of the two remaining projects are substantially different (5,325 ac (2,155 ha) versus 478 ac (193 ha)), which adds to the uncertainty about potential impacts on Mohave ground squirrel habitat. Ultimately, solar energy development on BLM land is likely to be limited within the range of the Mohave ground squirrel. Currently, none of the proposed solar energy projects are located in any of the eight important population areas for the Mohave ground squirrel.

The BLM is developing programmatic-level guidance for the development of solar energy projects and recently released a draft programmatic Environmental Impact Statement (EIS) for solar energy (BLM and DOE 2010). This draft EIS proposes four solar energy zones (SEZs) on 677,400 ac (27,414 ha) in the California desert. These SEZs are areas where the BLM would either make processing

utility-scale solar energy project applications located in SEZs a priority or restrict solar energy project development to SEZs. None of the four proposed SEZs is in the range of the Mohave ground squirrel, and the EIS includes language and a map showing that BLM lands that are ACECs, DWMA, or Mohave ground squirrel habitat are excluded from solar development. However, within the range of the Mohave ground squirrel, the map identifies scattered tracts of BLM land near the edge of EAFB and Victorville that have been identified as available for solar energy development (BLM and DOE 2010, p. 2). We note that this is a draft document, and the final document may be similar or different from the current EIS. Based on the currently available information, none of the proposed solar energy projects, the SEZs, or the scattered tracts of BLM land are within any of the important population areas for the Mohave ground squirrel.

Under the current WEMO Plan, which may extend to 2035, solar development within the range of the Mohave ground squirrel will also be restricted because the BLM has a maximum cumulative limit of 1 percent new surface disturbance of any kind for the MGSCA. One large solar project within the MGSCA would meet or exceed this 1-percent cap on any kind of surface disturbance. Although the 1-percent cap also applies to DWMA, solar energy projects on BLM land in DWMA are not likely to occur because of their designation as ACECs (see Factor D, *Bureau of Land Management*). The WEMO Plan also requires a mitigation ratio of 5:1 for lands within the DWMA and the MGSCA for habitat lost from ground disturbance (BLM *et al.* 2005, chapter 2, p. 204). The mitigation generally involves acquisition of non-Federal land to add to the DWMA and MGSCA, but mitigation measures other than habitat acquisition may be implemented to meet the 5:1 mitigation ratio. Outside of these areas, the mitigation ratio is 1:1 (BLM *et al.* 2005, chapter 2, p. 204, LaPre 2010). Once the DRECP is completed, the WEMO Plan would likely be amended to adopt this plan. The current delineation for the DWMA and MGSCA are not likely to change with implementation of the DRECP.

BLM does not have jurisdiction over the permitting, development, and operation of solar energy projects on private land within the range of the Mohave ground squirrel and, therefore, does not have information on the number, size, and location of these projects. A project on private land may

require approval from a County agency only, or from the County and the CEC. The applications received by these agencies are not always available to the public because of potential competition between energy developers, and as with BLM land, the number, size, and location of proposed solar energy projects changes frequently. However, we are aware of 21 proposed projects on private land within the range of the Mohave ground squirrel, which combined total 16,772 ac (6,787 ha), or about 0.3 percent of the range of the Mohave ground squirrel. Many of these projects are proposed for areas that were previously cleared and used for agriculture. None of these projects are located in any of the important population areas for the Mohave ground squirrel.

In summary, the impacts from construction and operation of a solar project in the range of the Mohave ground squirrel are similar to those described in the "Urban and Rural Development" section and are primarily loss of habitat. Two solar energy projects occur in the range of the Mohave ground squirrel, which combined are less than 0.1 percent of the range of the Mohave ground squirrel. The solar projects proposed on DOD land could comprise about 0.3 percent of the range of the squirrel. Three projects have been proposed on BLM land within the range of the squirrel, one of which was recently cancelled. The remaining two proposed projects make up about 0.1 percent of the range of the squirrel. Given the limitations for future development in the MGSCA and DWMA, the BLM's current proposed position to either limit utility-scale solar energy development to SEZs or make projects located in SEZs a priority for processing over other projects, we expect that few solar projects will be approved and constructed on BLM land within the range of the Mohave ground squirrel within the foreseeable future.

We are aware of 21 proposed solar projects on private land, which combined are about 0.3 percent of the range of the Mohave ground squirrel. However, the locations for many of these projects primarily occur on lands previously cleared for agriculture. The combined total of existing and proposed solar projects make up no more than 0.81 percent of the range of the Mohave ground squirrel. It is unlikely that all of the proposed projects will be built, and none of them are located in any of the important population areas for the Mohave ground squirrel. Therefore, based on the best available scientific and commercial information, we

conclude that solar energy development is not currently a significant threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

Wind Projects

At wind energy project sites, wind turbine towers are scattered among hundreds or thousands of acres. The entire project site is not cleared of vegetation, rather an area at the base of each tower and the roads that provide access to the towers are cleared. Thus, the project area is crisscrossed with cleared areas, which are used during operation and maintenance. In addition to the roads, ancillary facilities include meteorological towers, a substation and an electrical collection system of buried electrical cables conveying electricity from the wind turbines to a substation, an operation and maintenance building, an electrical transmission line and associated tower structures to transmit the generated power to an existing high-voltage transmission line, and a “switching station” that connects the electrical components associated from the wind turbines to the high-voltage transmission line. Additionally, water and sewer lines are needed for an operations and maintenance building.

Adverse effects to the Mohave ground squirrel from construction and operation of wind energy projects include crushing animals and their burrows; loss of habitat for foraging, cover, and reproduction; increased levels of vehicle traffic that potentially result in the increased mortality of squirrels and increased predation; introduction of nonnative plants, especially along pipelines, transmission lines, and roads; and alteration of habitat upslope and downslope causing hydrologic and erosion effects.

Although wind energy projects are usually similar in size or larger than solar energy projects, averaging about 8,725 ac (3,530 ha), they do not result in the elimination of all habitat within their perimeter as solar energy projects do. Habitat remains between the turbine pads and access roads. In addition, unlike solar projects, wind energy projects are frequently located on ridgelines, slopes, or in passes and would not likely be in areas with habitat characteristics preferred by Mohave ground squirrels. However, we have no information on how Mohave ground squirrel populations have been affected by currently operating wind energy projects or how they would be affected by the construction and operation of proposed wind energy projects.

Small patches of wind resources that are considered economically feasible to develop occur within the range of the Mohave ground squirrel (LM 2005, Appendix B, pp. 31–32), and some wind development is likely to occur. However, most of the large, commercially important wind fields in the Mojave Desert are to the west and south of the squirrel’s range. So far, wind energy projects have been constructed on non-Federal land along the western edge of the Mohave ground squirrel’s range in Kern County. Existing projects encompass about 4,900 ac (1,983 ha) or about 0.01 percent of the range of the Mohave ground squirrel (Waln 2011, p. 1). Wind turbines in this area have been placed mainly on hilltops and ridgelines, which are not generally suitable habitat for the Mohave ground squirrel.

It is difficult to quantify the impacts of proposed wind energy projects on the habitat of the Mohave ground squirrel. Applications have been submitted and withdrawn, and the size and location of the projects have changed after submission. It should be noted, however, that even if a project is cancelled, it does not prevent another project proponent from submitting an application for wind development at the same site. Recently the demand for energy sources from wind has been dampened by a reduction in the price of newly-found sources of natural gas and concerns over the future of renewable energy subsidies from Congress (Ball 2011, p. 2). As with solar energy projects, there is no single entity that is responsible for overseeing the development and operation of all wind energy projects in the Mojave Desert or within the range of the Mohave ground squirrel.

There is uncertainty in the development of future wind energy projects in the range of the Mohave ground squirrel. For example, only one wind project has been proposed on DOD land, a 49 ac (20 ha) project on Fort Irwin. In 2010, the BLM reported receiving 20 applications for wind energy projects totaling about 194,000 ac (78,509 ha) (Miller 2010, *in litt.*), although not all proposals occur within the range of the Mohave ground squirrel. The average project size is about 9,700 ac (3,925 ha), but sizes range from 160 ac (65 ha) to 45,385 ac (18,367 ha) (Miller 2010, *in litt.*). In contrast, in 2011 the BLM’s list of wind energy applications (BLM 2011a, pp. 1, 3, and 4) did not include eight projects from the 2010 list. This change from 2010 was a reduction of about 86,000 ac (34,803 ha).

The total acreage of currently proposed wind energy projects that potentially occur in the range of the Mohave ground squirrel is about 107,347 ac (43,442 ha), or about 2 percent of the range of the species. In addition, the actual number of acres that fall within the range of the Mohave ground squirrel is likely to be far less because at this early stage in the proposal process the boundaries of each project are very generalized, and some of the current proposals overlap and some are partly outside the squirrel’s range. In fact, requests for permits submitted to the BLM far exceed the 72,300 ac (29,259 ha) of economically developable wind resources that the BLM estimates occur on the lands they manage in the entire State of California (BLM 205, pp. 2–5). Most of the currently proposed wind energy projects on BLM land are located along the west and southeast edges of the range of the Mohave ground squirrel, and most are located on ridgetops and hillsides, which are not considered suitable habitat for the Mohave ground squirrel.

The BLM’s wind energy program established policies, Best Management Practices (BMPs), and an Instructional Memorandum (IM 2009–043, December 19, 2008) to address the administration of wind energy development activities and identify minimum requirements for mitigation measures. These programmatic policies and BMPs would be applicable to all wind energy development projects on BLM lands. Site-specific and species-specific concerns, and the development of additional mitigation measures, would be addressed in project-level reviews, including National Environmental Policy Act (NEPA) analyses, as required (BLM 2005, Volume 1, Chapter ES, p. 4) (see Factor D below for a discussion of NEPA). For example, the BLM recommends establishing a policy by which right-of-way grants will not be issued for lands where wind energy development would be incompatible with specific resource values (BLM 2005, Volume 1, Chapter 2, pp. 6–7), such as those found within ACECs. Additional areas of land may be excluded from wind energy development on the basis of findings of resource impacts that cannot be mitigated and/or conflict with existing and planned multiple use activities or land use plans (BLM 2005, Volume 1, Chapter 2, p. 7). Other BLM policies include incorporating management goals and objectives specific to habitat conservation for species of concern (BLM 2005, Volume 1, Chapter 2, p. 9), such as the Mohave ground squirrel.

Under the current WEMO Plan, which may extend to 2035, wind development within the range of the Mohave ground squirrel will also be restricted because the BLM has a maximum cumulative limit of 1 percent new surface disturbance of any kind for the MGSCA and 1 percent for each of the two DWMA's. One large wind project within the MGSCA would meet or exceed this 1-percent cap on any kind of surface disturbance. The WEMO Plan also requires a mitigation ratio of 5:1 for lands within the DWMA's and the MGSCA for habitat lost from ground disturbance (BLM *et al.* 2005, chapter 2, p. 204). The mitigation generally involves acquisition of non-Federal land to add to the DWMA's and MGSCA, but mitigation measures other than habitat acquisition may be implemented to meet the 5:1 mitigation ratio. Outside of these areas, the mitigation ratio is 1:1 (BLM *et al.* 2005, chapter 2, p. 204; LaPre 2010, *in litt.*). Although compensation is required, there is no requirement that the lands acquired will be enhanced or excluded from future development projects, but they are subject to the 1-percent development cap. Once the DRECP is completed, the WEMO Plan would likely be amended to adopt this plan. The current delineations for the DWMA's and MGSCA are not likely to change with implementation of the DRECP.

Although patches of economically developable wind resources occur on private land throughout the range of the Mohave ground squirrel, most of the proposed and approved projects are along the western edge of the Mohave ground squirrel's range in Kern County. The Kern County Planning and Community Development Department listed 16 wind projects as either approved for construction or as deemed complete to begin the approval process (Kern County Planning 2011, pp. 1–2). Thirteen of these projects are located partly or entirely within the range of the Mohave ground squirrel. Their area is estimated to be 47,000 ac (19,020 ha), or about 0.9 percent of the range of the Mohave ground squirrel.

In summary, existing wind energy projects occur in the range of the Mohave ground squirrel and additional projects have been proposed and approved. Most wind energy projects are or will be located on ridgetops and hillsides, which are not considered suitable habitat for the Mohave ground squirrel for feeding, breeding, or shelter. None of the existing or proposed wind energy projects are located in any of the important population areas for the Mohave ground squirrel.

The impacts from construction and operation of a wind energy project in the range of the Mohave ground squirrel would likely be similar to those described under the "Off-Highway Vehicle Recreational Use" section but with low vehicle use due to restricted access, the impacts would be reduced.

Current operational wind energy projects are on non-Federal lands on the western edge of the range of the Mohave ground squirrel and encompass about 0.01 percent of the species' range. Plans for wind energy development on DOD land are limited to 49 ac (20 ha) on Fort Irwin. On BLM land, development of wind energy projects in the MGSCA would be limited and none is likely to occur in the DWMA's in the future as the BLM has imposed restrictions on future development in these areas. Although likely an overestimate, if we assume that all proposed wind energy projects on BLM land are entirely within the range of the Mohave ground squirrel, would be constructed, and would result in the total loss of habitat within the project boundaries, 107,347 ac (43,442 ha), or 2 percent of the range of the Mohave ground squirrel, would be lost. On non-Federal land, about 47,000 ac (19,020 ha), or 0.9 percent of the range of the Mohave ground squirrel, have proposed or recently approved wind energy projects. The combined total of existing, proposed, and approved wind projects make up at most about 3 percent of the range of the Mohave ground squirrel; however, this is an overestimate as the projects would not result in a total loss of Mohave ground squirrel habitat.

Therefore, based on the best available scientific and commercial information, we conclude that wind energy development does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future, because:

- (1) Large areas of economically developable wind resources do not occur within the range of the Mohave ground squirrel;
- (2) The number and size of proposed or approved development on DOD land is limited;
- (3) There are limitations on the areal extent of development in the MGSCA and DWMA's; and
- (4) Typical construction and operation of wind energy projects does not result in the total loss of habitat within the project site.

Geothermal Projects

A typical geothermal project has one or more power plants, a series of wells

scattered throughout an area, pipelines delivering water to the wells and heated water to the power plant(s), a substation, transmission lines to a high-voltage transmission line, administrative offices, water and sewer lines, and ponds. Geothermal projects are not limited to a particular type of terrain as are wind turbines; they may or may not be located in areas with suitable habitat for Mohave ground squirrels. However, ancillary facilities such as transmission lines, pipelines, and access roads, would likely occur in Mohave ground squirrel habitat.

Adverse effects to the Mohave ground squirrel from construction and operation of geothermal energy projects include crushing animals and their burrows; loss of habitat used for foraging, cover, and reproduction; increased levels of vehicle traffic that potentially result in the increased mortality of squirrels and increased predation; introduction of nonnative plants, especially along pipelines, transmission lines, and roads; and altering habitat upslope and downslope causing hydrologic and erosion effects. Similar to wind energy projects, the overall size of geothermal projects may be large, but the entire project area is not cleared of vegetation, which leaves patches of habitat within the project area. Habitat patches would remain between the wells, pipelines, transmission poles/towers, and access roads.

Unlike solar and wind energy projects, geothermal energy projects are restricted to very specific areas where geothermal energy is sufficient and near the surface. There are only two locations in the range of the Mohave ground squirrel with actual and potential geothermal resources (Known Geothermal Resource Areas (KGRA)). One, the Coso Hot Springs KGRA, is on both NAWS (NAWS 2002, p. 47) and BLM land in the northern portion of the range of the Mohave ground squirrel; the second, the Randsburg KGRA, is mostly or entirely on BLM land near Randsburg in the central portion of the range of the squirrel (BLM *et al.* 2005, Appendix P–2, p. 3; California Department of Conservation 2002, p. 1). The single existing geothermal power plant, the Coso geothermal plant, is located in the Coso Hot Springs KGRA and consists of 106,000 ac (42,897 ha), or 2.0 percent of the range of the Mohave ground squirrel. Completed in 1987, it has 4 power plants and more than 120 wells producing 270 MW of energy (NAWS 2002, p. 48). Within the Coso Hot Springs KGRA, the BLM recently approved a 55 ac (22.3 ha) (BLM 2008, p. 13) project that includes

a groundwater extraction and pipeline delivery system for injection into the existing geothermal project. The addition of the 9-mile-long (14.5-km-long) pipeline and access right-of-way would expand the existing energy output by pumping an additional 4,800 ac-feet (5,920,713 cubic meters) of ground water per year, extending the life of the power plants.

Although a geothermal energy project has been constructed in the range of the Mohave ground squirrel, we have no information on how Mohave ground squirrel populations have been affected by the currently operating project and can therefore only speculate how the Mohave ground squirrel would be affected by the construction and operation of proposed geothermal energy projects. Mohave ground squirrels at the existing project in the northwest portion of the species' range have been studied, but the purpose of the study was to gather data on the effects of excluding livestock grazing and provide data on the biology of the Mohave ground squirrel (Leitner and Leitner 1998, p. i), and not the impacts of geothermal development on the squirrel. Only one of the important population areas for the Mohave ground squirrel, the Coso Range—Olancho area, is near the Coso geothermal power plant. Although the power plant is on the southern edge of this important population area for the Mohave ground squirrel, it has not been reported as having been affected by construction and operation of the geothermal plant.

The BLM issued a decision on the final programmatic Environmental Impact Statement (EIS) for geothermal development in December 2008 (BLM and USFS 2008). In its Record of Decision, the BLM determined that issuing a geothermal lease does not cause any effect on a species, as there is no guarantee that any development will ever take place on such a lease (BLM 2008c pp. 1–22). If development does take place, prior to the development the BLM would examine individual projects and phases (exploration, development, and operation) to determine the appropriate level of environmental analysis needed to comply with NEPA (BLM and USFS 2008, pp. 2–23) and address the impacts to the Mohave ground squirrel at that time. In addition, the BLM would apply stipulations on any lease where a special status species, such as the Mohave ground squirrel, is known or strongly suspected to occur. These stipulations include modifications to existing exploration and development proposals or modifications to lease terms (BLM 2008c pp. 1–23). The BLM

has developed BMPs for geothermal projects which include requiring the operator or lessee to identify important, sensitive, or unique habitats and biota in the project vicinity, and siting and designing the project to avoid (if possible), minimize, or mitigate potential impacts on these resources (BLM and USFS 2008, p. D–6), such as the Mohave ground squirrel. During each stage from exploration to utilization, the BLM retains the authority to approve, deny, or approve with conditions such as protective measures (BLM 2008c, pp. 1–24). In the CDCA, geothermal leasing is designated for all lands, with the exception of wilderness areas (BLM 2008c, pp. 2–3; BLM 1999, p. 15). We are not aware of any proposed geothermal projects on private lands in the range of the Mohave ground squirrel.

On September 11, 2009, the BLM issued a notice of intent to prepare an EIS for the exploration, development, and use of up to an additional 22,060 ac (8,927 ha), or 0.4 percent of the range of the Mohave ground squirrel in the northern resource area (74 FR 175 46786–46787). Within this 22,060 ac (8,927 ha) area, the BLM has received three applications for new geothermal development on 4,460 ac (1,805 ha), or 0.08 percent of the range of the Mohave ground squirrel. The BLM has received no applications for geothermal energy development near Randsburg.

Once the DRECP is completed, the WEMO Plan would likely be amended to adopt this plan. The current delineations for the DWMA and MGSCA are not likely to change with implementation of the DRECP.

In summary, there are limited locations for geothermal energy projects within the range of the Mohave ground squirrel. Currently, there is only one operating geothermal energy project in the range of the squirrel, and its impacts on the Mohave ground squirrel and its habitat have not been studied. Although an important population area for the Mohave ground squirrel is nearby the existing project, the Mohave ground squirrel has not been reported as having been affected by construction and operation of the geothermal plant. Additional geothermal energy projects have been proposed in the vicinity of the existing plant, and, when added to the existing project, would impact about 2.1 percent of the range of the Mohave ground squirrel. However, the impacts would likely not affect the entire area, as not all of the habitat within these geothermal energy areas is removed during construction and operation; not all of the habitat within the project sites is likely to be suitable for the Mohave

ground squirrel; and the BLM is required to implement best management practices to avoid (if possible), minimize, or mitigate potential impacts to species of concern, such as the Mohave ground squirrel. Therefore, we conclude that the construction and operation of geothermal energy projects are not currently a threat to the Mohave ground squirrel, nor do we anticipate geothermal energy projects posing a threat in the future.

Utility Corridors

The development of renewable energy projects in the western Mojave Desert will require construction of new transmission lines and the upgrading of existing transmission lines to carry the increased electrical energy production. Pipelines are also needed to carry water to some solar and geothermal energy plants for daily operational needs and natural gas or propane to some solar energy plants for energy production on cloudy days.

Utility corridors may impact the Mohave ground squirrel and its habitat in various ways. Construction activities result in direct impacts by crushing Mohave ground squirrels and their burrows, and collapsing burrows, which destroy the shelter the species needs to escape temperature extremes and predators and to rear young. Construction activities also unearth, injure, or kill other animals that attract Mohave ground squirrel predators, such as the common raven. The construction and use of unpaved roads along transmission lines and pipelines affect Mohave ground squirrel habitat in the same manner as roads created and used by OHVs (see “Off-Highway Vehicle Recreation Use” section); OHVs would also use the utility corridors. The physical structures (*e.g.*, towers and pads, access roads) cause loss of habitat and facilitate predation of the Mohave ground squirrel by providing nesting, roosting, and perching habitat for common ravens and birds of prey (Boarman and Heinrich 1999, pp. 23–24). Because of ongoing operation and maintenance, the recovery or restoration of these areas of lost habitat is limited (Lovich and Bainbridge 199, p. 313).

Because we have no reliable information on the number, size, and location of potential renewable energy projects in the range of the Mohave ground squirrel, we have no reliable information of the number, size, and location of their associated utility lines. However, utility corridors in the range of the Mohave ground squirrel already exist, having been designated by the BLM. In the range of the Mohave ground squirrel, these corridors generally run

closely parallel to major highways, including I-15, US-395, SR-58, and SR-178 (Inyokern to Ridgecrest and Trona). Corridors that are not associated with highways, or that are only occasionally associated with highways, include ones along the Mojave River, another along the southern boundary of Fort Irwin, two north-south corridors in the western Antelope Valley, and one east-west corridor near SRs-138 and 18 (Palmdale to Victorville) (BLM 2011b, p. 1). The purpose for designating the corridors is to provide a coordinated and consolidated delivery system network that meets the needs of the public and minimizes the proliferation of rights-of-way, construction, and loss of habitat through the western Mojave Desert (BLM *et al.* 2005, Chapter 3, p. 275). The BLM requires all new linear utilities exceeding certain thresholds to be placed within these designated corridors (BLM *et al.* 2005, chapter 3, pp. 274-275).

It is difficult to quantify the impacts of proposed transmission lines and pipelines ("lines") on the habitat of the Mohave ground squirrel. First, the number, length, and location of new lines are dependent on the size, number, and location of new solar, wind, and geothermal development. Applications for these have been submitted and withdrawn, and the size and location of some of the projects may have changed after they were submitted. The cost of constructing new lines is a significant part of the overall cost of an energy project, and therefore, most power suppliers locate their power generation source close to an existing utility corridor to reduce costs. Regardless, many miles of new lines and associated access roads will likely be constructed in the range of the Mohave ground squirrel, a portion of which will be outside of existing utility corridors.

Another important factor in determining the overall impact of new lines on the Mohave ground squirrel and its habitat is that the BLM requires mitigation for the Mohave ground squirrel from direct impacts of projects, such as energy development, and utility construction and maintenance. The WEMO Plan requires a mitigation ratio of 5:1 for lands within the DWMA and the MGSCA for habitat lost from ground disturbance (BLM *et al.* 2005, chapter 2, p. 204). The mitigation generally involves acquisition of non-Federal land to add to the DWMA and MGSCA, but mitigation measures other than habitat acquisition may be implemented to meet the 5:1 mitigation ratio. Outside of these areas, the compensation requirement is at a rate of 1:1 (BLM *et al.* 2005, chapter 2, p. 204, LaPre 2010,

in litt.). Although compensation is required, there is no requirement that the lands acquired will be enhanced or excluded from future development projects, but any acquired lands are subject to the 1-percent development cap. Thus, habitat acquisition may result in securing blocks of habitat for the Mohave ground squirrel, but it will also result in a net loss of total available acres of habitat. In addition, the CDFG may require mitigation for the loss of Mohave ground squirrel habitat as part of the permitting process under CESA (see Factor D, "State Laws and Regulations").

In summary, the construction and operation of utility corridors may impact the Mohave ground squirrel through increased animal mortality and the loss and degradation of habitat used for feeding, breeding, and sheltering. Utility corridors have been designated to minimize the proliferation of rights-of-way through the western Mojave Desert and range of the Mohave ground squirrel. Many are located along existing highways, which confines the locations and impacts of linear structures and minimizes new impacts to Mohave ground squirrel habitat. Where these rights-of-way cross BLM land, any permitted surface disturbance would be limited to a 1 percent development cap in the MGSCA and the DWMA and the mitigation rate would be 5:1. Outside these special management areas, the mitigation rate would be 1:1. Thus, habitat for the Mohave ground squirrel would likely be lost, but this loss would be confined mainly to the utility corridors and other areas of habitat that would be acquired through mitigation that could benefit the Mohave ground squirrel.

Summary of Energy Development

In summary, 22 non-renewable and renewable energy projects have been constructed within the range of the Mohave ground squirrel. No new non-renewable projects have been proposed; however, many more renewable energy projects have been proposed. Existing solar, wind, and geothermal projects encompass about 2.2 percent of the range of the Mohave ground squirrel. However, at the present time, there is a great deal of uncertainty as to the number, size, and location of future energy development and its potential impact on the Mohave ground squirrel. This uncertainty is caused by a number of factors, including overlapping proposed projects, the cost of supplying renewable energy compared to other energy sources, and whether or not the December 2011 construction deadline for funding under the American

Recovery and Reinvestment Act of 2009 will be extended.

Although we are not aware of any studies on the impact of renewable energy development on the Mohave ground squirrel, at least some loss of habitat will occur, with the potential amount and suitability of the habitat lost dependent in part on the type of energy development. Solar energy development may occur anywhere there is flat or gently sloping land, which is where Mohave ground squirrel habitat usually occurs, and is likely the most destructive type of renewable energy to Mohave ground squirrel habitat because most of the area is cleared of vegetation during construction and operation. In contrast, wind development is limited to those areas with economically developable wind energy and generally occurs on ridges and hilltops, while geothermal development within the range of the Mohave ground squirrel is limited to two areas where geothermal energy can be commercially developed. The impact of both wind and geothermal development may also be less than solar because much of the vegetation is not cleared during their construction.

Future solar and wind development on Federal land, which makes up about two-thirds of the range of the Mohave ground squirrel, is likely to be limited for several reasons. No solar and wind projects exist on the 37 percent of the range of the Mohave ground squirrel that is managed by the DOD, while proposed solar and wind development on DOD land makes up about 0.3 percent of the range of the Mohave ground squirrel. On BLM land, which includes about one-third of the range of the Mohave ground squirrel, existing renewable energy projects make up about 2.1 percent of the range of the squirrel, most of which is geothermal. However, the BLM has received applications for solar, wind, and geothermal projects that could encompass about an additional 2.2 percent of the range of the Mohave ground squirrel. This level of development on BLM land is likely an overestimate because the BLM has implemented a 1-percent cap (BLM *et al.* 2005a, chapter 2, p. 48) on all new development, including energy projects, in the 1,726,722 ac (698,78 ha) MGSCA and in the two DWMA, which total 1,155,835 ac (467,752 ha) (BLM *et al.* 2005, chapter 2, pp. 15, 48, 204) (see Map 2 and Factor D); the BLM also requires extensive and potentially expensive mitigation in these areas. This cap means the BLM would limit new development in each of these areas, which make up most of the range of the

BLM land within the range of the Mohave ground squirrel, to no more than 1 percent under the current WEMO Plan, which may extend to 2035. However, the proposed renewable energy projects in these limited development areas may already exceed this 1-percent cap, which means not all of the proposed projects would be built, and no other permitted projects of any kind with surface disturbance could occur in these areas.

For solar development, the BLM has proposed four SEZs in its programmatic EIS for solar energy, all of which are outside the range of the Mohave ground squirrel and within which solar development is more likely to occur. Wind development may be more likely to occur on BLM land within the range of the Mohave ground squirrel than solar, but it will be restricted because of the 1-percent cap within the MGSCA and each of the DWMAAs and the required mitigation. The mitigation ratio for ground disturbing activities within the MGSCA is 5:1; for land acquisition that means up to 65,440 ac (26,483 ha) of private lands (inholdings) in the MGSCA could be purchased and become part of the MGSCA if the entire 1 percent (13,088 ac (5,297 ha)) was developed. The same mitigation requirement (1-percent cap on development and 5:1 mitigation ratio) applies in the DWMAAs, where up to 86,335 ac (34,939 ha) could be added to the DWMAAs. However, assuming the worst-case scenario that all proposed wind and geothermal projects on BLM land are developed within the range of the Mohave ground squirrel, then as much as 2.2 percent of the range would be affected.

On non-Federal land, which comprises about one-third of the range of the Mohave ground squirrel, several solar and wind energy projects have been proposed that would impact about 1.2 percent of the range of the Mohave ground squirrel. However, many of the projects on private land will be constructed on land previously converted to agriculture. Therefore, although most probably an overestimate, 5.9 percent of the range could be lost as a result of renewable energy development. None of the existing or proposed renewable energy projects on Federal or private land are located within any of the important population areas for the Mohave ground squirrel.

Renewable energy development will also require the construction of additional utility lines, which may result in the loss of Mohave ground squirrel habitat. These additional lines will be limited in the MGSCA and the DWMAAs, as energy development in

these areas is expected to be limited, long utility lines add substantially to the cost of a project, and the lines are subject to the 1-percent development cap and the 5:1 mitigation ratio. New lines would be subject to a 1:1 mitigation ratio outside the MGSCA and DWMAAs.

In conclusion, existing non-renewable energy development has occurred in or near cities and communities in the range of the Mohave ground squirrel; however, no new non-renewable projects are proposed. Renewable energy development has occurred in rural areas within the range of the Mohave ground squirrel and has been mainly limited to solar thermal development in the central portion of the range and geothermal development in the northern portion of the range. Future development on Federal land, which makes up about two-thirds of the range, is likely to occur outside the MGSCA and the DWMAAs. Development on BLM land outside the MGSCA and the DWMAAs will require a mitigation ratio of 1:1. This mitigation could include the acquisition of additional lands to be included in the DWMAAs and MGSCA. Proposed energy development on DOD land makes up 0.3 percent of the range. We are aware of several proposed projects on private land, but many of them are in areas where the site has been graded, so the habitat is not suitable for the Mohave ground squirrel. Therefore, after reviewing the best available scientific and commercial information, we conclude that energy development does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

Livestock Grazing

Potential impacts from livestock grazing to Mohave ground squirrel habitat are mainly from degradation of soils and vegetation rather than direct loss of habitat, which is limited to construction and use of certain livestock improvements, such as livestock troughs, stock tanks, and corrals (Lovich and Bainbridge 1999, p. 313). Habitat degradation due to grazing occurs to varying degrees and includes soil compaction, destruction or degradation of cryptobiotic soil crusts, decreased water infiltration, increased erosion, trampling of plants, and overcropping (Lovich and Bainbridge 1999, p. 311). Grazing also collapses burrows (Boarman 2002, p. 28). Several studies have been conducted that document the impacts of livestock grazing, especially

overgrazing, on soils and vegetation in the Mojave Desert (Busack and Bury 1974, pp. 181–182; Berry 1978, pp. 511–515; Webb and Stielstra 1979, pp. 522–527; Nicholson and Humphreys 1981, pp. 171–81; Brooks 1995, pp. 67–69; Avery 1998, pp. 67–68).

In the Mojave Desert, livestock grazing impacts soils in various ways. It damages cryptobiotic soil crusts (see “Military Operations” section) in the open spaces between desert shrubs and causes soil compaction. In a comparison of soil conditions following sheep grazing in the western Mojave Desert, Webb and Stielstra (1979, pp. 522–523) noted that surface strength (a measure of compaction) was significantly greater in grazed as compared to ungrazed areas, particularly in the upper 4 in (10 cm) of the soil, and that surface erosion was greater after grazing.

Grazing has also been found to reduce the number of seeds in a soil seed bank (Brooks 1995, p. 670), which contributes to changes in plant communities. In the western Mojave Desert, a study comparing grazed and ungrazed plots reported the grazed plot had reduced native forb density (Larson *et al.* 1997, as cited in Boarman 2002, p. 34). Native vegetation biomass in the Mojave Desert is higher in areas protected from grazing, while nonnative grass biomass is greater outside protected areas (Brooks 1995, pp. 67–68).

The impacts to soils and vegetation in active allotments vary by location and intensity. For much of the grazing season, the areas livestock graze are limited by distance from water. Grazing intensity and associated impacts are generally greater near watering areas, but decrease substantially within a short distance (Boarman 2002, p. 34), and some areas within an allotment may not be grazed because of their distance from water.

Although several studies have been conducted on the effects of livestock grazing on soils and vegetation in the Mojave Desert, we found only one study on the effects of livestock grazing on the Mohave ground squirrel. This study focused on dietary overlap, not impacts to soils and vegetation. Using fecal microhistological analysis, Leitner and Leitner (1998, pp. iv, 27) reported that both Mohave ground squirrels and livestock rely on the leaves from shrubs, particularly one uncommon shrub, *Krascheninnikovia lanata* (winterfat). This reliance by both livestock and squirrels was greater in dry years. The researchers concluded there was dietary overlap between the Mohave ground squirrel and cattle (Leitner and Leitner 2006, p. 38), but provided no information on whether this overlap

was impacting the Mohave ground squirrel.

Cattle and sheep grazing are authorized within the range of the Mohave ground squirrel. The majority of grazing occurs on BLM land, but grazing also occurs on private land. The BLM has designated 21 grazing allotments (11 sheep, 7 cattle, and 3 cattle/sheep) within the range of the Mohave ground squirrel (BLM *et al.* 2005, chapter 2, pp. 125, 130; chapter 3, pp. 213, 215–216). An allotment is an area designated for grazing for a private rancher to use. The grazing program in the WEMO Plan addresses BLM lands only; however, many of the BLM allotments include both public and private lands (BLM *et al.* 2005, chapter 2, p. 130).

With adoption of the WEMO Plan, the BLM made several changes to grazing management. The BLM implemented public land health standards and guidelines for grazing management to improve ecological conditions and ensure healthy sustainable rangelands (BLM *et al.* 2005, chapter 2, p. 118). The standards in the WEMO Plan include managing soils and native species' habitats by managing ecological processes, and include indicators to evaluate whether populations and their habitats are sufficiently distributed and healthy to prevent the need for listing under the ESA (BLM *et al.* 2005, chapter 2, p. 121). The BLM is required to restore, maintain, or enhance habitats of special status species, such as the Mohave ground squirrel, to promote their conservation (BLM *et al.* 2005, chapter 2, p. 124).

Under the WEMO plan, specific management changes to livestock grazing in the range of the Mohave ground squirrel included reducing the area authorized for grazing in the range of the Mohave ground squirrel by 33 percent; eliminating ephemeral grazing for cattle in the DWMAs; eliminating sheep grazing in most of the DWMAs; excluding cattle grazing in the spring in DWMAs in years when annual plant productivity is low; excluding cattle grazing on NAWS; and allowing permittees to voluntarily relinquish cattle and sheep allotments (BLM *et al.* 2005, chapter 2, pp. 127, 132–135). These management prescriptions will be in effect during implementation of the current WEMO Plan, which may extend to 2035. The area currently authorized for grazing by the BLM within the range of the Mohave ground squirrel habitat is 1,718,686 ac (695,530 ha) of BLM and private land (BLM *et al.* 2005, chapter 3, pp. 213, 215–216; Waln 2010, p. 1), or about 32.3 percent of the range of the Mohave ground squirrel (see "Range and Distribution" section). In addition,

the BLM reports that although no allotments have been voluntarily relinquished, the permittee for the 45,619 ac (38,994 ha) Pilot Knob allotment has not grazed livestock recently and has requested relinquishment (Fitton 2010, *in litt.*). This area is 0.9 percent of the range of the Mohave ground squirrel.

We do not have any information on regionwide grazing on private lands outside of BLM allotments; therefore, the total area grazed presented above underestimates the actual area of grazing within the range of the Mohave ground squirrel (BLM *et al.* 2005, Appendix M, no page number).

Mohave ground squirrel habitat can also be degraded by feral burros and wild horses, which occur in the northern portion of the species' range. Impacts to Mohave ground squirrel habitat from feral burro and wild horses are hypothesized to be similar to those of livestock grazing. The extent of these impacts on Mohave ground squirrel habitat is likely influenced by wild horse and feral burro population density, topography and soils, resident plant communities, spatial and temporal scale, other disturbances, year to year and longer term climatic variation, and animal behavior (Abella 2008, p. 817).

The BLM has an ongoing program on its lands to capture and move feral burros and wild horses (BLM *et al.* 2005 chapter 2, p. 90), and although these animals remain within the range of the Mohave ground squirrel, their degree of impact they have on the habitat of the Mohave ground squirrel has been greatly reduced. The Navy also has an ongoing program to capture and move burros and horses from the NAWS (see "Military Operations" section).

In summary, although livestock grazing may result in the degradation of soils and vegetation, it rarely results in the direct loss of habitat, and there is no information that demonstrates livestock grazing is negatively impacting Mohave ground squirrel habitat. The focus of studies on livestock grazing in the Mojave Desert has been on general impacts to soils and vegetation rather than how those impacts are affecting the Mohave ground squirrel and its habitat. One study found there was dietary overlap between the Mohave ground squirrels and livestock for one forage species, but provided no information that this was adversely affecting the Mohave ground squirrel. Although we are not aware of any significant impacts of grazing on Mohave ground squirrel habitat, soil and habitat degradation associated with grazing have been further reduced with the BLM's recent implementation of public land health

standards and guidelines for grazing. Recent BLM actions in the range of the Mohave ground squirrel include eliminating grazing in some areas and reducing it in others, which should improve the condition of the soils and vegetation, particularly in the MGSCA and the DWMAs (see Map 2). Over time, these changes are likely to provide increased foraging opportunities for the Mohave ground squirrel and reduce the overall amount of time that livestock spend within these areas, thus reducing impacts to soils, vegetation, and dietary overlap. Therefore, based on the best available scientific and commercial data, we conclude that livestock grazing does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate livestock grazing posing a threat in the future.

Agriculture

Agriculture occurs in the range of the Mohave ground squirrel. Agricultural development results in the conversion of native desert habitat to croplands and orchards. In addition to the direct loss of habitat, agricultural activities expose Mohave ground squirrels and nearby habitat to insecticides, herbicides, and rodenticides (Hoyt 1972, p. 7). Because the Mohave ground squirrel eats both plants and insects, it could be adversely affected by the loss or reduction of these food items from the use of insecticides and herbicides. In addition, drift of insecticides, herbicides, or rodenticides from the fields into adjacent habitat or bioaccumulation of these chemicals from contaminated forage and insects could adversely affect the Mohave ground squirrel.

We found no information that the use of pesticides is adversely affecting the Mohave ground squirrel from direct exposure, reduction of forage, or bioaccumulation from consuming treated vegetation or insects. Habitat loss from agricultural activities has occurred at several locations within the range of the Mohave ground squirrel. By the early 1990s, more than 39,000 ac (15,700 ha), or 0.7 percent of the range of the Mohave ground squirrel, had been lost to agriculture, including areas in the Antelope Valley and Mojave River Basin (Gustafson 1993, p. 24). In 1994, Krzysik (1994, p. 18) reported that the spread of alfalfa fields throughout the species' southern range in the Mojave River area had destroyed prime Mohave ground squirrel habitat and fragmented populations. Krzysik (1994, p. 18) concluded that the Mohave ground squirrel was no longer found in the

Lucerne Valley, Apple Valley, or Victorville areas, which are in the southern portion of the squirrel's range (see Map 1). We estimate this area to be about 2.4 percent of the range of the Mohave ground squirrel. However, there have been recent sightings of the Mohave ground squirrel near Adelanto and Hesperia (Victorville/Mojave River Valley area) and Mojave (western Antelope Valley) (Leitner 2008, pp. 6–7) (see Map 1).

We acknowledge that past agricultural development resulted in the destruction of Mohave ground squirrel habitat. However, the current cost of pumping ground water to irrigate crops in the western Mojave Desert discourages the development of new areas for agriculture (Los Angeles County Cooperative Extension 2009, p. 1). In addition, many areas historically used for agriculture are being converted to residential and commercial development (Los Angeles County Cooperative Extension 2009, p. 1). This conversion would not result in additional loss of habitat for the Mohave ground squirrel, as the native vegetation had previously been removed when developed for agriculture. After reviewing the information on Web sites of local agricultural agencies in the western Mojave Desert, we conclude that there will likely be no increase in agricultural development in the future. Given the best available scientific and commercial data, and the small percent of the range of the species affected by agriculture, we conclude that agriculture does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

Mining

Limited mining occurs in the range of the Mohave ground squirrel, and includes mineral, sand, and gravel mines. Mining results in the loss of Mohave ground squirrel habitat through removal of vegetation used for forage and cover, and removal of soils used for burrows, which provide protection from temperature extremes and predation, and serve as a location to give birth. Travel off road during mining exploration, and the construction and use of roads to access the mine site during production, also result in the loss of habitat (Boarman 2002, p. 18). These activities impact the Mohave ground squirrel by damaging and removing shrub cover and compacting the soil (see "Off-Highway Vehicle Recreational Use" section above for

additional details). Extracting minerals is usually done by constructing adits (a type of horizontal shaft), shafts, and/or pits. The unused materials may include overburden, waste ore, and tailings, which are deposited near the mine site. A mining operation may require office space, storage facilities, and power plants at the mine site. These activities impact Mohave ground squirrels through a direct loss of habitat, similar to impacts from urban development, although on a reduced scale (Boarman 2002, p. 18) (see "Urban and Rural Development" section).

Mining has occurred in the western Mojave Desert for more than a century. Minerals extracted in the western Mojave Desert include gold, borates, and aggregate materials (sand, gravel, and stone). Mine size ranges from less than a few acres for recreational mining and exploration, to large commercial mines covering several square miles. However, most of the mines in the western Mojave Desert are small and their impacts are very limited and localized.

The only extensive mining operation in the range of the Mohave ground squirrel is the U.S. Borax borate mine located north of Boron (see Map 1). This operation is proposing to increase its footprint by 1,500 ac (607 ha) (U.S. Borax 2008, Figure ES–2), which would allow the mine to operate past 2050. Sand, gravel, cement, and other mineral commodities used for construction materials are in demand as the population in the western Mojave Desert and southern California continues to grow. We anticipate there will be an increase in demand for these materials in the future in the western Mojave Desert (BLM *et al.* 2005, Appendix P, p. 2), despite the current slowdown in the economy. As sand and gravel mining operations deplete their material sources at currently approved mining sites, they will likely request permits to expand their current operation sites (e.g., Ag Con in Oro Grande, San Bernardino County 2003 Mining Conditional Use Permit and Reclamation Plan). Mine expansion would result in the loss of Mohave ground squirrel habitat, but this loss would likely be minimal in area when compared to the range of the species (far less than 0.01 percent of the range). Much smaller existing or proposed gold and silver mines are in the Mojave-Rosamond and Randsburg areas, but these mines are located on rocky buttes and do not occur in Mohave ground squirrel habitat.

Commercial and recreational mining does not occur on DOD lands. On public land, the BLM allows mining in all areas, unless the land has been

withdrawn from mineral entry. Lands not withdrawn but requiring an approved plan of operation prior to commencing mining activities include proposals to remove more than 1,000 tons of ore, to disturb more than 5 ac (2 ha) of BLM land, or to be located on lands that are ACECs or wilderness. Class L public lands are limited-use areas to help protect sensitive, natural, scenic, ecological, and cultural resource values. These public lands are also managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished. Class C public lands are wilderness areas with controlled use that is also closed to OHV use (BLM *et al.* 2005, chapter 3, p. 3 and Appendix P, p. 4). Casual mining use or prospecting can occur on BLM lands in the western Mojave Desert, as can commercial mining. However, the DWMA areas are ACECs and the MGSCA area is Class L land. The BLM would need to approve a plan of operation prior to anyone initiating mining activities in these areas. The plan of operation would also need to include the 5:1 mitigation ratio, and mine development would contribute to the 1-percent development cap. Given these requirements, it is unlikely that mining would occur on these lands in the range of the Mohave ground squirrel in the future.

In summary, mining occurs in the range of the Mohave ground squirrel on private and BLM lands. However, using the best available scientific and commercial information, we find that only a small number of known active and proposed mines occur in the range of the Mohave ground squirrel; many of these mines are located in areas that are not suitable habitat (*i.e.*, rocky, mountainous areas) for the Mohave ground squirrel; and commercial mining is absent on DOD lands (which constitute about one third of the range of the species). Therefore, we conclude that mining does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

Climate Change

Climate change may be impacting the Mohave ground squirrel. Climate change is discussed here under Factor A because, although climate change may affect the Mohave ground squirrel directly by creating physiological stress, the primary impact of climate change on the Mohave ground squirrel is expected

to be through changes to the availability and distribution of Mohave ground squirrel habitat.

“Climate” refers to an area’s long-term average weather statistics (typically for at least 20- or 30-year periods), including the mean and variation of surface variables, such as temperature, precipitation, and wind, whereas “climate change” refers to a change in the mean and/or variability of climate properties that persists for an extended period (typically decades or longer), whether due to natural processes or human activity (Intergovernmental Panel on Climate Change (IPCC) 2007a, p. 78). Although changes in climate occur continuously over geological time, changes are now occurring at an accelerated rate. For example, at continental, regional and ocean basin scales, recent observed changes in long-term trends include: A substantial increase in precipitation in eastern parts of North America and South America, northern Europe, and northern and central Asia, and an increase in intense tropical cyclone activity in the North Atlantic since about 1970 (IPCC 2007a, p. 30); and an increase in annual average temperature of more than 2 degrees Fahrenheit (F) (1.1 degrees Celsius (C)) across the U.S. since 1960 (Global Climate Change Impacts in the United States (GCCIOUS) 2009, p. 27). Examples of observed changes in the physical environment include: An increase in global average sea level, and declines in mountain glaciers and average snow cover in both the northern and southern hemispheres (IPCC 2007a, p. 30); substantial and accelerating reductions in Arctic sea ice (*e.g.*, Comiso *et al.* 2008, p. 1), and a variety of changes in ecosystem processes, the distribution of species, and the timing of seasonal events (*e.g.*, GCCIOUS 2009, pp. 79–88).

The IPCC used Atmosphere-Ocean General Circulation Models and various greenhouse gas emissions scenarios to make projections of climate change globally and for broad regions through the 21st century (Meehl *et al.* 2007, p. 753; Randall *et al.* 2007, pp. 596–599), and reported these projections using a framework for characterizing certainty (Solomon *et al.* 2007, pp. 22–23). Examples include: (1) It is virtually certain there will be warmer and more frequent hot days and nights over most of the earth’s land areas; (2) it is very likely there will be increased frequency of warm spells and heat waves over most land areas, and the frequency of heavy precipitation events will increase over most areas; and (3) it is likely that increases will occur in the incidence of extreme high sea level (excludes

tsunamis), intense tropical cyclone activity, and the area affected by droughts (IPCC 2007b, p. 8, Table SPM.2). More recent analyses using a different global model and comparing other emissions scenarios resulted in similar projections of global temperature change across the different approaches (Prinn *et al.* 2011, pp. 527, 529).

All models (not just those involving climate change) have some uncertainty associated with projections due to assumptions used, data available, and features of the models; with regard to climate change this includes factors such as assumptions related to emissions scenarios, internal climate variability and differences among models. Despite this, however, under all global models and emissions scenarios, the overall projected trajectory of surface air temperature is one of increased warming compared to current conditions (Meehl *et al.* 2007, p. 762; Prinn *et al.* 2011, p. 527). Climate models, emissions scenarios, and associated assumptions, data, and analytical techniques will continue to be refined, as will interpretations of projections, as more information becomes available. For instance, some changes in conditions are occurring more rapidly than initially projected, such as melting of Arctic sea ice (Comiso *et al.* 2008, p. 1; Polyak *et al.* 2010, p. 1797), and since 2000 the observed emissions of greenhouse gases, which are a key influence on climate change, have been occurring at the middle to higher levels of the various emissions scenarios developed in the late 1990s and used by the IPCC for making projections (*e.g.*, Raupach *et al.* 2007, Figure 1, p. 10289; Manning *et al.* 2010, Figure 1, p. 377; Pielke *et al.* 2008, entire). Also, the best scientific and commercial data available indicate that average global surface air temperature is increasing and several climate-related changes are occurring and will continue for many decades even if emissions are stabilized soon (*e.g.* Meehl *et al.* 2007, pp. 822–829; Church *et al.* 2010, pp. 411–412; Gillett *et al.* 2011, entire).

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing “climate change” as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. For example, climate-related changes to habitats, predator-prey relationships, disease and disease vectors, or conditions that exceed the physiological tolerances of a species, occurring

individually or in combination, may affect the status of a species. Vulnerability to climate change impacts is a function of sensitivity to those changes, exposure to those changes, and adaptive capacity (IPCC 2007, p. 89; Glick *et al.* 2011, pp. 19–22). As described above, in evaluating the status of a species, the Service uses the best scientific and commercial data available, and this includes consideration of direct and indirect effects of climate change. As is the case with all potential threats, if a species is currently affected or is expected to be affected by one or more climate-related impacts, this does not necessarily mean the species is a threatened or endangered species as defined under the Act. If a species is listed as threatened or endangered, this knowledge regarding its vulnerability to, and impacts from, climate-associated changes in environmental conditions can be used to help devise appropriate strategies for its recovery.

While projections from global climate model simulations are informative and in some cases are the only or the best scientific information available, various downscaling methods are being used to provide higher resolution projections that are more relevant to the spatial scales used to assess impacts to a given species (see Glick *et al.* 2011, pp. 58–61). With regard to the area of analysis for the Mohave ground squirrel, downscaled projections are available to some degree. Specifically, the IPCC models predict that precipitation will decrease, but the frequency and magnitude of extreme precipitation events will increase. The IPCC provides a more recent report that supports EPA’s prediction of temperature increases and adds that rising air and ocean temperature is unquestionable (IPCC 2007a, p. 4). The Western Regional Climate Center’s California Climate Tracker has developed 11 climate-monitoring regions for California. The western Mojave Desert is part of one region that includes most of the Mojave Desert in California and the Owens Valley. Data collected from this region indicate that mean, maximum, and minimum temperatures have increased during the last 110 years (Redmond 2009, pp. 36–46).

There is still a considerable degree of uncertainty associated with projecting future climate change, due in part to uncertainties about future emissions of greenhouse gases and to differences among climate models and simulations (Stainforth *et al.* 2005, pp. 403–406; Duffy *et al.* 2006, pp. 873–874), and to the inability to predict change at a local scale. It is difficult with currently

available models to make meaningful predictions of climate change for areas such as the range of the Mohave ground squirrel (Parmesan and Matthews 2005, p. 354). The difficulty in predicting how an animal or plant will respond further increases the uncertainty of evaluating the potential impacts of climate change. Responses may include changes in distribution, population size, behavior, and physiological and physical characteristics (Parmesan and Mathews 2005, p. 373). Several published studies predict that temperature and precipitation trends may change in the near future, and some describe how biotic communities may respond to such changes (Parmesan and Mathews 2005, pp. 333–374; IPCC 2007a, pp. 1–21; IPCC 2007b, pp. 1–22; Jetz *et al.* 2007, pp. 1211–1216; Kelly and Goulden 2008, pp. 11823–11826; Loarie *et al.* 2008, pp. 1–10; Miller *et al.* 2008, pp. 1–17). In the interior western region of the United States, species may respond to increases in temperature by shifting their range to cooler areas.

The Mohave ground squirrel usually occurs in the flats and alluvial fans between rocky, mountainous areas. Based on the specific known habitat requirements of the Mohave ground squirrel, the species could respond to ambient temperature increases in three general ways: (1) Constrict its range; (2) move farther north; or (3) move higher in elevation within its current range. Moving farther north would require travelling over rocky hills, which is difficult, but possible, in some areas for the Mohave ground squirrel (see “Home Range and Movements” section). Moving to higher elevations would require the Mohave ground squirrel to cross rocky terrain and inhabit more marginal habitats at higher elevations with less suitable substrate for burrow construction. The most likely response by the Mohave ground squirrel to climate change would be to move north. However, we cannot be certain that the Mohave ground squirrel will respond this way. Regardless of the species’ response to ambient temperature increases, ultimately the range of the species will likely be smaller than it is currently.

Based on the information discussed above, we acknowledge that temperatures in the western Mojave Desert where the Mohave ground squirrel occurs have increased and are likely to continue increasing. We also acknowledge that, if hotter and drier summers and more extreme weather patterns in temperature and precipitation occur within its range, the Mohave ground squirrel may be negatively affected. As discussed in the

“Biology and Natural History” section, the activity period of the Mohave ground squirrel is generally spring and early summer when they mate and forage to sustain themselves for the remainder of the year. Increased temperatures could cause Mohave ground squirrels to have a shorter active period. A reduced active period may lessen the species’ ability to consume and store sufficient forage to sustain it through the dormant period, and may reduce the frequency of reproduction. If precipitation declines, the availability of nutritious forage would likely decline in a given year and across years. If such reduced precipitation levels persist, the habitat may no longer be suitable for the Mohave ground squirrel during the drought period.

Drought is a natural feature of the Mojave Desert. The State of California has experienced cycles of drought for many years. For example, between 1928 and 1987 the U.S. Geological Survey (USGS) reported five severe droughts across California, including the longest drought in the State’s history during the period 1929–1934 (USGS 2004, p. 2).

The Mohave ground squirrel has evolved several adaptations to persist in an environment with drought. These adaptations include suppressing reproduction during periods of low rainfall and food availability, retreating to burrows for most of the year to escape temperature and humidity extremes in summer and winter, reducing physiological demands by going into a state of torpor for much of the year, and caching food in burrows. However, prolonged drought exacerbates the effects of drought on the species; no young may be born for several years, the survivability of adults is reduced by poor forage conditions, and the surviving adults eventually die due to old age or predation (Gustafson 1993, p. 22). This situation can result in the extirpation of the Mohave ground squirrel in local areas (Gustafson 1993, p. 22). However, based on past records of severe drought, the Mohave ground squirrel has demonstrated that it can persist and recolonize areas following episodes of severe drought. Therefore, we have no information that supports the assumption that severe drought will threaten the species in the foreseeable future.

We also have no information on which to base meaningful predictions on how climate change may influence the duration or severity of drought within the range of the Mohave ground squirrel, or how its status may be affected. Increasing temperature could result in more severe and frequent drought, especially in the Southwest

(Karl *et al.* 2009, p. 42). However, we are not aware of any formal studies on the direct effect of rising global temperature on drought severity or frequency (Karl *et al.* 2009, p. 5). Drought severity and frequency are a function of a complex series of factors, such as the El-Nino-Southern Oscillation (ENSO) intensity and duration, as well as geographic variations in sea surface temperature, which may also be affected by increasing temperatures (Karl *et al.* 2009, p. 105), thereby compounding the uncertainty associated with precipitation projections (Karl *et al.* 2009, p. 105).

In summary, within the range of the Mohave ground squirrel, the potential effects of climate change, their magnitude, and projections on how the species will react are speculative for several reasons, including the uncertainties of climate projection models, the lack of models for projecting climate change for relatively small geographic areas, the complexity of interacting factors that may influence vegetation changes, and the uncertainty regarding the effects of climate change on the Mohave ground squirrel’s foraging, breeding, and movement/dispersal behaviors. Although climate change may have some effect on the species, at this time we cannot make meaningful projections on either how the climate within the range of the Mohave ground squirrel may change, or how the species may react to climate change. The Mohave ground squirrel has survived several periods of drought in the 20th century, including a 5-year drought in the early 20th century, and has evolved several adaptations to persist in an environment with drought as a natural feature of its environment, including recolonizing areas following episodes of severe drought. Therefore, based on a review of the best available scientific and commercial data, we conclude that climate change does not currently pose a threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate it posing a threat in the future.

Summary of Factor A

We have assessed the best available scientific and commercial data on the impacts of urban and rural development, OHV recreational use, transportation infrastructure, military operations, energy development, livestock grazing, agriculture, mining, and climate change on the range and habitat of the Mohave ground squirrel.

Urban and rural development destroys habitat used by the Mohave

ground squirrel for feeding, breeding, and shelter; reduces or prevents movement of individuals among populations (see Factor E); and introduces human behaviors that result in an increase in the number of Mohave ground squirrel predators (see Factor C). Most habitat loss occurs at the southern end of the species' range in the incorporated areas of Palmdale, Lancaster, Victorville, Apple Valley, Hesperia, Adelanto, and Barstow (see Map 1). Except for California City, which is located in the central part of the Mohave ground squirrel's range (see map 1), these cities make up almost all the incorporated lands within the squirrel's range. Not all the incorporated lands within these cities are developed; however, because of the proximity to existing infrastructures, we expect that future growth will take place in these incorporated areas. We cannot predict with any certainty how much or which of these areas will be developed in the next 20–30 years. Currently, about 2.6 percent of the range of the squirrel has been lost to urban and rural development. The development of all incorporated areas would result in the loss of approximately 9–10 percent of the Mohave ground squirrel's range; this number includes the 2.6 percent of the range already lost to development. However, this is highly unlikely because we expect very limited development of California City (or 2.45 percent of the species' range), which is the largest incorporated area within the range of the squirrel.

OHV recreational use occurs throughout much of the range of the Mohave ground squirrel. However, impacts to the Mohave ground squirrel and its habitat occur mainly in the most heavily used areas (management areas, spill-over zones, and high-use areas). If we assume that all habitat in the management areas, spill-over zones, and high-use areas has been severely impacted, then about 6.6 percent of the range of the Mohave ground squirrel has been lost to OHV use. However, we know that the Mohave ground squirrel continues to occur on at least one of the four management areas. Areas of lesser use (e.g., existing unpaved roads and trails) result in the loss of habitat, and vehicle activity can crush Mohave ground squirrels. However, the significance of such losses is undocumented for the Mohave ground squirrel and does not result in the total fragmentation of habitat, as unpaved roads and trails are not barriers to Mohave ground squirrel movement (Leitner 2010, *in litt.*). In addition, the BLM, through implementation of the

WEMO Plan, has no plans to designate additional high-use areas or roads and trails for the next few decades, has closed 45 percent of the roads and trails in the DWMA and 90 percent in the Rand Mountains ACEC (BLM *et al.* 2005, chapter 2, p. 167), is restoring habitat in areas of closed roads and trails, is increasing enforcement, and is revising its route designation to minimize damage to public resources and harassment and disruption of wildlife and habitat.

Several highways and roads cross the western Mojave Desert. This network of roads potentially impacts the Mohave ground squirrel and its habitat by direct mortality, loss of habitat from initial construction, introduction of invasive plants, and alteration of habitat upslope and downslope from hydrologic and erosion effects. One new highway is proposed in the southern portion of the range of the Mohave ground squirrel, and two highways are proposed for widening, which combined would result in the loss of at most 0.18 percent of the range of the squirrel. Although there is no information specific to the Mohave ground squirrel, roads are known in some cases to affect species and their habitat beyond the loss of habitat from construction of the road itself. This road-effect zone can have varying degrees of both positive and negative impacts, with the width of the zone varying with the species affected, location, habitat, road width, and traffic density. There is research that indicates that the effects of roads on small mammals in the desert are neutral to slightly positive. Assuming the worst case scenario that such a road-effect zone exists for the Mohave ground squirrel, and its impacts to the species' habitat are severe, we estimate that about 0.74 percent of the range could be lost.

Military operations vary in their magnitude and intensity of impacts to Mohave ground squirrel habitat. Ground force training activities that use live ammunition, ordnance, and tracked and wheeled vehicles remove vegetation, compact the soil, and cause fires that remove perennial plants. These activities, including the Fort Irwin expansion area, occur on about 8.2 percent of the range of the Mohave ground squirrel. Bombing and weapons testing often result in intense disturbance in small areas while large buffer areas remain undisturbed. Flight-testing and training have limited if any ground impacts. Training areas for the military bases in the western Mojave Desert have buffer areas where surface disturbance is limited, or not allowed. However, much of the habitat on the

three major bases in the western Mojave Desert, especially EAFB and NAWS, is protected from human impacts, such as urban and rural development, OHV recreational use, agriculture, and grazing, because these activities are not compatible with the military mission. Approximately 37.2 percent of the range of the Mohave ground squirrel occurs within the boundaries of Fort Irwin, EAFB, and NAWS. Although about 8.2 percent of the military land is intensively used for military operations, much of the remainder of its range within these DOD facilities is not heavily used, and large undisturbed areas are needed to test aerial vehicles and weapons and to act as buffer areas around target sites. To maintain the ongoing mission of the military, these large, undisturbed areas must remain undeveloped. Thus, while habitat for the Mohave ground squirrel is severely impacted in some areas by military operations, there are extensive areas where it does not experience these impacts.

Several renewable energy projects and utility lines have been constructed or are proposed for construction in the range of the Mohave ground squirrel. Besides the direct loss of potentially large areas of habitat from the construction of new facilities, new and existing energy projects can also facilitate an increased presence of predators and promote invasive plants. Solar projects are likely to be the most destructive to Mohave ground squirrel habitat because these projects are situated in relatively flat or gently sloping areas that are preferred by the squirrel and because all vegetation is removed during construction and operation. There are two existing solar projects within the range of the squirrel, which make up about 0.07 percent of the range. Both of these projects are on private land; there are no projects at the present time on BLM or DOD land within the range of the squirrel. Unlike solar projects, wind turbines are often situated on ridges and hilltops, which are not the squirrel's preferred habitat, and geothermal energy only occurs in two areas within the range of the squirrel. Also, all vegetation is not cleared during the construction of wind and geothermal projects. Existing wind projects are on private land on the western edge of the squirrel's range and make up about 0.1 percent of the range. There are no wind projects on BLM or DOD land at the present time. There is one large geothermal project on Federal land that makes up about 2 percent of the range, although much of the habitat in this area has not been destroyed.

Combined, existing renewable energy projects make up about 2.2 percent of the range of the Mohave ground squirrel.

Several renewable energy projects have been proposed on both Federal and private land in the range of the Mohave ground squirrel. However, at the present time, there is a great deal of uncertainty as to the number, size, and location of future energy development and its potential impact on the Mohave ground squirrel. This uncertainty is caused by a number of factors, including the overlap of proposed projects, the cost of supplying renewable energy compared to other energy sources, and the uncertainty of whether or not the December 2011 construction deadline for funding under the American Recovery and Reinvestment Act of 2009 will be extended. Proposals for solar and wind projects on DOD land, which include about 27 percent of the range of the Mohave ground squirrel, would encompass about 0.3 percent of the range, if constructed. Proposed solar and wind projects on BLM land, which includes about one third of the range of the squirrel, would encompass about 2.2 percent of the range, almost all of which is wind energy. However, this is likely an overestimate because not all of the proposed projects would likely be built. In addition, there is a 1 percent cap on development in the DWMA and MGSCA and the BLM would require a 5:1 mitigation ratio on all types of development in the MGSCA and DWMA and a 1:1 mitigation ratio outside these areas. Also, the BLM's draft PEIS on solar energy development has identified four proposed SEZs, none of which are within the range of the squirrel.

Proposals for new geothermal development on Federal land amount to only about 0.08 percent of the range of the Mohave ground squirrel. Although unlikely, if all proposed projects on Federal land, which makes up about 62 percent of the range, were constructed they would make up about 2.5 percent of the range. There are also proposals on private land, which would encompass about 1.2 percent of the squirrel's range, but many of these are proposed for land that has already been converted to agriculture. Therefore, under the worst case scenario, if we assume all proposed projects are constructed, construction of all renewable energy projects destroys all habitat, and all the habitat that is lost is suitable for Mohave ground squirrels, then an additional 3.7 percent of habitat could be lost. However, even in this worst case, large tracts of habitat would remain untouched, especially on Federal land.

Livestock grazing occurs throughout portions of the range of the Mohave ground squirrel. The available information on the effects of livestock grazing on the Mohave ground squirrel is limited to a study on dietary overlap between cattle and Mohave ground squirrels; the study provided no indication that this overlap was adversely affecting the Mohave ground squirrel. Other studies in the Mojave Desert have described the general impacts of livestock grazing, particularly overgrazing, on soils and vegetation, which may result in habitat degradation but rarely habitat loss. The greatest ground-disturbance impact of grazing occurs at and near stock tanks and other water sources where cattle congregate. However, these areas make up a small percent of the range of the Mohave ground squirrel. The BLM's recent implementation of public land health standards and guidelines, which include eliminating or reducing grazing in some areas in the range of the Mohave ground squirrel, should improve the conditions of the soils and vegetation, including in the MGSCA and DWMA. Over time, these changes are likely to improve the condition of soils and vegetation in the range of the Mohave ground squirrel.

Agricultural activities are ongoing in the range of the Mohave ground squirrel. Agricultural development is focused in three areas: the western Antelope Valley, an area south of EAFB, and the Mojave River Valley and results in the direct loss of Mohave ground squirrel habitat. However, this loss is estimated to be less than 1 percent of the range of the Mohave ground squirrel. Operational impacts in agricultural areas may also include exposing Mohave ground squirrels and their forage to pesticide contamination. We found no information that pesticide use is adversely affecting the Mohave ground squirrel or its habitat. We also found no information that agricultural development and associated impacts would likely increase in the western Mojave Desert. The cost of irrigation has risen to a level that discourages extensive conversion of desert scrub habitat to agriculture, and instead, some agricultural lands are being converted to residential and commercial development.

Mining activities have been ongoing in the western Mojave Desert for more than a century. Mining activities have impacts to the Mohave ground squirrel similar to urban and rural development and OHV recreational use, but on a more localized and limited scale. BLM lands are open to mining unless otherwise withdrawn; however, the

number of active mines is small when compared to the number of inactive mines. There is no commercial mining on DOD lands, and there are few large mines in the range of the Mohave ground squirrel.

Average temperatures have been rising in the western Mojave Desert, and this trend will likely continue because of climate change. Climate change may also affect precipitation and the severity, duration, or periodicity of drought. However, there is a great deal of uncertainty as to the rate at which the average temperature may increase, and the effect of climate change on both precipitation and drought. In addition to the uncertainty associated with how the overall climate of the Mojave Desert may change, the impact of climate change on the Mohave ground squirrel will depend on a complex array of other factors, including how the species and its habitat respond to climate change. In light of all the factors involved, we are not aware of information that would allow us to make a meaningful projection on the impact of climate change on the Mohave ground squirrel.

We now look at the impacts of urban and rural development, OHV recreational use, transportation infrastructure, military operations, energy development, livestock grazing, agriculture, mining, and climate change, cumulatively. Many acres of Mohave ground squirrel habitat have been lost to these impacts and additional habitat is expected to be lost in the future. The greatest impacts have resulted from urban and rural development. Impacts from development as well as those from agriculture have and continue to be mainly concentrated on private lands in the southern portion of the range of the Mohave ground squirrel. Habitat loss due to military operations has been concentrated in the NTC in the easternmost portion of the squirrel's range. Other impacts, including heavy-use OHV recreation and transportation infrastructure, existing and proposed renewable energy development, and grazing are more dispersed throughout the species' range. Based on a worst-case analysis, we estimate that in the next 20–30 years about 32.2 percent of the range of the Mohave ground squirrel could be lost. However, we expect that the actual loss during this timeframe will be much less because this estimate is based on a series of worst-case assumptions.

For urban and rural development, we expect the loss of habitat to be less because California City, which is the largest incorporated area in the Mojave Desert, has developed very little of its incorporated area in the past 46 years

and because the CDFG would likely require mitigation for the loss of Mohave ground squirrel habitat as part of the permitting process under CESA (see Factor D, “State Laws and Regulations”).

For transportation infrastructure, we calculated the loss of habitat from road construction along the entire highway length, which includes portions located within incorporated areas and currently developed areas, thus double counting these impacts within the range of the Mohave ground squirrel. In addition, we assumed a road-effect zone for the Mohave ground squirrel, although there may be little or no such zone for the squirrel, as several studies indicate that the impacts of highways are generally neutral to slightly positive for small mammals.

For military operations, we assumed that the entire NTC including the expansion area would be used for ground forces training resulting in the loss of all Mohave ground squirrel habitat within this area. In reality, not all of this area will be used for training and some areas have been set aside as buffer zones needed to shield the training activities from civilian uses on lands adjacent to the base.

For renewable energy, although the area requested for development may be large, the actual footprint of the projects is small, much of the Mohave ground squirrel habitat within the project boundary for wind and geothermal will not be developed, and many of these projects are proposed for areas that were previously cleared and used for agriculture. We also believe the total loss from renewable energy will be less because habitat loss is frequently mitigated by the acquisition and enhancement of habitat for the Mohave ground squirrel. In the squirrel’s range, the CDFG may require mitigation for development on private land and for Federal projects (see Factor D, “State Laws and Regulations”). The BLM requires 5:1 mitigation for projects in the DWMA and MGSCA and 1:1 elsewhere. Even if the worst case occurs and all 32.2 percent of the range is eventually lost, we expect that most of the remaining area will remain relatively undisturbed. More than 80 percent of the remaining land is Federal, and includes the MGSCA and DWMA, which are managed at least in part for the Mohave ground squirrel, and large areas of DOD land, especially on EAFB and NAWS, which we expect to remain undisturbed in support of the military’s mission. Of particular importance to the Mohave ground squirrel, much of the remaining lands are contiguous and provide connectivity from the northern

end of the range to well south of SR-58 in the southern portion of the range. These lands contain most or all the habitat within the eight important population areas and include habitat that provides for connectivity among the eight areas.

Based on this information, we conclude that the cumulative impacts of urban and rural development, OHV recreational use, military operations, energy development, transportation infrastructure, grazing, agriculture, mining, and climate change do not currently constitute a significant threat to the Mohave ground squirrel in relation to the present or threatened destruction, modification, or curtailment of its habitat or range, nor do we anticipate that they will pose a threat in the future.

Factor B: Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We found no known commercial or recreational utilization of the Mohave ground squirrel. Scientific and educational activities associated with the Mohave ground squirrel are controlled by the CDFG through the issuance of scientific research permits.

Based on our review of the best available scientific and commercial information, we found no evidence of threats from overutilization for commercial, recreational, scientific, or educational purposes affecting the Mohave ground squirrel or potential risks in the future. We therefore conclude that overutilization for commercial, recreational, scientific, or educational purposes is currently not a threat to the Mohave ground squirrel across its range, nor do we anticipate overutilization for commercial, recreational, scientific, or educational purposes posing a threat in the future.

Factor C: Disease or Predation

Disease

Although other species of ground squirrels are subject to sylvatic plague (Foley *et al.* 2007, p. 1; CA Dept. Public Health 2008, p. 2), there is no evidence of its presence in Mohave ground squirrels (Leitner 2005, PowerPoint presentation, slide 11). There is no information of any other disease present in the Mohave ground squirrel. Based on our review of the best available scientific information, we found no research or observational evidence that documents or suggests that disease is affecting the Mohave ground squirrel (Service and CDFG 1998, p. 2; Leitner presentation, 2005).

Predation

Small rodents such as the Mohave ground squirrel are important prey for many species. The Mohave ground squirrel is potentially prey to a host of native predators, including the coyote; American badger; bobcat (*Lynx rufus*); various species of raptors, such as the golden eagle, prairie falcon, and red-tailed hawk (Gustafson 1993, p. 88); common raven (Boarman 1993, p. 2); and various species of rattlesnakes (Gustafson 1993, p. 88). In addition, domestic cats and dogs may also prey on Mohave ground squirrels. Of 36 Mohave ground squirrels radio-collared in 1995 and 1997, 12 (33 percent) were believed to be lost to predation (Harris and Leitner 2005, pp. 190–191). Although not directly observed, mortality from predation was determined from a combination of blood or toothmarks on radio collars or the discovery of collars at a raptor or raven perch site. Overall, predation on Mohave ground squirrels has seldom been observed, and the impact of predation on the species is not known. Small rodents are important prey for many of the species listed above, and predation on small rodents, including the Mohave ground squirrel, can be high.

The coyote is a common predator in the western Mojave Desert. Although the coyote is likely a predator of the Mohave ground squirrel, we found no recorded observations of coyotes preying on Mohave ground squirrels or fecal analysis of coyote scat that contained remains of Mohave ground squirrels. In addition, we found no information documenting that the coyote population has increased or is expected to increase in the western Mojave Desert, or the level of predation by the coyote on the Mohave ground squirrel has increased or is expected to increase, or that coyote predation is having an adverse impact on the species.

The increased presence of domestic dogs and cats in the western Mojave Desert may impact the Mohave ground squirrel. Feral or free-ranging domestic dogs have been identified as potential predators of the Mohave ground squirrel (D. LaBerteaux, cited in Gustafson 1993, Appendix, p. 86). The BLM (BLM *et al.* 2005, chapter 3, p. 65) noted “feral dogs are a problem in several areas” of the western Mojave Desert “where they may kill Mohave ground squirrels.” The BLM found that dogs are most common in the habitat adjacent to urbanized areas (BLM *et al.* 2005, chapter 3, p. 96). For example, BLM survey results showed that dog sign occurred on 88

percent of the transects surveyed in proximity to urbanized areas but occurred on less than 1 percent of the transects surveyed in the undeveloped Fremont-Kramer and Superior-Cronese DWMAAs (BLM *et al.* 2005, chapter 3, p. 104). For those transects within the range of the Mohave ground squirrel, 4 percent had dog sign (BLM *et al.* 2005, chapter 3, p. 156). Although these data indicate that dogs, based on the presence of sign, occur in desert habitats within the range of the Mohave ground squirrel, Leitner (2005 presentation) indicated that no data have been collected that document that dogs have an impact on the species. In our review of the available information, we did not find any indication that feral or domestic dogs prey on Mohave ground squirrels or dig up Mohave ground squirrel burrows. In the WEMO Plan, the BLM stated that failure to implement a feral dog management plan is not likely to adversely affect the Mohave ground squirrel, as “feral dog predation has not been documented as a significant threat” (BLM *et al.* 2005, chapter 4, p. 153). Therefore, we conclude that domestic or feral dogs are not a major predator of the Mohave ground squirrel and their rate of predation is not likely to increase in the future.

Domestic cats may have increased near urban expansion areas in the western Mojave Desert. Domestic cats are efficient predators of small birds and mammals (Harrison 1992, p. 10). Gustafson (1993, p. 30–31) postulated that domestic cats may kill Mohave ground squirrels. However, Leitner (2005 presentation) stated there is no documentation of the impact of predation by domestic cats on Mohave ground squirrels. Although it is likely that domestic cats have increased in the western Mojave Desert with the increased human population in the past few decades, we were unable to find information documenting that domestic cats prey on Mohave ground squirrels.

The common raven is a likely predator of the Mohave ground squirrel. Harris and Leitner (2005, pp. 190–191) found empty radio collars from Mohave ground squirrels under raven perch sites and concluded this was evidence of predation by common ravens on Mohave ground squirrels. Common ravens kill many types of animals for food, including ground squirrels (Boarman 1993, p. 2). Kochert *et al.* (1976, in Knight and Call 1980, p. 17) reported that Townsend ground squirrels (*Urocitellus townsendii*) in Idaho comprised 93 and 70 percent of the food biomass of nesting ravens during a 2-year study.

The common raven population increased more than 700 percent in the western Mojave Desert from 1986 to 2004 (Boarman and Kristan 2006, p. 2; Service 2008, p. A–16), likely in response to increased urbanization and recreational use, which provide common ravens with an artificial source of reliable and widespread food, water, nest sites, roost sites, and perch sites (Boarman 2002, p. 1). In most locations, human-created nest, roost, and perch sites, including transmission line towers, telephone and streetlight poles, buildings, billboards, and fences, provide the common ravens with previously unavailable high perches, which allow them to hunt and scavenge more effectively, or with less energy expenditure than required by flight or from a low perch (Boarman 1993, p. 2).

Although common ravens likely prey on Mohave ground squirrels, and the amount of predation has likely increased as the population of ravens has increased, the available information does not indicate that this level of predation is having an adverse effect on Mohave ground squirrel populations.

Summary of Factor C

In summary, we found no information that disease is a threat to the Mohave ground squirrel throughout its range. Regarding predation, beyond the general knowledge of natural and potential predators of the Mohave ground squirrel, we found no information on the observance or extent of predation by coyotes, domestic dogs or cats on the Mohave ground squirrel, and no information suggesting that predation is affecting Mohave ground squirrel abundance, distribution, or long-term survival. We did find circumstantial information that predation by the common raven likely occurs on the Mohave ground squirrel. We also found information that the number of common ravens in the western Mojave Desert has increased substantially in the last few decades. We acknowledge that the level of predation by the common raven on the Mohave ground squirrel may have increased, but the available information does not indicate that this level of predation is adversely affecting Mohave ground squirrel abundance, distribution, or long-term survival. Therefore, based on our review of the best available scientific and commercial information, we conclude that predation is currently not a significant threat to the Mohave ground squirrel throughout its range, nor do we anticipate predation posing a threat in the future.

Factor D: The Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats that may place the Mohave ground squirrel in danger of becoming either endangered or threatened. Existing regulatory mechanisms that provide some protection for the Mohave ground squirrel include local land use ordinances and processes, State laws and regulations, and Federal laws and regulations. The habitat of the Mohave ground squirrel spans private lands, local government lands, State lands (California State Parks, CDFG, and California State Land Commission), and Federal lands (BLM, DOD, National Park Service (NPS), and U.S. Forest Service (USFS)) in California.

Local Land Use Ordinances and Processes

Approximately 31 percent of the range of the Mohave ground squirrel is privately owned, or owned by local governments. We found little in the way of local planning and enforceable zoning regulations specific to the Mohave ground squirrel. Approximately 11.9 percent of the range of the Mohave ground squirrel lies within San Bernardino County, but the County has regulatory authority over only a portion of these lands. The County of San Bernardino online “Biotic Resources Overlay Map” includes information to assist both the property developer and County land use planner in identifying lands that may support the Mohave ground squirrel. If a proposed discretionary project is within this overlay area, the County would accept an application for development only after a focused survey for the Mohave ground squirrel has been completed (Zias-Roe 2010, pers. comm.). If the survey results are positive, the County would require demonstration of compliance with CESA. Similar planning tools are used by municipalities such as the Town of Apple Valley (2009, p. III–50 of the General Plan) for discretionary projects. The Mohave ground squirrel is usually not considered when implementing actions such as issuing building or grading permits.

State Laws and Regulations

California laws and regulations that may benefit the Mohave ground squirrel include CESA and the California Environmental Quality Act (CEQA) (Public Resources Code sections 21000–21177). These laws provide broad

authority to regulate and protect wildlife within the State, specific authority for lands directly owned by the State, and specific authority to require reduction of take of the species through minimization and mitigation of impacts from discretionary actions at a local or State government level.

The State of California has broad authority to regulate and protect wildlife within its borders. The mission of the CDFG is "to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public" (CDFG 2005, p. 1). The CDFG does this through a variety of actions, including enforcing hundreds of laws and regulations related to fish, wildlife, and habitat; managing lands at wildlife areas, ecological reserves, and public access sites for ecological and recreational uses; and collecting and analyzing scientifically based data on the distribution and abundance of fish, wildlife, and native plant species and the natural communities and habitats in which they live. When implemented in the range of the Mohave ground squirrel, these actions benefit the species.

One California law that addresses the conservation and protection of the Mohave ground squirrel is CESA, which was enacted in 1985. The Mohave ground squirrel is listed as threatened under CESA; CESA defines a threatened species as a native species that, although not presently threatened with extinction, is likely to become an endangered species in the foreseeable future in the absence of special protection and management efforts. CESA also declares that it is the policy of the State to conserve, protect, restore, and enhance any endangered or threatened species and its habitat. Take, as defined under CESA, of a threatened or endangered species is prohibited without first obtaining authorization from the CDFG.

Because the Mohave ground squirrel is a threatened species under CESA, anyone wishing to capture or otherwise take a Mohave ground squirrel for scientific purposes must first obtain a memorandum of understanding (MOU) or a permit from the CDFG as described under California Fish and Game Code 2081(a) (CDFG 2003, p. 1). The issuance of the MOU or permit is a discretionary action by the CDFG. Under the California Fish and Game Code, the CDFG is charged with ensuring that any action it authorizes does not jeopardize the continued existence of the species. Therefore, the CDFG is not allowed by regulation to issue a permit that would

result in the overutilization of the Mohave ground squirrel for scientific purposes.

California Fish and Game Code section 2081, enacted in 1999, states that the CDFG may authorize, by permit, the take of an endangered and threatened species, if the take is incidental to an otherwise lawful activity and the impacts of the take are minimized and fully mitigated. Although CESA does not apply to Federal land management agencies conducting actions on Federal lands, it generally does apply to actions taken by non-Federal entities. Therefore, compliance with CESA is needed for many actions occurring in the range of the Mohave ground squirrel, including on Federal land. In addition, the State listing of the Mohave ground squirrel helps focus Federal land managers' attention on the species and consider impacts to the species when developing actions. Most Federal land managers would prefer to manage for a species to ensure it does not require the protections of the Act.

Because CESA prohibits the taking of the Mohave ground squirrel without obtaining a permit, the CDFG requires that a standard survey protocol, which was developed by the CDFG in 1987 (Gustafson 1993, p. 463) and revised in 2003, be used to determine the presence or absence of the Mohave ground squirrel on lands proposed for development. Therefore, the results obtained with the protocol are a critical component of the decision making process, and most of the information available on the distribution and abundance of the Mohave ground squirrel is based on the same results. The survey protocol specifies that a CDFG-approved, qualified biologist conduct a visual survey of the proposed project site. If the results are negative, a series of live grid traps are set during three periods. If the results for Mohave ground squirrels are negative after implementation of the survey protocol, the CDFG stipulates that the project site contains no Mohave ground squirrels, and development may occur without an incidental take permit and mitigation (CDFG 2003, p. 3). If Mohave ground squirrels are present at a proposed development, then CESA and California Fish and Game Code section 2081 require that the impacts be minimized and fully mitigated. The CDFG generally requires securing and managing existing habitat at another location for the Mohave ground squirrel. Thus, for every discretionary project with positive survey results, implementation of the proposed development with mitigation yields a net loss of acres of habitat for

the Mohave ground squirrel, but the lands acquired for mitigation are managed to improve their habitat value and are secured in perpetuity for the Mohave ground squirrel.

One major difference between CESA and the Act is that there is no requirement under CESA to develop and implement a recovery plan for a State-listed species. Consequently, with no recovery plan, there is no written guidance for Federal, State, and local agencies and the public to know what actions to implement and where to implement them to achieve the State's policy to conserve, protect, restore, and enhance the Mohave ground squirrel and its habitat.

In evaluating the Mohave ground squirrel protocol, some scientists have identified potential problems with the protocol that raise into question the accuracy of the current survey technique (Brooks and Matchett 2002, p. 172). The survey protocol may yield false negative results or undersample the population. Mohave ground squirrels are difficult to trap, even in locations where they have been sighted (Hoyt 1972, p. 7). Mohave ground squirrels have been observed approaching traps but not entering them (Leitner 2009, pers. comm.). In some cases, only a few squirrels have been trapped while several had been seen or heard calling in the same area (Urban *et al.* 2010, p. 1). In addition, the grid trap arrangement is not necessarily the best trapping method to use for detecting rare small mammals. For example, in comparing grid and transect trap arrangements for small mammals, transect arrangements yielded more total captures, more individual captures, and more species than grid arrangements (Pearson and Ruggiero 2003, p. 457). The differences between the two methods tend to be greatest when small mammals are least abundant (Pearson and Ruggiero 2003, p. 457), as may be the case with the Mohave ground squirrel. Recently, a video survey method was compared to the live trapping survey protocol at two locations. The Mohave ground squirrel detection rate for the video method was greater than for the trapping protocol (Delaney 2009, p. 12) (see "Abundance and Trend" section).

The CDFG acknowledges that a negative survey result does not mean that the Mohave ground squirrel does not occur on the site, or that take will not occur (CDFG 2003, p. 3). The survey protocol, including the trapping component of the protocol, may result in a false negative finding (*e.g.*, the Mohave ground squirrels may be present but the available data from the

survey protocol indicates they are not present). The purpose of the survey protocol is to determine presence and therefore if take will occur. Its purpose is not to provide population information on population size, status, or trend.

In summary, CESA provides some protection for the Mohave ground squirrel from take and habitat loss. However, the benefit of CESA to the squirrel may depend on the ability to detect the species on a proposed development site. If squirrels are present on a site but not detected with the survey protocol, which is known to occur based on subsequent observations, then the project is implemented with no mitigation for the Mohave ground squirrel under CESA. If a project proponent assumes presence of the Mohave ground squirrel at a project site or if squirrels are detected during the survey protocol, then CESA requires mitigation for the take of the Mohave ground squirrel. Thus, CESA provides some benefit to the Mohave ground squirrel and its habitat.

CEQA is a regulatory mechanism that affords protection for the Mohave ground squirrel in certain circumstances. CEQA requires review of environmental impacts for any proposed discretionary project that is undertaken, funded, or permitted by a State or local governmental agency, and public disclosure of these findings. Section 15065 of the CEQA guidelines requires a finding of significance if the project has the potential to “reduce the number or restrict the range of a rare (threatened) or endangered plant or animal.” The Mohave ground squirrel is such a species, because as stated above it is listed as threatened by the State of California. In general, if a proposed project in Mohave ground squirrel habitat requires a discretionary permit from a State or local agency, that public agency is required to prepare a public document under CEQA that analyzes the impacts of the proposed action on the species and requires mitigation for the impacts. However, if economic, social, or other conditions make it infeasible to mitigate one or more significant effects of a project on the species, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations (CEQA Guidelines section 15093), even though the project may cause significant environmental damage, such as destruction of a listed species or its habitat.

Although CEQA may provide protection for the Mohave ground squirrel in certain circumstances, there are several statutory and categorical

exemptions to CEQA which exempt proposed projects that are undertaken, funded, or permitted by local or State agencies from the requirements of public disclosure and mitigation. These include certain mass transit projects, certain planning documents, certain pipeline projects, certain ministerial (non-discretionary) projects (Title 14 California Code of Regulations, chapter 3, Article 18, sections 15260 to 15285), grazing (Rebecca Jones 2010, *in litt.*), and in-fill development projects (Article 19, sections 15300 to 15333). Also exempt are projects that are approved by popular vote that do not involve a public agency-sponsored initiative (Title 14 California Code of Regulations, chapter 3, Article 20, section 15378).

The exemption of ministerial-permitted projects is an important consideration in evaluating the level of protection of the Mohave ground squirrel and its habitat afforded by CEQA. On private land, CEQA applies only to discretionary actions, such as major changes in zoning or requests for a conditional use permit. Building or grading permits or other development projects with minor, or no, changes to existing land use or zoning designations are considered ministerial by the local development agencies and are not subject to CEQA. Although minor on an individual basis, cumulatively, these activities can result in the take of the species and the loss, fragmentation, and degradation of habitat with no mitigation under CEQA. These activities, however, would still be subject to the requirements of CESA.

Another California law that could benefit the Mohave ground squirrel is the Natural Communities Conservation Planning Act (NCCPA). NCCPA provides for voluntary cooperation among the CDFG, landowners, and other interested parties to develop natural community conservation plans (NCCPs) that provide for early coordination of efforts to protect listed species or species that are not yet listed. NCCPA identifies and provides for the regional or area-wide protection of plants, animals, and their habitats, including listed species, while allowing compatible and appropriate development activity. NCCPA could not only benefit the Mohave ground squirrel, but could also benefit local communities in the western Mojave Desert, which, under the NCCPA, could obtain authorization to take the Mohave ground squirrel while allowing for reasonable development. There is no NCCP for the Mohave ground squirrel at this time; however, there is one under development for renewable energy in the California desert. If the renewable

energy NCCP is finalized and implemented, some areas inhabited by the Mohave ground squirrel would be included in the plan area.

In addition to these laws and regulations, California also manages lands in the range of the Mohave ground squirrel for native habitat. These lands include about 22,000 ac (8,900 ha) managed by the California Department of Parks and Recreation and 15,000 ac (6,070 ha) managed by the CDFG.

Federal Laws and Regulations

Federal agencies are responsible for managing approximately 66 percent of the range of the Mohave ground squirrel (Defenders of Wildlife and Stewart 2005, pp. 39–40). The Federal agencies with the largest land management authority for these lands are the BLM and the DOD (see Table 1 and Factor A).

Several Federal laws and regulations that may benefit the Mohave ground squirrel include the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended (NEPA); Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) (FLPMA); Public Rangelands Improvement Act of 1978 (43 U.S.C. 1752 *et seq.*); Wild Horse and Burro Protection Act of 1971 (16 U.S.C. 1331 *et seq.*); and the Sikes Act Improvement Act (16 U.S.C. 670a–670o), as amended (Sikes Act). These laws provide authority to conserve habitat and mitigate for adverse impacts to habitat, including habitat for the Mohave ground squirrel. In addition, if the Mohave ground squirrel occurs on the same patch of habitat as a federally listed species (*e.g.*, desert tortoise (*Gopherus agassizii*) or *Astragalus jaegerianus* (Lane Mountain milk-vetch)), the Mohave ground squirrel may benefit from the protections afforded these species under the Act.

Bureau of Land Management

About 37 percent of the land (1,804,139 ac (730,112 ha)) within the range of the Mohave ground squirrel is administered by the BLM (Defenders of Wildlife and Stewart 2005, pp. 39–40). As a Federal agency, whenever BLM proposes to implement or authorize any action on lands that it manages, it must comply with NEPA. NEPA requires all Federal agencies to formally document and publicly disclose the environmental impacts of their proposed actions and management decisions.

In addition, 40 CFR 1500.2 requires all Federal agencies, to the fullest extent possible, to use all practicable means, consistent with the requirements of NEPA and other essential considerations of national policy, to

restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment. When implementing NEPA within the range of the Mohave ground squirrel, all Federal agencies must consider their potential impacts on the species and identify and consider appropriate mitigation measures.

FLPMA is the primary Federal law governing most land uses on BLM lands. FLPMA established a public land policy for the BLM; it provides for the management, protection, development, and enhancement of the BLM lands. Public lands are managed for multiple use and sustained yield. Under its multiple use mandate, the BLM allows grazing, mining, OHV use, energy production, and other uses on public lands. The BLM also has the flexibility under FLPMA to establish and implement special management areas such as ACECs and research natural areas, where the BLM can limit or exclude surface disturbance activities that adversely affect sensitive species, such as the Mohave ground squirrel.

FLPMA directs the development and implementation of resource management plans (RMPs), which direct management at a local level, and requires public notice and participation in the formulation of such plans and programs for the management of BLM lands. RMPs authorize and establish allowable resource uses, resource condition goals and objectives to be attained, program constraints, general management practices and sequences, intervals and standards for monitoring and evaluating RMPs to determine effectiveness, and the need for amendment or revision (43 CFR 1601.0–5(k)).

Section 601 of FLPMA was written specifically for the CDCA, which includes the western Mojave Desert. In this section, Congress noted the fragility of the California desert ecosystem that is “easily scarred and slow to heal; the historical, scenic, archeological, environmental, biological, cultural, scientific, educational, recreational, and economic resources in the California desert; and that certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California.” Congress charged the BLM with developing and implementing an RMP

for the CDCA that provides for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple-use and sustained yield, and the maintenance of environmental quality. Within the range of the Mohave ground squirrel, the current BLM land management documents are the California Desert Conservation Area (CDCA) Plan 1980, as amended (BLM 1999) and other amendments to the CDCA Plan, including the WEMO Plan and EIS (BLM *et al.* 2005). The WEMO Plan is the RMP for the western portion of the CDCA.

The Mohave ground squirrel is designated as a sensitive species on BLM lands. The management guidance for special status species under BLM Manual 6840—Special Status Species Management states that “Bureau sensitive species will be managed consistent with species and habitat management objectives in land use and implementation plans to promote their conservation and to minimize the likelihood and need for listing under the ESA” (BLM 2008, p. 05V). BLM Manual 6840 further requires that RMPs should address sensitive species, and that implementation “should consider all site-specific methods and procedures needed to bring species and their habitats to the condition under which management under the Bureau sensitive species policies would no longer be necessary” (BLM 2008, p. 2A1).

The WEMO Plan is the up to 30-year RMP whose boundary includes most of the current habitat of the Mohave ground squirrel. One of the purposes of the WEMO Plan was to develop and implement management strategies that would conserve the Mohave ground squirrel throughout the western Mojave Desert (BLM *et al.* 2005, p. ES–1). This RMP contains specific measures pertinent to the management of the Mohave ground squirrel and its habitat. The BLM designated the MGSCA, a wildlife habitat management area (WHMA), on BLM lands in the northern part of the species’ range (BLM *et al.* 2005, chapter 2, p. 203; LaPre 2009, *in litt.*). Within the MGSCA boundary, land ownership is BLM (1,308,877 ac (529,686 ha)) with private land (420,000 ac (169,969 ha)) scattered among the BLM land (BLM *et al.* 2005, chapter 2, p. 203). Thus, about 75 percent of the land within the MGSCA is subject to the BLM’s management protections for the MGSCA.

Within the central and southern portion of the range of the Mohave ground squirrel are three ACECs, the Fremont-Kramer DWMA (513,918 ac

(207,976 ha)), the Desert Tortoise Research Natural Area (DTNA), which is contained within the Fremont-Kramer DWMA, and the Superior-Cronese DWMA (641,917 ac (259,776 ha)) (BLM *et al.* 2005, chapter 2, p. 13). About 55 percent of the Fremont-Kramer, 59 percent of the Superior-Cronese, and 92 percent of the DTNA lands within the ACEC boundaries are BLM lands. The BLM manages these ACECs at a greater level of protection for wildlife and habitat than the MGSCA. It does not allow certain land uses, such as solar energy development, in ACECs, and acquires private land within DWMA boundaries in areas that overlap the range of the Mohave ground squirrel (BLM *et al.* 2005, chapter 2, pp. 28, 70). The Mohave ground squirrel will benefit from the management of these three ACECs and the MGSCA because they are contiguous with each other, which will facilitate management of these lands as blocks of unfragmented habitat outside military bases (see Map 2).

The Public Rangelands Improvement Act established a national policy and commitment to improve the conditions on public rangelands. Its goal is to improve range condition, which relates to wildlife habitat and plant communities. The BLM has specific regulatory authority for grazing management provided at 43 CFR 4100 (Regulations on Grazing Administration Exclusive of Alaska). Livestock grazing permits and leases contain terms and conditions to achieve management and resource condition objectives on the BLM lands, and to ensure that habitats are, or are making significant progress toward, being restored or maintained for BLM special status species (43 CFR 4180.1(d)), which include the Mohave ground squirrel. Examples of the actions BLM has taken to accomplish this goal include: Closing some sheep allotments, removing sheep from allotments in the MGSCA when ephemeral plants are no longer the primary forage used by sheep, eliminating ephemeral grazing for cattle in the DWMA, and excluding cattle grazing in the spring in DWMA when annual plant productivity is low (BLM *et al.* 2005 chapter 2, pp. 131–135).

In 1964, Congress enacted the Wilderness Act, with the intent of establishing a National Wilderness Preservation System composed of federally owned wilderness areas to be protected in their natural condition for the use and enjoyment of the people of the United States. A variety of activities are prohibited by the Wilderness Act within designated wilderness areas.

As mentioned under Factor A, part or all of 14 designated wilderness areas are on BLM lands and in the range of the

Mohave ground squirrel. The Wilderness Act protects these areas from various forms of development and human activities that are stressors for the Mohave ground squirrel; however, the areas designated as wilderness within the range of the Mohave ground squirrel comprise about 4.6 percent of the species' range and are not contiguous. These areas include steep slopes and rocky substrates that would not provide suitable habitat for the Mohave ground squirrel but would contribute to connectivity among squirrel habitat.

The Wild Horse and Burro Protection Act directs the BLM to protect these animals on public lands where they occurred when the law was enacted, and to manage them by removing excess animals to restore a thriving natural ecological balance to the range. This law enables the BLM to remove nonnative wild horses and burros that are degrading or destroying habitat within the range of the Mohave ground squirrel.

To manage motorized access on BLM lands within the range of the Mohave ground squirrel, the FLPMA and its implementing regulations direct the BLM to locate trails in a manner to minimize impacts to the physical resources (*i.e.*, soils, watershed, vegetation, air, and other resources), and to minimize harassment of wildlife or significant disruption of wildlife habitats (43 CFR 8342.1). To manage for the Mohave ground squirrel and other species, the BLM has implemented a program of OHV route obliteration and restoration and the signing of open routes to keep OHV activities aligned with what is permitted. In the central portion of the Mohave ground squirrel's range, the BLM implemented the Rand Mountain Fremont Valley Plan (Rand Plan) on 65,020 ac (26,313 ha) between Ridgecrest and California City, which includes an area popular with OHV enthusiasts. The Rand Plan adopted a motorized vehicle access network, expanded the Rand ACEC by 13,120 ac (5,309 ha), reduced the multiple use class from Class M to Class L, acquired private lands, and withdrew land from mineral entry. Class L lands are intended to support limited use by activities that degrade the value of the land and to protect sensitive, natural, scenic, ecological, and cultural resource values. Class M lands have moderate use, and provide for a controlled balance between higher intensity uses and resource protection (BLM *et al.* 2005, chapter 3, p. 3). The BLM considered implementing the Rand Plan a high priority for Mohave ground squirrel conservation (BLM *et al.* 2005,

chapter 3, p. 170) as it reduces impacts to the Mohave ground squirrel and its habitat from OHV recreation in the Plan area.

Both FLPMA and the Mineral Leasing Act give the BLM the legal authority to regulate and condition energy permits. The Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*) orders the identification of renewable energy sources and provides incentives for their development (42 U.S.C. 15851). This law and Presidential Executive Order 13121 direct the production, purchase, and facilitation of development of renewable energy products by Federal entities and land management agencies. The "Energy Development" section of Factor A describes the development and operation of renewable energy projects, including recent increases in solar, wind, and geothermal energy development. All of these activities require ground disturbance, infrastructure, and ongoing human activities that could adversely affect the Mohave ground squirrel on the landscape.

In summary, the BLM manages about one-third of the range of the Mohave ground squirrel. Under FLPMA, the BLM has designated three ACECs and a MGSCA, which are contiguous and will facilitate management of these lands (see Factor E). The BLM has a mandate to manage BLM lands for multiple-use, and has broad regulatory authority to plan and manage all land use activities on public lands, including energy development, OHV recreation, grazing, and other activities. As described in Factor A, these activities have the potential to impact the Mohave ground squirrel and its habitat. The BLM has developed mitigation measures for many of these activities that will reduce or eliminate the magnitude and severity of the impacts to Mohave ground squirrel habitat. In some cases, the BLM limits or prohibits activities on BLM lands with special designations because of incompatibility with those designations.

Department of Defense

The U.S. Army's Fort Irwin, the U.S. Navy's NAWS, and the U.S. Air Force's EAFB include about 1,683,095 ac (681,127 ha) or 31.6 percent of the Mohave ground squirrel range. Additional DOD lands in the Mohave ground squirrel range (Air Force Plant 42 in Palmdale and Cuddeback Lake Air Force Range northeast of EAFB) comprises about 0.1 percent of the species' habitat. Three of the Mohave ground squirrel important population areas (Leitner 2008, p. 34) occur partly

or entirely on these DOD lands (see Map 2). Part of the Coso Range-Olancho important population area is on NAWS, part of the Coolgardie Mesa-Superior Valley important population area is on Fort Irwin, and the EAFB important population area is within this military base.

As Federal agencies, these DOD bases must formally document and publicly disclose the environmental impacts of their proposed actions and management decisions. Fort Irwin recently expanded its boundaries. Much of the expansion area is in the range of the Mohave ground squirrel. During the NEPA process, DOD identified that the proposed expansion would impact about 123,000 ac (49,777 ha) of desert tortoise habitat, of which, about 83,000 ac (33,589 ha) is in designated critical habitat and within the Superior-Cronese DWMA (Charis 2005, p. ES-9). Of the four known populations of Lane Mountain milk-vetch, the expansion and operation of the NTC would not impact the 1,283 ac (519 ha) NASA-Goldstone population, but would impact 66 percent of the 5,499 ac (2,225 ha) Brinkman Wash-Montana Mine population and 20.25 percent of the 4,796 ac (1,941 ha) Paradise Valley population (U.S. Fish and Wildlife Service 2004, pp. 24, 53). The 9,775 ac (3,956 ha) Coolgardie Mesa population is located outside the Fort Irwin boundary.

To help offset the loss of habitat of the desert tortoise and Lane Mountain milk-vetch, the Army established two conservation areas for the Lane Mountain milk-vetch totaling 6,770 ac (2,740 ha) (Charis 2005, pp. 4-21 and 4-22); acquired private lands in the Fremont-Kramer and Superior-Cronese DWMA's (Fort Irwin 2003, pp. 2-31); and purchased fee land and associated assets and improvements associated with the 26,314 ac (10,649 ha) Harper Dry Lake grazing allotment and retired cattle grazing on these lands (Fort Irwin 2003 pp. 2-34). The acquired private lands in the Fremont-Kramer and Superior-Cronese DWMA's (see Map 2) and the grazing allotment comprise 8.2 and 0.5 percent of the range of the Mohave ground squirrel, respectively, whereas the expansion area comprises 75,300 ac (30,473 ha) or 1.4 percent of the range of the Mohave ground squirrel and the NTC including the expansion area within the range of the Mohave ground squirrel comprises 435,978 ac (176,435 ha) or 8.2 percent of the range of the Mohave ground squirrel (see Factor A, "Military Operations"). When the total area of the acquired mitigation lands is compared to the total area of expansion lands, the mitigation ratio of

acquired lands to expansion lands is about 5.8:1.

The DOD must comply with the Sikes Act and its implementing regulations. This law requires the DOD to develop cooperative plans for conservation and rehabilitation programs for natural resources on military bases and to establish outdoor recreation facilities. Each base prepares an Integrated Natural Resources Management Plan (INRMP) that provides for fish and wildlife habitat improvements or modifications; range rehabilitation where necessary to support wildlife; control of OHV traffic; and specific habitat improvement projects and related activities and adequate protection for species of fish, wildlife, and plants considered threatened or endangered.

Fort Irwin prepared an INRMP in 2006 that included conservation, protection, and management actions for the Mohave ground squirrel. The Fort Irwin INRMP recognized the expansion would adversely affect the Mohave ground squirrel (Fort Irwin 2006, pp. 135–136) and proposed measures in addition to the mitigation measures in the Fort Irwin Expansion FEIS. Some of these measures included retiring a grazing allotment near Harper Dry Lake in the central portion of the range of the Mohave ground squirrel; continuing research on Mohave ground squirrel populations at Fort Irwin and the Goldstone Complex, an area within Fort Irwin used by NASA and protected from military activities; and surveying for the Mohave ground squirrel in the east important population area (Fort Irwin 2006, pp. 136–146).

NAWS is currently revising its INRMP. Its current INRMP states that its objectives for the Mohave ground squirrel include “maintain[ing] viable populations” and “minimize[ing] impacts and protect[ing] known and potential endangered and sensitive species habitats to the maximum extent practicable” (NAWS 2000, pp. 126–127).

The Air Force completed its INRMP for EAFB in 2008. Based on this document, the Air Force is continuing its implementation of surveys for the Mohave ground squirrel and implementing specific management measures to minimize or eliminate impacts to Mohave ground squirrel habitat from ongoing military operations on the base (EAFB 2008a, pp. 73–76). Also, conservation measures for the federally threatened desert tortoise and its designated critical habitat included in the INRMP will benefit the Mohave ground squirrel.

Environmental Protection Agency

The Clean Air Act of 1970 (42 U.S.C. 7401 *et seq.*) directs the EPA to develop and enforce regulations to protect the general public from exposure to airborne contaminants that are known to be hazardous to human health. In 2007, the U.S. Supreme Court ruled that gases that cause global climate change are pollutants under the Clean Air Act, and the EPA has the authority to regulate carbon dioxide and other heat-trapping gases (*Massachusetts et al. v. EPA* 2007 [Case No. 05–1120]). EPA policies to implement the Clean Air Act in addressing climate change caused by greenhouse gas emissions are still evolving. However, our status review did not reveal information that indicates that climate change is a significant threat to the Mohave ground squirrel throughout its range (see Factor A).

Other Federal Agencies

The USFS and NPS have management authority for less than 2 percent of the habitat of the Mohave ground squirrel. For the USFS, these lands are within Federal wilderness areas on the east side of the Sierra Nevada. For the NPS, these lands are within Death Valley National Park. Under the Wilderness Act of 1964 (16 U.S.C. 1131–1136), motorized activities, including motorized travel, energy development, mining, and other mechanized activities, are prohibited. Although grazing may be permitted in Federal wilderness areas, the USFS does not permit grazing in the Owens Peak and Sacatar Trail wilderness areas, which are within the range of the Mohave ground squirrel.

The amount of USFS lands within the range of the Mohave ground squirrel is very small, about 4,400 ac (1,781 ha) or 0.08 percent, and occurs at the west and northwest edge of the species' range. A strip of about 44,026 ac (17,824 ha), which is less than 1 percent of the range of the Mohave ground squirrel, occurs on NPS land along the northeast edge of the range of the species.

Summary of Factor D

Several laws and regulations, including CEQA, CESA, FLPMA, Sikes Act, and NEPA, provide varying levels and aspects of protection of or beneficial measures for the Mohave ground squirrel and its habitat at the local, State, and Federal level. Many of these regulatory mechanisms also encourage habitat protection for the Mohave ground squirrel and provide tools to implement these habitat protections. Although no single law or regulation provides overall protection of the

Mohave ground squirrel and its habitat throughout its range, we find that, cumulatively, when implemented, existing regulations provide for the long-term survival of the species. Our assessment of threats based on the best available scientific and commercial information regarding the loss and degradation of the range or habitat of the Mohave ground squirrel under Factor A, and fragmentation and mortality as discussed under Factor E lead us to conclude that the inadequacy of existing regulatory mechanisms is not a threat to the Mohave ground squirrel. Therefore, based on our review of the best available scientific and commercial information, we conclude that the Mohave ground squirrel is not currently threatened by inadequate regulatory mechanisms throughout its range, nor do we anticipate inadequate regulatory mechanisms posing a threat in the future.

Factor E: Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Direct Mortality

As discussed in Factor A, several actions/stressors may result in mortality of the Mohave ground squirrel. Heavy equipment used in the construction of urban and rural development, roads, energy facilities, agricultural areas, and mines may crush Mohave ground squirrels above ground and in their burrows. The intensive use of vehicles in OHV management areas and wheeled and tracked vehicles used off road in military operations may have similar impacts. Although we recognize that mortality of Mohave ground squirrels from these sources occurs, we found few documented reports of Mohave ground squirrels being run over by vehicles (Threlloff 2007, *in litt.*) or heavy equipment and no reports of them being killed in their burrows. The level of mortality is likely a function of a number of complex variables including squirrel density, habitat quality, time of year, and type and intensity of human activity. Mortality is probably highest in areas of preferred habitat where heavy equipment is used, habitat is cleared, and human activity is high (*e.g.*, urban development, road construction), as the entire area is graded and replaced with man-made structures. Roads may be another important source of direct mortality, and depending on factors such as location, road width, and traffic rates, roads could result in reduced Mohave ground squirrel abundance. However, Glista *et al.* (2008, p. 80) found that during a 17-month study in Indiana, only 3 percent of the animals

killed on roads were mammals. Garland and Bradley (1984, p. 52) found no mortality within their study area during an 11-month study on the effects of a highway on Mojave Desert rodent populations, including the round-tailed ground squirrel. Also, Rosa and Bissonette (2008, p. 565) found that in a desert community in southern Utah, roads (specifically I-15) did not appear to affect small mammal abundance or diversity near or away from roads and concluded that the abundance and diversity of small mammals respond more markedly to habitat quality and complexity than to the presence of roads. Thus, road mortality does not appear to affect the abundance of small mammals, such as the Mohave ground squirrel.

In summary, although direct mortality has likely occurred and will continue to occur during construction, in high-use OHV areas, during military operations, and on highways, there is no evidence that mortality is having an impact on the Mohave ground squirrel or is a significant threat to the species. Although road mortality has not been studied for the Mohave ground squirrel, research on other species of small mammals has not found a relationship between road mortality and abundance. Therefore, we conclude that direct mortality is not currently a significant threat to the Mohave ground squirrel, nor do we anticipate it posing a threat in the future.

Habitat Fragmentation

As discussed in Factor A, urban and rural development, OHV recreational use, transportation infrastructure, military operations, energy development, and agriculture may cause or contribute to habitat fragmentation. Habitat fragmentation is the separation or splitting apart of previously contiguous, functional habitat components of a species. Habitat fragmentation can result from direct habitat loss that leaves the remaining habitat in noncontiguous patches, or from the alteration of habitat areas that render the altered patches unusable to a species (*i.e.*, functional habitat loss). Alterations that can result in functional habitat loss include: disturbances that change a habitat's successional state or remove one or more habitat functions, creation of physical barriers that preclude the use of otherwise suitable areas, and activities that prevent animals from using suitable habitat patches due to behavioral avoidance. When a habitat patch becomes isolated, the animal population is also isolated, and gene flow with other populations is reduced or eliminated. A small, isolated

population may not be as able to survive environmental changes or stochastic events; may experience changes in gene frequencies due to genetic drift, diminished genetic diversity, and/or effects due to inbreeding (*i.e.*, inbreeding depression) (Lande 1995, p. 786); and may eventually be extirpated. Animals from nearby populations are unable to re-establish the lost population because the habitat is not accessible. The effects of fragmentation on a species such as the Mohave ground squirrel depend on a complex array of factors such as patch size, type of barrier, distance between populations, and condition of habitat between patches.

Most urban and rural development in the western Mojave Desert has occurred in the southernmost portion of the range of the Mohave ground squirrel. This development has destroyed habitat, leaving patches of various quality and size of Mohave ground squirrel habitat interspersed among developed areas. In the southernmost portion of the range, habitat has been severely fragmented, and we assume that any remaining small patches of Mohave ground squirrel habitat in the southernmost portion of the range that are surrounded by large areas of urban development no longer support Mohave ground squirrels. However, none of the eight important population areas is located in the southernmost portion of the range, and all eight are at least in part interconnected by Federal land, where urban development is heavily restricted. Also, urbanization outside the southernmost portion of the range is limited to only a few areas and is not a major barrier.

Vehicular recreation, specifically in OHV management and high-use areas, may cause fragmentation. As mentioned in Factor A, impacts in OHV areas include disturbance of soils and destruction of shrubs, both of which combine to reduce the number of native spring annual plants, which in turn reduces habitat suitability for the Mohave ground squirrel. We presume these areas are extensively degraded and provide little value to supporting populations of Mohave ground squirrels now, or in the future. However, some habitat remains within these areas as indicated by the occurrence of Mohave ground squirrels in the Dove Springs Open Area. The distance between squirrel populations, the distance between habitat patches that may support squirrels, and the condition of the area between patches are likely primary influences on the ability of squirrels to move through an OHV management area. Therefore, the larger

management areas (*e.g.*, Spangler Hills) are more likely to be major barriers than the smaller ones (*e.g.*, Dove Springs). Regardless, there are relatively few intensively used OHV areas within the range of the Mohave ground squirrel, and with the possible exception of Spangler Hills, they do not limit movement between the eight important population areas (maps 1 and 2). Spangler Hills, the largest management area, lies between two of the important population areas and likely limits movement between them. However, these two population areas, as well as others, remain connected to the west and south by BLM lands that are closed to cross-country OHV use, including a portion of the MGSCA, and to the east by a combination of BLM and NAWA lands. Therefore, we conclude that OHV use does not constitute a major barrier to Mohave ground squirrel movement.

Transportation infrastructure may cause or contribute to habitat fragmentation when linear developments (roads) or transportation corridors substantially reduce or prevent the movement of a species from one location to another. Negative effects of corridors include mortality of animals along roadways (Rosen and Lowe 1994, as cited in Lovich and Bainbridge 1998, p. 331; Boarman and Szaki 1996, as cited in Lovich and Bainbridge 1998, p. 331) and restriction of movements and gene flow (Nicholson 1978, as cited in Lovich and Bainbridge 1999, p. 313).

Radio-collared Mohave ground squirrels are known to have crossed four-lane, divided highways (Leitner pers. comm., as cited in Defenders of Wildlife and Stewart 2005, p. 22). However, highways with high traffic volume and multiple lanes (*e.g.*, I-15 and SR-14) (see Map 1) may reduce movements of Mohave ground squirrels from one side to the other. Some stretches of multi-lane highways (I-15 and portions of SR-14) that cross areas within the range of the Mohave ground squirrel have, on average, over 36,000 vehicles pass over them daily, while other multi-lane highways (rural parts of SR-14) and the smaller, two-lane highways within the species' range have roughly 3,100 to 7,800 vehicles per day, on average (Caltrans 2010c, pp. 33-34, 36-37). We assume that the increased level of vehicle traffic on the portions of the multi-lane highways, along with the greater number of physical hindrances that may result from multiple lanes, is more likely to serve as a barrier than the smaller, less-traveled two-lane highways. In these cases, squirrels may be limited to crossing under bridges and culverts.

Depending on how roads are constructed, they may serve as physical hindrances to the movement of Mohave ground squirrels. For example, a road with a roadway divider (e.g., K-rail) may contribute to making a roadway a physically impassible barrier for Mohave ground squirrels. Although there are no studies on the impacts of roads specific to the Mohave ground squirrel, studies on other small mammals, including other species of squirrels in desert habitat, have found the following: roads may have a neutral or slightly positive effect on small mammals species; roads do not appear to affect small mammal abundance or diversity near or away from them; and the abundance and diversity of small mammals responds more markedly to habitat quality and complexity than to the presence of roads (Rosa and Bissonette 2007, p. 565). In addition, bridges and culverts, especially those with larger-sized openings, may allow Mohave ground squirrels to cross under roads (Painter and Ingraldi 2007, p. 17). Although it is not known whether the openings under such structures are used regularly by the Mohave ground squirrel, it is likely that undercrossings with natural substrates created by larger culverts and bridges are used to some extent.

Although the amount of contact needed to maintain population connectivity of Mohave ground squirrels is not known, Mills and Allendorf (1996, p. 1517) suggested that if 1 to 10 individuals per generation successfully cross, that level of movement is likely sufficient to maintain the connection between populations, provided the overall population is of sufficient size. Thus, a potential barrier would have to almost entirely eliminate Mohave ground squirrel movement throughout its length and at all times for it to be a complete barrier. In addition, Bell *et al.* (2006, pp. 18, 39, and 40) found low genetic diversity throughout the range of the species, suggesting that gene flow occurs throughout the range and roads are not complete barriers to Mohave ground squirrel movement.

Military operations, such as intense ground forces training activities on the NTC portion of Fort Irwin, may contribute to fragmentation of Mohave ground squirrel habitat. The recent expansion at Fort Irwin will bring the impacts of ground forces training activities into part of the Coolgardie Mesa-Superior Valley important population area identified by Leitner (2008, p. 1) (see Factor A, "Military Operations"). Ground forces training in the expansion area may restrict Mohave ground squirrel populations to the south

from accessing populations in the Goldstone Complex (see Map 1), thus isolating the Goldstone area (Defenders of Wildlife and Stewart 2005, p. 21). However, access for Mohave ground squirrels between the Goldstone Complex and other areas is available to the west and north through NAWS. Access from Coolgardie Mesa and Superior Valley to the west and south is available through the Superior-Cronese DWMA and NAWS (see Map 2). Although ground forces training will impact part of the Coolgardie Mesa-Superior Valley important population area, access to this area from the north, west, and south would not be disrupted by ground forces training.

Several renewable energy projects have been constructed in the range of the Mohave ground squirrel; these projects encompass about 2.2 percent of the squirrel's range. Additional renewable energy projects have been proposed in the western Mojave Desert, and depending on their size and location, they could reduce the ability of the Mohave ground squirrel to move between populations.

We know that future renewable energy projects on Federal lands, which make up about two-thirds of the range of the Mohave ground squirrel, are likely to be limited. Renewable energy projects proposed on DOD lands make up less than 0.01 percent of the range of the Mohave ground squirrel. The BLM has received applications that, if all were built, would encompass an additional 2.5 percent of the range of the Mohave ground squirrel. However, this is an overestimate because many of these proposals overlap and many would be constructed in areas that are not suitable habitat for squirrels. Also, energy development within the DWMAs or the MGSCA would be extremely limited because of the 1 percent cap on development and the 5:1 mitigation ratio. The mitigation in these areas and the 1:1 mitigation the BLM requires outside of these areas means that, although Mohave ground squirrel habitat may be lost, habitat would be acquired to add to the large blocks of habitat for the squirrel in the DWMAs and MGSCA or enhanced to increase the habitat value of the DWMAs and MGSCA. In addition, solar projects on BLM land may be more likely to occur in one of the four proposed SEZs, which are all outside the range of the squirrel. Most of the current and proposed wind energy projects are located along the western edge of the range of the Mohave ground squirrel, and many will be situated on ridges and hilltops, which are not the preferred habitat of the squirrel. Geothermal energy is available

in only two areas within the range of the squirrel, and few new geothermal projects have been proposed. Thus, with only a few renewable energy proposals on DOD land and limited development in the MGSCA and DWMAs, connectivity will not be significantly degraded.

On non-Federal land, which comprises about one-third of the range of the Mohave ground squirrel, several solar and wind energy projects have been proposed that would encompass about 1.2 percent of the range of the squirrel. However, many of these projects are on lands previously converted to agriculture or are along the western edge of the Mohave ground squirrel's range on ridges and hilltops, which is not preferred habitat. Based on the best scientific and commercial information available on current management designations, development limitations, and required mitigation, we conclude that fragmentation of Mohave ground squirrel habitat is not likely to occur from energy development.

Agricultural development in the western Mojave Desert is concentrated in the western Antelope Valley, on the north side of the San Gabriel Mountains, and from the Mojave River Valley to the Lucerne Valley. New agricultural development is limited by the availability and cost of water to produce crops. We recognize that past agricultural development may have contributed to fragmentation of Mohave ground squirrel habitat (see Factor A, "Agriculture") and that agriculture in combination with other activities fragmented the habitat of the Mohave ground squirrel in the Mojave River and Lucerne Valleys. However, we do not believe that agriculture constitutes an absolute barrier to squirrel movement because habitat requirements for dispersing or moving through an area are likely very different than for those needed for long-term occupancy. Mohave ground squirrels are known to forage along the edges of alfalfa fields (Hoyt 1972, p. 10) and are therefore likely able to disperse through such fields.

The BLM and DOD have taken actions to reduce the impact of habitat fragmentation on Mohave ground squirrels on Federal lands. The BLM recently designated the MGSCA as a WHMA, two DWMAs as ACECs, and expanded the size of the DTNA, all of which are within the range of the Mohave ground squirrel (see Map 2). The DOD bases have "off-limits" areas in Mohave ground squirrel habitat, which reduce or eliminate ground disturbance from military activities. Under the Sikes Act, the DOD bases are

obligated to develop cooperative management plans that reflect the mutual agreement of the CDFG “concerning conservation, protection, and management of fish and wildlife resources,” which includes the Mohave ground squirrel (see Factor D). The locations of these designated and “off-limits” areas form a contiguous area from the northern portion of the range of the Mohave ground squirrel to the southern portion. The MGSCA is contiguous with the NAWS and the Fremont-Kramer DWMA, which connects with the DTNA, EAFB, the Superior-Cronese DWMA, and the Goldstone Complex (BLM *et al.* 2005, Map 2–1) (see Map 2). Therefore, at a landscape scale, the major Federal land management agencies have identified large, contiguous blocks of habitat from the northern to the southern portion of the range with management prescriptions to help conserve the Mohave ground squirrel (see Map 2 and Table 1).

On private lands, we have no information about any landscape-scale plan that considers the Mohave ground squirrel (*e.g.*, NCCP Plan). Absent such a plan, private lands within the range of the Mohave ground squirrel will likely continue to be developed on a case-by-case basis in the future. Most of the development will likely occur near existing urban areas in the southernmost portion of the range of the Mohave ground squirrel, an area which has already been heavily fragmented. However, none of the eight important population areas are located in the southernmost portion of the range, and all eight are at least in part interconnected by Federal land, where development is limited. Urbanization outside the southernmost portion of the range is limited to only a few areas and is not a major barrier.

Future development on BLM lands is directed by the WEMO Plan, which limits development within the MGSCA and the DWMA to 1 percent. The three DOD bases have not identified plans to increase their boundaries for future military missions. Rather, the DOD recently identified a growing conflict between implementing their military missions and incompatible residential/commercial development adjacent to their boundaries. These areas are within the range of the Mohave ground squirrel and most include native desert plant communities used by Mohave ground squirrels. Because much of the land on the DOD bases is not developed and not expected to be developed in the future, and the military installations’ INRMPs have provisions to manage for Mohave ground squirrel habitat, establishing

land buffers will help connect the Mohave ground squirrel habitat on the military installations with the DWMA and MGSCA and increase the area being managed, in part, for the Mohave ground squirrel. This activity is another means of ensuring connectivity among the northern, central, and southern portions of the range of the Mohave ground squirrel and reducing the likelihood of fragmentation in the future.

In summary, severe fragmentation as a result of urban and rural development has occurred in the southernmost portion of the Mohave ground squirrel’s range, and movement of the species in that area is greatly diminished or has been eliminated. However, urban and rural development in the rest of the range has occurred in only a few areas and has been more limited in extent. Other activities that may result in habitat fragmentation (*e.g.*, OHV recreational use, transportation infrastructure, military operations, and energy development) affect smaller areas within the range of the Mohave ground squirrel and do not constitute major barriers to movement, especially between the eight important population areas, all of which are at least in part interconnected by Federal land where development that would be a barrier to movement is not likely to occur. The ability of squirrels to move between populations is further indicated by recent genetic research that found low genetic diversity throughout the range of the species, which could suggest that gene flow occurs throughout the range (Bell *et al.* 2006, pp. 18, 39, 40). We therefore conclude that habitat fragmentation is currently not a threat to the Mohave ground squirrel, nor do we anticipate it posing a threat in the future.

Summary of Factor E

Although direct mortality has likely occurred and will continue to occur during construction, in high-use OHV areas, during military operations, and on highways, there is no evidence that mortality is having an impact on the Mohave ground squirrel or is a significant threat to the species. Although road mortality has not been studied for the Mohave ground squirrel, research on other species of small mammals has not found a relationship between road mortality and abundance.

Severe habitat fragmentation as a result of urban and rural development has occurred in the southernmost portion of the range of the Mohave ground squirrel and will likely continue to occur in that area. However, large, contiguous tracts of Federal land occur

throughout the rest of the range of the Mohave ground squirrel, which will largely remain undeveloped. These lands support key Mohave ground squirrel population areas, including the eight important population areas, and provide connectivity throughout much of the range of the Mohave ground squirrel, both among these important population areas and from the northern portion through the central and southern portions of the squirrel’s range. This connectivity helps ensure exchange of genetic material among the populations of Mohave ground squirrels and prevents the deleterious effects of small population dynamics such as inbreeding depression. Renewable energy projects are proposed for BLM land, but these will likely be very limited in the MGSCA and DWMA in which development of all types is limited to 1 percent of the areas. Much of the range of the Mohave ground squirrel has not been developed, is not proposed for development at this time, or cannot be developed because of restrictions imposed by the BLM and DOD.

Therefore, based on our review of the best available scientific and commercial information, we conclude that the Mohave ground squirrel is not currently threatened by other natural or manmade factors throughout its range, nor do we anticipate other natural or manmade factors posing a threat in the future.

Finding

As required by the Act, we considered the five factors in assessing whether the Mohave ground squirrel is threatened or endangered throughout all or a significant portion of its range. We have assessed the best scientific and commercial information available regarding threats faced by the Mohave ground squirrel. We have reviewed the petition, scientific literature, information available in our files, and all information submitted to us following our 90-day petition finding (75 FR 22063, April 27, 2010). We also consulted with recognized Mohave ground squirrel experts, Federal and State land managers, and local governments to assess potential threats to the habitat and range of the species relative to current and planned land uses and occurrences of the species.

We analyzed the potential threats to the Mohave ground squirrel including: Habitat loss and habitat degradation from urban and rural development, OHV recreational use, transportation infrastructure, military operations, energy development, livestock grazing, agriculture, mining, and climate change; predation by native species and

domestic dogs and cats; the inadequacy of regulatory mechanisms to control land use and development on private, State, and Federal lands; direct mortality; and habitat fragmentation. We found that the Mohave ground squirrel continues to be present throughout a large portion of its historical and current range.

Land ownership within the range of the Mohave ground squirrel is about one-third private land, one-third DOD land, and one-third BLM land. While much of the private land in the southernmost portion of the range of the Mohave ground squirrel has been developed or used for agriculture, little of the squirrel's range has been developed in the central and northern portions of its range where most is under Federal jurisdiction and is not subject to development.

Sources of threats on non-Federal lands include urban and rural development, transportation infrastructure, renewable energy, agriculture, and mining. We estimate that current and future development will comprise about 9–10 percent of the range of the Mohave ground squirrel, with most occurring in the incorporated areas. Although there is no information specific to the Mohave ground squirrel, roads are known in some cases to affect species and their habitat beyond the loss of habitat from construction of the road itself. As a worst case, we calculated a road-effect zone of about 0.7 percent of the range for the construction of a new major highway and the expansion of two existing major highways. However, research indicates that the effects of roads on small mammals in the desert are neutral to slightly positive; thus, there may be no negative road-effect zone for the Mohave ground squirrel. Several renewable energy projects have been proposed on private land, which would encompass about 1.2 percent of the Mohave ground squirrel's range, but many of these are proposed for land that has already been converted to agriculture. Although we estimate that about 1 percent of the range of the Mohave ground squirrel has been converted to agriculture, because of increasing costs for water and economic incentives to use this land for other purposes, agricultural lands are being converted to urban or rural development. There are few large mines on private land in the range of the Mohave ground squirrel.

On military lands, the impacts to the Mohave ground squirrel are mainly from the training of ground forces at the NTC along the eastern portion of the species' range. EAFB and NAWS conduct aircraft and weapons testing, which

leaves most of the area and habitat on these two large bases "off limits" to ground forces operations. The Goldstone Complex is also off limits to such operations. There is limited development at the small cantonment area at each military base, OHV use is restricted to designated areas that total about 0.2 percent of the range of the Mohave ground squirrel, and two military bases have announced plans to construct renewable energy projects that could impact about 0.3 percent of the range of the Mohave ground squirrel. Mining is prohibited on military land.

Recently, the BLM has undertaken several conservation measures specific to the Mohave ground squirrel and its habitat or measures that benefit the species on its lands. The BLM designated the Fremont-Kramer and Superior-Cronese DWMA as ACECs, increased the size of the DTNA and Rand ACEC, and established the MGSCA. These designations place additional restrictions on land use and require the BLM to manage these lands in part for Mohave ground squirrel habitat. One such restriction is a 1 percent cap on total new development within the MGSCA and DWMA under the WEMO Plan with the requirement for 5:1 mitigation. On BLM land, cross-country OHV use is limited to a few specific areas, and the number of open roads and trails within the range of the Mohave ground squirrel has been reduced. The BLM is restoring habitat in areas with closed routes, signing open and closed routes, increasing enforcement of route designations, and implementing a monitoring plan to determine compliance with route closures and to identify whether any new illegal routes are being created. Future energy development is restricted or limited in its location and areal extent in much of the range of the Mohave ground squirrel. The BLM's 1 percent cap on total new development within the MGSCA and DWMA, including energy projects, limits the impacts of proposed or future projects in much of the range of the Mohave ground squirrel.

Livestock grazing on BLM land has been reduced with the BLM's recent implementation of public land health standards and guidelines for grazing. The BLM has implemented a 33 percent reduction in the area authorized for grazing in the range of the Mohave ground squirrel, eliminated ephemeral grazing for cattle in the DWMA, eliminated sheep grazing in most of the DWMA, excluded cattle grazing in the spring in DWMA in years when annual plant productivity is low, excluded cattle grazing on NAWS, and authorized

the ability of permittees to voluntarily relinquish cattle and sheep allotments. Over time, these changes are likely to provide increased foraging opportunities for the Mohave ground squirrel and reduce the overall amount of time that livestock spend within these areas, thus reducing impacts to soils, vegetation, and dietary overlap.

Potential threats associated with climate change are a concern, but we do not have evidence to conclude that the threats rise to the level of potentially threatening the Mohave ground squirrel within the foreseeable future.

Overall, we estimate that in the next 20–30 years about one-third of the range of the Mohave ground squirrel could potentially be lost. However, because of a general lack of information on the species and uncertainty over future development we based this estimate on a series of worst-case assumptions (*e.g.*, we double-counted impacts, assumed impacts existed or were worse than the available information indicated, assumed all habitat within a project boundary would be lost), and we expect that the actual loss during this timeframe will be much less. In addition, we did not include the mitigation for the Mohave ground squirrel that would be implemented for project implementation. Even if the worst case occurs, we expect that most of the remaining area will remain relatively undisturbed and in the same condition as it is today. More than 80 percent of the remaining land is Federal, much of which (*e.g.*, EAFB, NAWS, Goldstone Complex, DWMA, and MGSCA) is managed, at least in part, for the Mohave ground squirrel and its habitat. Of particular importance to the status of the Mohave ground squirrel, much of the remaining lands are contiguous and provide connectivity from the northern end of the range to well south of SR-58 in the southern portion of the range. More importantly, these lands contain most or all the habitat within the eight important population areas and include habitat that provides for connectivity among the eight areas. Therefore, we conclude that the present or threatened destruction, modification, or curtailment of the habitat or range of the Mohave ground squirrel is not a significant threat to this species now or in the foreseeable future.

We found no information that over-collection or overutilization for commercial, recreational, scientific, or educational purposes is a threat or will become a threat to the species in the future. Therefore, we conclude that overutilization for commercial, recreational, scientific, or educational purposes does not threaten the Mohave

ground squirrel now or in the foreseeable future.

We also found no evidence suggesting that disease is affecting the Mohave ground squirrel, and therefore, conclude that disease does not threaten the Mohave ground squirrel. Similarly, we found no information suggesting that predation by domestic dogs or cats is affecting the Mohave ground squirrel. Information on the rate of predation by a native predator (coyote) was inferred in one study, but it did not show this rate to be a threat to the Mohave ground squirrel. Although the number of common ravens in the western Mojave Desert has increased substantially in the past few decades, we found no information suggesting that predation by the common raven on the Mohave ground squirrel has increased or is adversely affecting the squirrel. Therefore, we conclude that disease or predation are not significant threats to the Mohave ground squirrel now or in the foreseeable future.

The Mohave ground squirrel is listed as threatened by the State of California under the CESA. There are other regulatory mechanisms in place, such as CEQA, FLPMA, and Sikes Act that, when implemented, provide protections from threats to the Mohave ground squirrel on Federal, State, and private land. On Federal lands, agencies such as the BLM and DOD have implemented actions under these laws that provide for the conservation of the Mohave ground squirrel on much of the lands that they manage. We conclude the inadequacy of regulatory mechanisms is not a significant threat to the Mohave ground squirrel now or in the foreseeable future.

We considered direct mortality as a potential threat, and although direct mortality has likely occurred and will continue to occur during construction, in high-use OHV areas, during military operations, and on roads, there is no evidence that mortality is having an impact on the Mohave ground squirrel or is a significant threat to the species. Although road mortality has not been studied for the Mohave ground squirrel, research on other species of small mammals has not found a relationship between road mortality and abundance.

Severe habitat fragmentation as a result of urban and rural development has occurred in the southernmost portion of the range of the Mohave ground squirrel and will likely continue to occur in that area. However, large, contiguous tracts of Federal land occur throughout the rest of the range of the Mohave ground squirrel, which will largely remain undeveloped. These lands support many Mohave ground

squirrel population areas, including the eight important population areas, and provide connectivity throughout much of the range of the Mohave ground squirrel both among these important population areas and from the northern portion through the central and southern portions of the squirrel's range. This connectivity helps ensure exchange of genetic material among the populations of Mohave ground squirrels and prevents the deleterious effects of small population dynamics such as inbreeding depression. Renewable energy projects are proposed for BLM land, but these will likely be very limited in the MGSCA and DWMA's in which development of all types is limited to 1 percent of the areas. Much of the range of the Mohave ground squirrel has not been developed, is not proposed for development at this time, or cannot be developed because of restrictions imposed by the BLM and DOD. We conclude that other natural or manmade factors are not significant threats to the Mohave ground squirrel now or in the foreseeable future.

Our review of the best available scientific and commercial information pertaining to the five factors, does not support a conclusion that there are independent or cumulative threats of sufficient imminence, intensity, or magnitude to indicate that the Mohave ground squirrel is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout its range. Therefore, listing the Mohave ground squirrel as endangered or threatened is not warranted at this time.

Distinct Vertebrate Population Segment

After assessing whether the species is endangered or threatened throughout its range, we next consider whether any distinct vertebrate populations segment (DPS) exists and meets the definition of endangered or is likely to become endangered in the foreseeable future (threatened). Under the Service's Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (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 Federal 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 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 Mohave ground squirrel that we were petitioned to list as threatened or endangered.

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

As described previously (see *Species Information* above), the Mohave ground squirrel extends throughout the range except where the habitat has been lost due to human activities, primarily along the southern and eastern portion of its range. We found no information that any Mohave ground squirrel population is markedly separated from other populations as a consequence of physical, physiological, ecological, or behavioral factors.

There are no international governmental boundaries associated with this species that are significant. The Mohave ground squirrel is found wholly within the United States. Because this element is not relevant in this case for a finding of discreteness, it

was not considered in reaching the determination.

We did not find any information that would indicate any DPS exists. Therefore, we determine, based on a review of the best available information, that there are no portions of the species' range that meet the discreteness criterion of the Service's DPS policy. The DPS policy is clear that significance is analyzed only when a population segment has been identified as discrete. Because both discreteness and significance are required to satisfy the DPS policy, we have determined that there are no populations of the Mohave ground squirrel that qualify as a DPS under our policy. As a result, no further analysis under the DPS policy is necessary.

Significant Portion of the Range Analysis

Having determined that the Mohave ground squirrel is not in danger of extinction or likely to become endangered within the foreseeable future throughout all of its range, we must next consider whether there are any significant portions of the range where the Mohave ground squirrel is in danger of extinction or is likely to become endangered in the foreseeable future.

Decisions by the Ninth Circuit Court of Appeals in *Defenders of Wildlife v. Norton*, 258 F.3d 1136 (2001) and *Tucson Herpetological Society v. Salazar*, 566 F.3d 870 (2009) found that the Act requires the Service, in determining whether a species is endangered or threatened throughout a significant portion of its range, to consider whether lost historical range of a species (as opposed to its current range) constitutes a significant portion of the range of that species. While this is not our interpretation of the statute, we first address the lost historical range before addressing the current range.

Historical Range

Available information provides no evidence of a significant loss of the historical range of the Mohave ground squirrel. Although the petition to list the Mohave ground squirrel indicated that the western Antelope Valley was no longer part of the species' current range, suitable habitat still remains in much of the western Antelope Valley and may be connected to habitat currently occupied by the Mohave ground squirrel. This information is supported by recent visual observations of Mohave ground squirrels in the western Antelope Valley (see "Range and Distribution" section). Additionally, although areas of natural habitat within the range of the Mohave

ground squirrel have been lost or degraded from human activity (see Factor A), the boundary of the current range is larger than reported by Howell in 1938, and may even be larger than now defined by the Service, as there have been recent sightings beyond the area defined by the Service as the range of the Mohave ground squirrel (see "Range and Distribution" section)." Therefore, there is no lost historical range of the Mohave ground squirrel that could constitute a significant portion of the range of the species.

Current Range

The Act defines "endangered species" as any species which is "in danger of extinction throughout all or a significant portion of its range," and "threatened species" as any species which is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The definition of species is also relevant to this discussion. The Act defines "species" as follows: "The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature." The phrase "significant portion of its range" (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as "significant."

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined "species": *Defenders of Wildlife v. Salazar*, 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 12, 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 SPR language to allow protecting only a portion of a species' range is

inconsistent with the Act's definition of "species." The courts concluded that once a determination is made that a species (*i.e.*, species, subspecies, or DPS) meets the definition of "endangered species" or "threatened species," it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase "significant portion of its range" in the Act's definitions of "endangered species" and "threatened species" to provide an independent basis for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, it, the species, is an "endangered species." The same analysis applies to "threatened species." Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species 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 SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice (*i.e.*, prior to the 2007 Solicitor's Opinion), as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase "significant portion of its range" provides an independent basis for listing and protecting the entire species, we next turn to the meaning of "significant" to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is "significant," we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for "significant" in terms of an increase in the risk of extinction for the species. We conclude that a

biologically based definition of “significant” best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species’ conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is “significant” if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of resiliency, redundancy, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species’ adaptive capabilities are conserved. Resiliency, redundancy, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species’ range may be determined to be “significant” due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion’s biological contribution is so important that the portion qualifies as “significant” by asking whether without that portion, the resiliency, redundancy, or representation of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (*i.e.*, would be “endangered”). Conversely, we would not consider the portion of the range at issue to be “significant” if there is sufficient resiliency, redundancy, and representation elsewhere in the species’ range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of “significant” (a portion of the range of a species is “significant” if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for “significant” that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered “significant” even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species’ range can be said to contribute some increment to a species’ viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for “significant” that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered “significant” only if threats in that portion result in the entire species’ being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife v. Norton*, 258 F.3d 1136 (9th Cir. 2001).

The definition of “significant” used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase “in a significant portion of its range” loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of “significant” used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a

portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.*, if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the complete extirpation (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be “significant,” and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not “significant,” we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is “significant.” In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species’ range that clearly would not meet the biologically based definition of “significant,” such portions will not warrant further consideration.

Through our range-wide analysis, we found that there is not one individual

impact that occurs throughout the range of the species, that is, the threats are not uniform throughout the species' range, and that some areas receive a greater number of impacts, although the magnitude may vary. After reviewing the potential threats throughout the range of the Mohave ground squirrel, we determine that there may be two portions of the squirrel's range that could be considered to have concentrated threats for the species there: one area is in the southern portion of the range and the other is the central portion of the range where Fort Irwin is located. Impacts in the southern portion of the species' range include urban and rural development, recreation, transportation network, military operations, energy development, livestock grazing, agriculture, and mining. In the central portion, the impacts include urban and rural development, OHV recreational use, military operations, energy development, livestock grazing, and mining. Below, we outline the elevated threats found in these portions. We then assess whether these portions of the species' range may meet the biologically based definition of "significant," that is, whether the contributions of these portions of the Mohave ground squirrel's range to the viability of the species is so important that without those portions, the species would be in danger of extinction.

Southern Portion of the Range: The impacts of urban and rural development and agriculture are concentrated in the southern portion of the range of the Mohave ground squirrel. This area is south of the Fremont-Kramer DWMA, south of EAFB, and south of SR-138 (see Maps 1 and 2). This area is the location of much of the urban and rural development and agriculture in the western Mojave Desert. Much of the western portion of the Antelope Valley south of SR-138, the area south of Littlerock and Pearblossom, and the Mojave River Valley have been developed for intensive agriculture (USGS 2000, p. 1). In addition, most of the human population in the western Mojave Desert is located in this area. As mentioned in the "Urban and Rural Development" section, about 300,000 ac (121,406 ha) south of SR-58, which is about 5.6 percent of the range of the Mohave ground squirrel, is incorporated (BLM 2005a, p. 3-2) and subject to future development. Additional acreage has been affected by rural development along the southern portion of the range of the Mohave ground squirrel, but data on this area are unavailable. More than 39,000 ac (15,700 ha) has been lost to

agriculture including the Antelope Valley and Mojave River Basin (Gustafson 1993, p. 24). The known losses in urban and rural development and agriculture are about 6.4 percent of the range of the Mohave ground squirrel, but the actual losses would be larger when including the unincorporated areas of development. This urban and rural development and agriculture are mostly located along the southern edge of the range of the Mohave ground squirrel (Map 2). Their locations would not inhibit the movement of the Mohave ground squirrel among the important population areas.

Central Portion of the Range: The second area where impacts are concentrated is the Fort Irwin NTC, including the expansion area. The area is about 435,978 ac (176,435 ha) including the expansion area, or about 8.2 percent of the range of the Mohave ground squirrel. However, not all of this area is used for ground forces training so the area of impact is less. One of the Mohave ground squirrel important population areas, the Coolgardie Mesa-Superior Valley core area, is located on lands managed by the BLM and Fort Irwin (expansion area and Goldstone Complex). Although part of this important population area will be subject to ground forces training, part is an off-limits area to these impacts (Charis 2005, chapter 4, p. 14), part is located on lands managed by the BLM that include an ACEC for the federally endangered Lane Mountain milk-vetch (*Astragalus jaegerianus*), and the desert tortoise (BLM *et al.* 2005, chapter 2, pp. 15, 214-215), and part is in the Goldstone Complex which is off-limits to military training. The Army has designated areas within the expansion area that combined total 6,704 ac (2,713 ha) as off-limits ground forces training (Charis 2005, chapter 4, pp. 11, 21, 22).

For this analysis, we will look at the significance question first (*i.e.*, whether the concentration of these threats applies to portions of the range that are so important to the viability of the species that without those portions, the species would be in danger of extinction). To do so, we conduct an evaluation of resiliency, redundancy, and representation. The terms "resiliency," "redundancy," and "representation" are intended to be indicators of the conservation value of portions of the range.

Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the

species in such a way as to capture the environmental variability found within the range of the species. A portion of the range of a species may make an essential contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat, or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, we evaluate the historical value of the portion and how frequently the portion is used by the species, if possible. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Resiliency, as a measure of a portion of the range's contribution to the viability of the species, may apply if a portion occurs in an environment that is meaningfully different from the rest; that is, representing differences to capture the environmental variability within the range of the species. We found that there was a large, contiguous area with management guidance for the Mohave ground squirrel (*e.g.* the MGSCA, NAWS, Fremont-Kramer DWMA and DTNA, Superior-Cronese DWMA, Goldstone Complex, and EAFB) (see Map 2). This area occurs from the northern portion through the southern portion of the species' range, and represents a variety of latitudes, elevations, rainfall, temperatures, soils, and vegetation. Based on a review of the best available scientific and commercial information, we find no indication that any geographic area is different from the rest of the range of the Mohave ground squirrel regarding environmental variability, or that one portion of the Mohave ground squirrel's range exhibits ecological or environmental characteristics that differ from another portion. Therefore, we conclude that the Southern and the Central portions of the range of the Mohave ground squirrel, individually and in combination, do not provide an essential contribution to the resiliency of the species.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is necessarily a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations.

Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Redundancy is a measure to ensure that a species is able to withstand catastrophic events. If sufficiently large enough areas of the species are conserved, then random events would impact only a small portion of the species. Researchers have identified eight important population areas where Mohave ground squirrels are known to occur consistently (Leitner 2008, pp. 10–12). Mohave ground squirrels are also known to occur in many other areas, although less is known about those populations. These important areas occur throughout much of the range of the Mohave ground squirrel including the southern, central, and northern portions of the species' range. There may be more important population areas for the Mohave ground squirrel that have not been identified because much of the range of the species has not been surveyed to determine population location and trend. Based on the best available scientific and commercial information, we find that there is a large area being managed for the species (see Map 2) and that the eight important population areas and other potentially important population areas are well distributed across the species' range. Thus, there is no portion of the range of the Mohave ground squirrel identified as being necessary to conserve the species in case there is a catastrophic event. Therefore, we conclude that the Southern and the Central portions of the range of the Mohave ground squirrel, individually and in combination, do not provide an essential contribution to the redundancy of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future

environmental changes. A peripheral population may provide an essential contribution to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Representation includes the genetic diversity of the species. We found that, using mitochondrial DNA (a maternally inherited genetic marker), estimates of gene flow among the past few generations were low between some populations (Coolgardie Mesa and EAFB) but not others (Olancha and Freeman Gulch, Freeman Gulch and EAFB) (Bell 2006, pp. 42–44). This reduced gene flow may have been caused by the recent drought years in the western Mojave Desert or limited movements of female Mohave ground squirrels. However, when using nuclear DNA, which is inherited from both parents rather than just the mother, the results did not show that gene flow was low between populations of Mohave ground squirrels. Bell's genetic analysis of long-term levels of gene flow among Mohave ground squirrel populations found low levels of subdivision among Mohave ground squirrel populations including between Coolgardie Mesa and EAFB (Bell 2006, pp. 43, 72), indicating that gene flow among Mohave ground squirrel populations including from the Coolgardie Mesa population west to EAFB has occurred over the long term. In addition, we did not find any information that indicates the population in the southern portion, where impacts are concentrated, provides genetic diversity to the species as a whole. Bell (2006, pp. 18, 39, 40) found low genetic diversity throughout the range of the species, indicating that gene flow occurs throughout the range. Therefore, we conclude that the Southern and the Central portions of the range of the Mohave ground squirrel, individually and in combination, do not provide an essential contribution to the representation of the species.

Based on the discussion above, we have determined that the Mohave ground squirrel does not face elevated threats in most portions of its range, and

that those portions of the Mohave ground squirrel's range that may have concentrated threats (the Southern and the Central portions of the range) do not contribute to the resiliency, redundancy, and representation of the Mohave ground squirrel such that without these portions, the species would be in danger of extinction. Accordingly, we find that the Mohave ground squirrel is not endangered or threatened in a significant portion of its range.

We do not find that the Mohave ground squirrel is 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 the Mohave ground squirrel as endangered or threatened under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, the Mohave ground squirrel to our Ventura Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and encourage its conservation. If an emergency develops for this 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 Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are 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.

Gregory E. Siekaniec,
Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–25473 Filed 10–5–11; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 404 Species in the Southeastern United States as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS-R4-ES-2011-0091; MO 92210-0-0008]

Endangered and Threatened Wildlife and Plants; Partial 90-Day Finding on a Petition To List 404 Species in the Southeastern United States as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a partial 90-day finding on a petition to list 404 species in the southeastern United States as threatened or endangered under the Endangered Species Act of 1973, as amended (Act) and to designate critical habitat. Based on our review, we find that for 11 of the 404 species: Sarah's hydroptila caddisfly (*Hydroptila sarahae*), Rogue Creek hydroptila caddisfly (*Hydroptila okaloosa*), Florida brown checkered summer sedge (*Polycentropus floridensis*), Florida fairy shrimp (*Dexteria floridana*), South Florida rainbow snake (*Farancia erythrogramma seminola*), Ouachita creekshell (*Villosa arkansasensis*), crystal darter (*Crystallaria asprella*), spotted darter (*Etheostoma maculatum*), Florida bog frog (*Rana okaloosae*), Greensboro burrowing crayfish (*Cambarus catagius*), and Blood River crayfish (*Orconectes burri*), the petition does not present substantial scientific or commercial information indicating that listing may be warranted at this time. Therefore, we are not initiating a status review for these 11 species. However, we ask the public to submit to us any new information that becomes available concerning the status of, or threats to, these 11 species or their habitat at any time.

DATES: The finding announced in this document was made on October 6, 2011.

ADDRESSES: This finding is available on the Internet at <http://www.regulations.gov> at Docket Number [FWS-R4-ES-2011-0091]. 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, 1875 Century Blvd., Atlanta, GA 30345. Please submit any new information, materials,

comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT:

Janet Mizzi, Chief, Division of Endangered Species, Ecological Services, Southeast Regional Office, U.S. Fish and Wildlife Service (see **ADDRESSES**) by telephone at 404-679-7169; or by facsimile at 404-679-7081. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:**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 a petitioned action may be warranted. We are to base this finding on information found in the petition, supporting information submitted with the petition, and information otherwise available in our files. The Act requires that, 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 this 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, the Act requires that we promptly review the status of the species (status review), which is subsequently summarized in our 12-month finding.

Petition History

On April 20, 2010, we received, via electronic mail, a petition from the Center for Biological Diversity (CBD), Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, West Virginia Highlands Conservancy, Tierra Curry, and Noah Greenwald to list 404 aquatic, riparian, and wetland species from the southeastern United States as threatened or endangered species and to designate critical habitat concurrent with listing under the Endangered Species Act. The petition clearly identified itself as such, and included the requisite identification information as required by 50 CFR 424.14(a). On April 21, 2010, via electronic mail to Noah Greenwald at CBD, we acknowledged receipt of the

Petition. On May 10, 2010, we provided additional formal written acknowledgement of receipt.

Petitioners developed an initial list of species by searching NatureServe for species that "occur in the twelve states typically considered the southeast, occur in aquatic, riparian, or wetland habitats and appeared to be imperiled." Species were considered imperiled if they were classified as G1 or G2 by NatureServe, near threatened or worse by the International Union for Conservation of Nature (IUCN), or a species of concern, threatened or endangered by the American Fisheries Society.

NatureServe conservation status ranks range from critically imperiled (G1) to imperiled (G2) to vulnerable (G3) to apparently secure (G4) to demonstrably secure (G5). Status is assessed and documented at three distinct geographic scales: Global (G), national (N), and subnational (S) (*i.e.*, state/province/municipal). Subspecies are similarly assessed with a subspecific (T) numerical assignment. Assessment by NatureServe of any species as being critically imperiled (G1), imperiled (G2), or vulnerable (G3) does not constitute a recommendation by NatureServe for listing under the Act. NatureServe status assessment procedures have different criteria, evidence requirements, purposes, and taxonomic coverage than government lists of endangered and threatened species, and, therefore, these two types of lists should not be expected to coincide. For example, an important factor in many legal listing processes is the extent to which a species is already receiving protection of some type—a consideration not included in the NatureServe conservation status ranks. Similarly, the IUCN and American Fisheries Society do not apply the same criteria to their ranking determinations as those encompassed in the Act and its implementing regulations.

On May 7, 2010, the Service received correspondence from the Southeastern Fishes Council, dated May 2, 2010, with an explanation of their involvement in formulation of the petition. The Council was contacted by CBD, which solicited its involvement in the preparation of the subject petition. Southeastern Fishes Council members provided expertise in review of the CBD list of fishes in the draft petition.

On May 27, 2010, the Freshwater Mollusk Conservation Society submitted a letter to the Regional Director, Fish and Wildlife Service, Southeast Region, in support of the CBD petitions' inclusion of a large number of freshwater mollusks, including the

Ouachita creekshell. On September 1, 2010, and again on October 1, 2010, CBD forwarded to the Regional Director, Service, Southeast Region, a letter of support for the subject petition from 35 conservation organizations.

The petition included 404 species for which the petitioners requested listing as endangered or threatened under the Act, and designation of critical habitat concurrent with the listing. It is our practice to evaluate all species petitioned for listing for the potential

need to emergency list the species under the emergency provisions of the Act at section 4(b)(7) and as outlined at 50 CFR 424.20. We have carefully considered the information provided in the petition and in our files and have determined that emergency listing is not indicated for any of the 404 species in the petition.

We published a partial 90-day finding in the **Federal Register** on September 27, 2011 (76 FR 59836), making substantial findings for 374 species and

noting that 19 species had already been addressed through previous Federal actions by either the Service or the National Marine Fisheries Service. This partial 90-day finding covers the remaining 11 species.

Previous Federal Actions

A complete summary of the previous Federal actions regarding these 11 species can be found in table 1.

TABLE 1—PREVIOUS FEDERAL REGISTER (FR) NOTICES ADDRESSING THE PETITIONED SPECIES

FR Citation	Publication date	Action	Species
59 FR 58982	11/15/1994	Endangered and Threatened Wildlife and Plants (ETWP); Animal Candidate Review for Listing as Endangered or Threatened Species; Notice of Review.	Spotted frog; Rogue Creek hydroptila caddisfly; Florida bog frog; Greensboro burrowing crayfish.
56 FR 58804	11/21/1991	ETWP; Animal Candidate Review for Listing as Endangered or Threatened Species.	Florida bog frog; Greensboro burrowing crayfish.
54 FR 554	01/06/1989	ETWP; Animal Notice of Review	Florida bog frog; Greensboro burrowing crayfish.
49 FR 21664	05/22/1984	ETWP; Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species.	Greensboro burrowing crayfish.

Species Information

The petition identified 404 aquatic, riparian, or wetland species from the southeastern United States as needing protection under the Act. This list included 15 amphibians, 6 amphipods, 18 beetles, 3 birds, 4 butterflies, 9 caddisflies, 83 crayfish, 14 dragonflies, 48 fish, 1 springfly, 1 fairy shrimp, 2 isopods, 4 mammals, 1 moth, 48 mussels, 6 nonvascular plants, 13 reptiles, 44 snails, 8 stoneflies, and 76 vascular plants. Of these 404 species, 11 species are addressed in this finding including: Sarah’s hydroptila caddisfly (*Hydroptila sarahae*), Rogue Creek hydroptila caddisfly (*Hydroptila okaloosa*), Florida brown checkered summer sedge (*Polycentropus floridensis*), Florida fairy shrimp (*Dexteria floridana*), South Florida rainbow snake (*Farancia erythrogramma seminola*), Ouachita creekshell (*Villosa arkansasensis*), crystal darter (*Crystallaria asprella*), spotted darter (*Etheostoma maculatum*), Florida bog frog (*Rana okaloosae*), Greensboro burrowing crayfish (*Cambarus catagius*), and Blood River crayfish (*Orconectes burri*).

Sarah’s Hydroptila Caddisfly (*Hydroptila sarahae*)

The genus *Hydroptila* is likely the most common genus of microcaddisflies in Florida, as is the case in North America. The genus inhabits a wide variety of habitats from small streams to large rivers and most lentic (slow-

moving or standing water habitats) environments. All instars feed on filamentous algae (Nielsen 1948, as cited in Pescador *et al.* 2004), as well as diatoms and other algae (Wiggins, 1996a, as cited in Pescador *et al.* 2004). Most microcaddisflies complete development in a year or less.

The petition states that this species of caddisfly is known only from four locations on Eglin Air Force Base (EAFB) in northwestern Florida (NatureServe 2008, as cited in the petition (p. 612)). However, we are aware of at least 11 locations on EAFB (St. Aubin, Service, pers. comm. 2010). The petition (p. 612) states that this species is dependent on “clean creeks.” The species is apparently restricted to EAFB, and occurs in “steepheads” (springheads in sandhill areas), spring runs, and clear creeks where aquatic vegetation is present. NatureServe ranks the species as critically imperiled.

Rogue Creek Hydroptila Caddisfly (*Hydroptila okaloosa*)

The genus *Hydroptila* is likely the most speciose (rich in number of species) genus of microcaddisflies in Florida, as is the case in North America. The genus inhabits a wide variety of habitats from small streams to large rivers and most lentic environments. All instars feed on filamentous algae (Nielsen 1948, as cited in Pescador *et al.* 2004), as well as diatoms and other algae (Wiggins, 1996a, as cited in Pescador *et al.* 2004). Most

microcaddisflies complete development in a year or less.

The petition states that this species of caddisfly is known from only three creeks on EAFB (NatureServe 2008, as cited in the petition (p. 611)). However, we are aware of the species’ presence at eight locations on the Base (St. Aubin, pers. comm., 2010). The petition (p. 611) states that this species is dependent on “clean creeks.” This species, like Sarah’s hydroptila caddisfly, is apparently restricted to EAFB, and occurs in similar steep head and small stream habitats where clean water and aquatic macrophytes are present, and is sympatric with Sarah’s hydroptila at five sites. NatureServe (2008) ranks the species as critically imperiled.

Florida Brown Checkered Summer Sedge (*Polycentropus floridensis*)

NatureServe (2008) estimates the range of the Florida brown checkered summer sedge (*Polycentropus floridensis*) as 100 to 250 square kilometers (sq km) (about 40 to 100 square miles (sq mi)). According to the Petition (p. 883) and NatureServe (2008), this caddisfly is found in small, clear streams with moderate flow in sandhills with a pine-oak canopy that is fairly heavy. It is known from only three occurrences: One in Alabama (Baldwin County) and two in Florida (Walton County; headwaters of Rocky Creek 6.4 km (3.8 mi) southwest of Mossy Head and Hamilton County), although the Hamilton County occurrence is

disputed. The species is believed to be relatively stable, “as long as stream habitats supporting populations on EAFB are protected (Rasmussen *et al.* 2008, p. 38), and also found to be widespread, though not common on EAFB (Rasmussen 2004, p. 45). NatureServe (2008) ranks the species as critically imperiled in Florida, and the State of Florida recognizes it as a ‘Species of Greatest Conservation Need.’ Florida Fairy Shrimp (*Dexteria floridana*)

The Florida fairy shrimp (*Dexteria floridana*) was originally described by Dexter (1953) as a species of *Eubranchipus*. However, it is now classified in the family *Linderiella*, with four recognized species, and the monotypic *Dexteria* (Belk and Brtek 1995, 1997). The Florida fairy shrimp is known only from the type locality, a “temporary pool approximately 6 km south of Gainesville,” Florida. The total range is quantified as less than 100 square km (about 40 square miles). This species was only ever found in a temporary pool (NatureServe 2008). The petition did not provide any information on the life history of this species. However, other fairy shrimp in the order Anostraca inhabit temporary ponds and pools, have stalked compound eyes, 11 pairs of swimming legs (in American species), and no carapace (Pennak 1989 p. 344). Fairy shrimp glide or swim gracefully by means of complex beating movements of the legs. Sometimes they drift along slowly, other times they dart rapidly or come to rest on the bottom (Pennak 1989 p. 346).

Fairy shrimp diets consist mostly of algae, bacteria, Protozoa, rotifers, and bits of detritus gathering food items through movements of the legs. As inhabitants of temporary ponds and pools, which dry up completely in the dry warm months, fairy shrimp resting eggs are capable of withstanding desiccation and freezing. The eggs hatch into the typical nauplius (a larval form with three pairs of appendages and a single median eye) or to the more advanced metanauplius (a stage following the nauplius, and having about seven pairs of appendages) larvae, after which there is a long series of instars, each following a complete shedding of the exoskeleton. Changes in size from one instar to the next are gradual, and there is progressive appearance of more segments, more appendages, and increasing complexity of appendages. The number of instars may be variable depending on temperatures and food conditions. The active portion of the life cycle may be

completed in as few as 15 days or as many as 9 months (Pennak 1989, pp. 353–354).

The type locality of Florida fairy shrimp was lost to development, and the species is not known from other locations (Rogers 2002). It has not been reported in any collections since it was described. Petitioners allow that “unless this species is discovered in new areas, it may already be extinct.” Rogers (2002) also reports that “It is possible that *D. floridanus* is extinct, however, it may still exist in some undeveloped portions of Florida or other regions of the United States or possibly Cuba.” NatureServe (2008) lists the species as “possibly extinct,” and IUCN lists the species as critically endangered, though this status was last assessed in 1996.

The petition presented brief information suggesting that the species was threatened by two of the five listing factors (Factors A and D) in section 4 of the Act in an effort to identify threats that may be leading or have led to the decline of the Florida fairy shrimp. However, these factors are pertinent only in cases where the organism being proposed for listing is present and thus capable of being affected by any threats. Because the information presented by petitioners and in our files suggests the species is already extinct, it does not meet the definition of an endangered species or a threatened species under the Act (section 3(6) and 3(20), respectively). Therefore, an analysis of the five threat factors is not appropriate.

South Florida Rainbow Snake (*Farancia erytrogramma seminola*)

Rainbow snakes are iridescent, glossy black above, with three red stripes. The venter is red and/or yellow with three rows of black spots. In the South Florida rainbow snake, the ventral black spots coalesce to render the venter predominantly black, except on the throat, and the middorsal red stripe is reduced to a dotted line due to invasion of black pigment. The largest of the three South Florida rainbow snakes ever reported was 131 centimeters (cm) (51.5 inches (in)) (Molar 1992, p. 251).

Rainbow snakes are strongly aquatic in habit, seldom wandering far from water. The two South Florida rainbow snakes for which data are available were both collected in the water at night. The South Florida rainbow snake is known from one population in Fisheating Creek, which flows into the west side of Lake Okechobee in Glades County, Florida, which lies approximately 250 km (150 mi) south of the nearest area known to support other species of rainbow snakes. This is an aquatic snake that has only been found in a freshwater

stream with substantial aquatic vegetation. Fisheating Creek, its only known location, is a sluggish, small to moderate sized stream flowing through a cypress stand. During drought Fisheating Creek is reduced to a series of disconnected lakes (Molar 1992). Though the South Florida rainbow snake has only been found in creeks, it could possibly inhabit areas similar to other rainbow snakes (Florida Museum of Natural History 2000).

Rainbow snakes are oviparous (egg-laying) and have been reported to lay clutches of 22 to 50 eggs. Adults feed primarily on eels (*Anguilla rostrata*) but aquatic amphibians may also be eaten. Nothing is known about the specific ecology of the South Florida rainbow snake (Molar 1992, pp. 251–252).

Only three specimens of the South Florida rainbow snake have ever been reported (one in 1949 and two in 1952), and only one of these specimens has been preserved. The Florida Museum of Natural History reports that several unsuccessful searches have been conducted for this snake since the 1950s (Florida Museum of Natural History 2000). Intensive collecting at Rainey Slough, a western tributary of Fisheating Creek, did not produce any rainbow snakes (S. Godley, personal communication). Molar (1992) classified the status of the species as “undetermined.” NatureServe (2008) classifies the subspecies as critically imperiled because of its very restricted geographic range, if it even exists, and because it is known from only one site without recent confirmation (most recent collection, 1952).

The petition presented brief information suggesting that the subspecies was threatened by three of the five listing factors (Factors A, B, and D) in section 4 of the Act in an effort to identify threats that may be leading or have led to the decline of the South Florida rainbow snake. However, these factors are pertinent only in cases where the organism being proposed for listing is present and thus capable of being affected by any threats. Because the information presented by petitioners and in our files suggests the species is already extinct, it does not meet the definition of an endangered species or a threatened species under the Act (section 3(6) and 3(20), respectively). Therefore, an analysis of the five threat factors is not appropriate.

Ouachita Creekshell (*Villosa arkansasensis*)

The Ouachita creekshell is a small mussel that seldom exceeds 50 mm (2 in) in length. Its outline is ovate (egg shaped) or obovate (egg shaped with the

narrow end at the base). The valves are subinflated and solid. It is rounded anteriorly and somewhat pointed posteriorly. The ventral margin is curved, while the dorsal margin is rather rounded. The posterior ridge is low and rounded. The hinge ligament is short, and the umbos is not much swollen, and only slightly projected above the hingeline. The periostracum (the external, chitinlike covering of the shell) is dull to satiny, yellowish to brownish (but most often darker) with fine green rays over the entire surface. The left valve has two heavy, triangular pseudocardinal teeth about equal in size and two short lateral teeth. The right valve has two pseudocardinals, the posterior one chunky and the anterior one vestigial. The nacre (mother-of-pearl) is silvery white, and bluish, and iridescent posteriorly. Male shells are somewhat pointed with female shells more broadly rounded and truncated below the medial line. Mature females have a distinct constriction in the middle of the truncation (Arkansas Wildlife Action Plan 2005). Host fish include the rainbow darter (*Etheostoma caeruleum*) and shadow bass (*Ambloplites ariommus*).

The petition states that there are an estimated 6 to 20 populations of this mussel (NatureServe 2008). In Arkansas, this species is extant in the Poteau, Ouachita, and Saline River systems (Harris *et al.* 1997). In Oklahoma, this mussel occurs in the headwaters of the Little River (C. Mather pers. comm. cited in NatureServe 2008, Vaughn and Taylor 1999, Vaughn 2000, Galbraith *et al.* 2008), eight sites in the Glover River (Vaughn, 2000, 2003), eight sites in the Mountain Fork River (Spooner and Vaughn 2007), and potentially in the Kiamichi River.

Historically, Ouachita creekshell was known from 23 streams and rivers in 2 States draining the Ouachita Mountains in the Red and Arkansas River basins (Davidson 2007, p. 9). Information in our files indicates the Ouachita creekshell is currently known to occur in 15 streams and may occur in an additional 5 streams in the Ozark region (Johnson 1980; Davidson 2007), with sizable populations with ample evidence of recent recruitment and considered viable for several decades to come, occurring on the Little River, Glover River, Mountain Fork Little River, Irons Fork Ouachita River, Alum Fork Saline River, and the North Fork Saline River (Davidson 2007, pp. 28–29). Small populations are known to occur in the Ouachita River, Little Missouri River, and the Saline River in the Ouachita River drainage (Davidson 2007, p. 29). Marginal populations are

known to occur in the Kiamichi River, Fourche LaFave River, Poteau River, Middle Fork Saline River, Chances Creek, and Brushy Creek (Davidson 2007, p. 29). Due to limited survey data it is unknown whether Ouachita creekshell occur in five additional streams: (Big) Cedar Creek, Buffalo Creek, Cossatot River, Saline River in the Little River drainage and Terre Noire Creek. The Ouachita creekshell has been extirpated from three streams: South Fork Ouachita River, Caddo River, and South Fork Saline River.

Historically, the Ouachita creekshell was widespread, but never locally abundant in many Ouachita Mountain streams (Davidson 2007, p. 10). Quantitative historical abundance data for Ouachita creekshell are unknown, and a review of online museum collections seems to indicate that most collectors only kept representative voucher material (*e.g.*, one or two specimens). The absence of substantial museum collections may be an artifact of infrequent encounters resulting from naturally low relative abundance or the difficulty associated with locating small mussels (Davidson 2007, p. 10).

This regional endemic (species found only in the region) is restricted to headwater streams. It is considered critically imperiled in Oklahoma (S1S2) and imperiled in Arkansas (NatureServe 2008). It is ranked as special concern/vulnerable by the American Fisheries Society (Williams *et al.* 1993, 2010 draft, in review). There is some question as to the taxonomic status of this species based on recent phylogenetic analysis (McKay *et al.* 2009, Inoue 2009). The results suggest that, based on genetic similarities, *V. arkansasensis* may be a synonymous species with *O. jacksoniana* (southern hickorynut mussel) (Inoue 2009). The Service published a not substantial finding on a petition to list *O. jacksoniana* on March 23, 2010 (75 FR 13717), prior to receipt of the petition.

Crystal Darter (*Crystallaria asprella*)

The crystal darter is a slender, cigar-shaped member of the perch family. It has a distinctly forked tail and pronounced snout. As one of the largest darters, it reaches up to an average of 130 millimeters (mm) (5.1 in) standard length (SL) (Kuehne and Barbour 1983, Page 1983). The crystal darter is mostly translucent, although some cryptic coloration is present in the form of dark saddles along the back and mottling along the sides.

Crystal darter habitat is described by Page (1983) as comprising large creeks and rivers with extensive clean sand and gravel raceways. Individuals

generally inhabit waters deeper than 60 cm (23.6 in) with strong currents (Page 1983). The species is rarely collected when current velocities are lower than 32 cm/second (George *et al.* 1996), and its preference for fast-moving water makes sampling difficult. The species diet ranges from fly and caddisfly larvae to water mites and small crustaceans (Forbes 1880, Hatch 1998).

Historically, the crystal darter was found within the Mississippi River basin from Wisconsin and Minnesota east to Ohio and south to Oklahoma, Louisiana, and Florida (Page 1983) and the Gulf slope in the Escambia, Mobile Bay, and Pearl River drainages (Page and Burr 1991). Crystal darters are considered rare, but the specific reasons for their rarity are poorly understood. Past approaches for sampling crystal darter populations in mid to large rivers have been relatively ineffective, leading to low catch rates that are generally not useful in producing population estimates, and little effort has been expended to specifically sample the species. Rather, gears have been deployed in habitats to generally characterize fish communities where crystal darters are coincidentally collected. Recently, new methodologies (*e.g.*, Missouri Trawl, Herzog *et al.* 2005) have been developed to sample species such as crystal darters in large rivers that show promise for quantitatively assessing population status and demonstrating the species may be more common than previously thought (FWS 2009, p. 38).

The species is presently known from large creeks and rivers in 15 States. The population from the Elk River in West Virginia is sufficiently genetically and morphologically distinct that it has now been separated from the crystal darter group and is referred to as the diamond darter (*Crystallaria cincotta*) (Welsh and Wood 2008). The diamond darter is a candidate species (75 FR 69287) and has been found to be warranted for listing, but precluded by higher priority listing actions. For the purposes of this finding, we assess only the remainder of the crystal darter group.

Spotted Darter (*Etheostoma maculatum*)

The spotted darter is a member of the Perch family (Percidae), a group characterized by the presence of a dorsal fin separated into two parts, one spiny and the other soft (Kuehne and Barbour 1983, p. 1). Darters are smaller and more slender than other percids. Most darters, including those in the genus *Etheostoma*, have a vestigial swim bladder, which decreases buoyancy, allowing them to remain near the bottom with little effort (Evans and Page

2003, p. 64). Distinguishing morphological characteristics of the spotted darter include: laterally compressed body, subequal jaws, sharp snout, short pectoral fins, an absent/weak suborbital bar, and a rounded posterior edge of the caudal fin (Zorach and Raney 1967, p. 300). They often exceed 60 millimeters (mm) (2.36 inches (in)) standard length (Kuehne and Barbour 1983, p. 116). The opercle and belly are scaled, the cheek is slightly scaled to unscaled, and the nape and breast are unscaled (Page 1983, p. 100). Lateral line counts are usually 56 to 65 scales, and vertebrae number 37 to 39 (Kuehne and Barbour 1983, p. 117). Spotted darters are sexually dimorphic. Males have black-edged red spots on the body and a bluish-green breast that intensifies in color at spawning time. Females have dark spots on the body that are larger and more diffuse than the males (Kuehne and Barbour 1983, p. 116). Spotted darters superficially resemble bluebreast darters (*E. camurum*), but the two can be distinguished by the latter having a black margin on its soft dorsal, caudal, and anal fins (Stauffer *et al.* 1995, p. 304). Small spotted darters can resemble Tippecanoe darters (*E. tippecanoe*), but Tippecanoe darters have an incomplete lateral line (Stauffer *et al.* 1995, p. 304).

The spotted darter was described as *Etheostoma maculata* by Kirtland (1841, pp. 276–277). Jordan and Eigenmann (1885, p. 71) amended the species epithet to *maculatum* to conform to the neuter gender of *Etheostoma*. The spotted darter was subsequently listed under the genera *Etheostoma*, *Nothonotus*, and *Poecilichthys* by various workers through the early 1950s. Bailey *et al.* (1954, pp. 139–141), and Bailey and Gosline (1955, pp. 6, 10) reduced the number of darter genera to three (*Ammocrypta*, *Etheostoma*, and *Percina*), placing the spotted darter in the subgenus *Nothonotus*. Three subspecies were subsequently recognized by Zorach and Raney (1967, p. 297): the spotted darter (*Etheostoma maculatum maculatum*) (Kirtland) in the Ohio River system including the Wabash and Green river systems, bloodfin darter (*E. m. sanguifluum*) (Cope) in the upper Cumberland River system below Cumberland Falls, and wounded darter (*E. m. vulneratum*) (Cope) in the upper Tennessee River system. These subspecies have since been elevated to distinct species within the genus *Etheostoma*, subgenus *Nothonotus*: *E. maculatum* (spotted darter), *E. sanguifluum* (bloodfin darter), and *E. vulneratum* (wounded darter) by Etnier and Williams (1989, p. 987).

Spotted darters are habitat specialists that take advantage of their extremely laterally compressed body to live under and among large, heterogeneous, unembedded substrates in riffles and glides (Raney and Lachner 1939, pp. 157–159; Burr and Warren 1986, p. 306; Bowers *et al.* 1992, p. 19; Osier and Welsh 2007, p. 457; Kessler and Thorp 1993, p. 1090; Kessler *et al.* 1995, p. 368). They are associated with deeper water and larger rocks than similar species (Raney and Lachner 1939, p. 158; Kessler and Thorp 1993, pp. 1087–1089; Osier and Welsh 2007, p. 456). They typically do not tolerate silt or embedded substrates (Kessler and Thorp 1993, p. 1090; Osier and Welsh 2007, p. 457).

Spotted darters typically spawn in May and June (Raney and Lachner 1939, p. 160; Weddle and Kessler 2008, p. 21; Ruble *et al.* 2008, Appendix 2). Raney and Lachner (1939, p. 159) found that spawning sites were spaced at least 120 centimeters (cm) (47.24 in) apart in the head of a riffle in water 15–60 cm (5.9–23.62 in) deep. Up to 350 adhesive pale yellow 2 mm (0.079 in) diameter eggs were deposited in tight wedge-shaped masses on the undersides of 90–275 cm (35.43–108.27 in) diameter flat rocks (Raney and Lachner 1939, p. 161). Weddle and Kessler (2008, p. 22) found that egg clump dimensions averaged 20 mm (0.79 in) long by 13 mm (0.51 in) wide and were deposited under rocks averaging 24.7 cm (9.72 in.) long and 18.2 cm (7.17 in) wide. Observations of up to five distinct egg size classes in females indicate that spotted darters spawn multiple times in a single season (Raney and Lachner 1939, p. 162; Weddle and Kessler 2008, p. 24). Male spotted darters guard the eggs while remaining mostly under or adjacent to the nest rock (Raney and Lachner 1939, p. 162). First spawning activity is reported to occur at 2 years for both males and females; males spawn through year 4 and females through year 5 (Raney and Lachner 1939, p. 164).

The species' extremely pointed snout makes them well-adapted for picking macroinvertebrate prey from underneath rocks (Kessler *et al.* 1995, p. 368). Macroinvertebrates, especially larval insects, comprise a large portion of their diet. Larval midges (Diptera, family Chironomidae), stoneflies (Plecoptera), caddisflies (Trichoptera), mayflies (Ephemeroptera), and beetles (Coleoptera), as well as adult water mites (Hydracarina) are important food items (Raney and Lachner 1939, p. 162; Hansen 1983, Appendix B; Kessler 1994, p. 29). Spotted darter eggs have been found in the stomachs of spotted

darter adults (Raney and Lachner 1939, p. 162).

The spotted darter historically occurred in the Ohio River drainage in New York, Pennsylvania, Ohio, Indiana, Kentucky and West Virginia. Spotted darters probably also occurred in other streams in the Ohio River basin with suitable habitat. Raney and Lachner (1939, p. 158) speculated that its presence had likely been overlooked by many collectors who had not thoroughly worked deeper riffles. In addition, small benthic fishes are difficult to collect in deeper water (Ohio Environmental Protection Agency (OEPA) 1988, pp. 4–10). Troutman (1981, p. 670) noted that there may be considerable variation in the numbers of spotted darters in individual populations from one year to another, although he did not discuss a cause for this phenomenon. These factors may help explain why spotted darters went undetected in the Elk, Blue, East Fork White, lower Allegheny, and Ohio Rivers until after 1975. Considering that many larger parent streams in the Ohio River Basin were extensively impounded and polluted beginning in the 1800's, degrading or eliminating spotted darter habitat (Ortmann 1909, pp. 90–110; U.S. Army Corps of Engineers (USACE) 1981; Trautman 1981, pp. 17–24), it is reasonable to believe that the species also inhabited some of these parent streams historically but were extirpated prior to detection.

Rangewide status assessments in the literature indicate that spotted darters are localized and uncommon (Kuehne and Barbour 1983, p. 117; Page 1983, p. 100; Page and Burr 1991, p. 305). Although there is no rangewide systematic sampling to monitor distribution and status, a number of riverwide surveys have been conducted in some basins in some years.

The spotted darter is considered extant in the mainstem Ohio River (PA) and in the Allegheny (NY, PA), Muskingum (OH), Scioto (OH), Blue (IN), Wabash (IN), Green (KY), and Kanawha (WV) river systems. Of the 37 known streams that historically supported or currently support spotted darters, the species is likely extant in 24, likely extirpated in 12, and potentially extirpated in 1. Of the 24 streams that currently support spotted darters, populations are likely stable or expanding in 9 and declining or vulnerable in 4. Recent trends are unknown in the remaining 11 streams with extant populations. Fourteen of the 24 extant populations were discovered after 1975, and 9 of these 14 were discovered after 1990. Given the recent discoveries of new populations of

spotted darters, and considering the potential difficulties in collecting them, it is reasonable to believe that they may also be present, but have gone unrecorded, in other streams within the aforementioned river systems.

Florida Bog Frog (*Rana okaloosae*)

The Florida bog frog is a small ranid frog endemic to three counties in western Florida. It is the smallest member of its genus in North America. The bog frog is restricted to a variety of seepage habitats, relatively stable streams and seeps that receive their water via percolation through adjacent, deep sandy uplands. It is associated with black titi, beds of sphagnum moss, and Atlantic white cedar. Breeding occurs from April to August, and the species is syntopic (sharing the same habitat within the same geographic range) with *Rana clamitans*, *Acris gryllus*, and sometimes *Hyla andersonii*. Eggs are laid in thin masses at the water surface in the same habitat occupied by adults, with some tadpoles overwintering (Molar 1985, 1992, 1993). The species has been observed eating moths at night and likely predators include cottonmouths (*Agkistrodon piscivorus*) and southern water snakes (*Nerodia fasciata*).

The species was not discovered until 1982 and was formally described in 1985 (Molar 1985 as cited in Jackson 2004, p. ii). Of approximately 57 known sites, all but 5 are located in roughly the western third of EAFB, Santa Rosa and Okaloosa Counties, Florida. Two highly disjunct sites occur in the northeastern part of EAFB, in Walton County, in Titi Creek, a tributary of the Yellow River via the Shoal River. The remaining three sites are on private lands on the north side of the Yellow River, across from EAFB (Jackson 2004, p. ii).

The species is included in Eglin's Threatened and Endangered Species Component Plan to the Integrated Natural Resource Management Plan (2006). Eglin's overall ecosystem management benefits the species. All mission activities are required to avoid disturbing wetlands, including the creeks inhabited by bog frogs.

The petition cites NatureServe (2008) as listing the species as imperiled in Florida, and IUCN considers the species "Vulnerable".

Greensboro Burrowing Crayfish (*Cambarus catagius*)

According to information in our files, this species is a North Carolina endemic known from Davidson, Guilford, Montgomery, and Randolph Counties. In total 16 localities are known, including 11 in the Haw River

subdrainage of the Cape Fear River basin and 5 localities in the central Yadkin-Pee Dee River drainage (McGrath 1994, pp. 346–347). This species is a primary burrower found in damp, open areas, which are sometimes far removed from surface moisture or standing water. In fact, most locations for this species have been recorded in urban and suburban yards, which are usually grassed areas that were cleared at some point in the past (McGrath 1994, p. 346). Little is currently known about population densities or habitat requirements of this narrow endemic, but McGrath (1994, p. 348) noted, "given the types of habitats that support the species, the numerous locations in which the species was found, the abundance of burrowing activity at those locations, and the potential for the species to be present in uninvestigated sites, the species may be doing well."

The State of North Carolina considers this crayfish to be a Species of Special Concern. It was a Federal category 2 candidate species until that list was abolished in 1996. It is ranked as vulnerable by the IUCN and as threatened by the American Fisheries Society. NatureServe (2008) ranks the species as imperiled and believes that in the short term, this species has a stable population.

Blood River Crayfish (*Orconectes burri*)

Taylor and Schuster (2004, pp. 143–145) provided a detailed description of the morphological characters and life appearance of the Blood River crayfish. The base color of the dorsal and lateral surfaces of the chelae (claws), carapace (platelike covering of the head and anterior half of the body), and abdomen is light brown to tan, with light to dark brown mottling (spots). The dorsal surface of the carapace has a wide, dark-brown patch anterior to the cervical groove (semicircular groove that generally divides the carapace in half) and a wide, U-shaped dark saddle centered at the caudal (posterior) margin that extends anteriorly along the lateral surface of the carapace. The fingers of the chelae (claws) have orange tips bordered by wide subdistal black bands. The large knobs at the base of the dactyl (mesal or thumblike part of the claw) are dark blue to black. The maximum known size for the species is 64.5 millimeters (2.54 inches).

The Blood River crayfish was not officially described until 1998 (Taylor and Sabaj 1998, pp. 645–652). Similar species include *O. bisectus* (Crittenden crayfish), *O. jeffersoni* (Louisville crayfish), *O. margorectus* (Livingston crayfish), *O. rafinesquei* (Rough River crayfish), *O. sanbornii* (Sanborn's

crayfish), and *O. tricuspis* (Western Highland crayfish); though the distribution of these species is not known to overlap that of the Blood River crayfish. The Blood River crayfish differs from all of these species in possessing a central projection (typically the longest terminal projection of the gonopod) with a tip bent at a 90° angle to the main shaft of the gonopod and which overhangs the mesial process (terminal process of the gonopod, typically shorter than the central projection). The strongly mottled appearance is also atypical for most other Kentucky species of *Orconectes* (Taylor and Schuster 2004, p. 145).

According to Taylor and Schuster (2004, pp. 145–146), the Blood River crayfish occurs in small to medium-sized creeks ranging in width from 3 to 10 meters (m) (5 to 33 feet (ft)) with substrates consisting of sand and gravel. The species typically inhabits woody debris piles or woody vegetation root masses along stream margins, especially in areas with current. According to Taylor and Schuster (2004), very little is known about the life history of *O. burri*. Form I males have been collected in March, April, May, and October. Oviparous (egg-carrying) females were observed for the first time in April 2008 (Ryan Evans, Kentucky State Nature Preserves Commission [KSNPC], personal communication, 2008). Most collections of *O. burri* have contained two distinct year classes, suggesting that the species has a 2-year life cycle (Taylor and Sabaj 1998, pp. 645–652). The Blood River crayfish has been found sympatrically with two other crayfish species, *Cambarus diogenes* (devil crayfish) and *Procambarus acutus* (White River crayfish) (Taylor and Schuster 2004, p. 146; Ryan Evans, KSNPC, personal communication, 2008). Detailed biological information is unavailable for *O. burri*, but the species is likely similar to most other Kentucky crayfishes with respect to longevity (usually 2 to 3 years), diet (opportunistic omnivores), and life cycle.

The species is endemic to the Blood River drainage, a Tennessee River tributary in western Kentucky and northwest Tennessee (Taylor and Schuster 2004, p. 145). Little is known regarding the historical distribution of the species, but it is assumed that the species occupied the same stream drainages in which it now occurs (Guenter Schuster, Eastern Kentucky University (EKU), personal communication, 2008). The Blood River originates in Henry County, Tennessee, and flows northeasterly into Kentucky where it empties into Kentucky Lake

(Tennessee River). Within Kentucky, the range of *O. burri* is contained entirely within the boundaries of Calloway County, where the species is known from the Blood River mainstem and seven of its tributaries: Wildcat Creek (the type locality), Panther Creek, McCullough Fork, Goose Creek, Beechy Creek, Grindstone Creek, and Lax Creek (Taylor and Schuster 2004, p. 145; Ryan Evans, KSNPC, personal communication, 2008). Within Tennessee, the species has been recorded from the North Fork Blood River and Middle Fork Blood River. Exhaustive collecting in the lower Tennessee River system of western Tennessee and Kentucky by Taylor and Sabaj (1998, p. 649) and a search of holdings in the National Museum of Natural History failed to document the presence of the species outside of the Blood River drainage.

Surveys conducted by Taylor and Sabaj (1998) in 1996 revealed that *O. burri* was moderately abundant in the Blood River and several of its tributaries in western Tennessee and Kentucky. Recent surveys by KSNPC during April, May, and June of 2008 confirmed the species' presence at the four previously reported Kentucky sites and recorded *O. burri* from six new Kentucky sites: (1) Blood River at the KY 121 bridge crossing; (2) Panther Creek at the KY 280 bridge crossing; (3) Goose Creek at the KY 280 bridge crossing; (4) Grindstone Creek at the KY 444 bridge crossing; (5) Wildcat Creek at the Ralph Wright Road bridge crossing; and (6) Lax Creek at the State Line Road bridge crossing (Ryan Evans, KSNPC, personal communication, 2008; M. Floyd, USFWS, personal observation, 2008). Collections were made using a standard seine (3.4 x 1.8 m (11 x 6 ft) with 0.3 cm (0.1 in) mesh), and approximately 15–20 seine hauls or kicks were made at each site in areas with suitable habitat (primarily woody debris piles or submerged tree roots). The species was observed at 12 of 14 sites (the species was not observed at 2 sites in the Sugar Creek basin), and catch rates ranged from a low of 0.176 individuals per seine effort at Lax Creek to a high of 2.73 individuals per effort at Grindstone Creek. The Blood River crayfish was the dominant crayfish at all sites, averaging 82.5 percent (range = 62.5 to 100 percent) of all crayfish individuals at each site. The species is currently listed as Threatened in Kentucky by KSNPC (KSNPC 2005), but this designation may be modified based on the species' current abundance and discovery of new populations (Ryan Evans, KSNPC, pers. comm. 2008).

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 endangered or threatened 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 affected could suffice. The mere identification of factors that could affect a species negatively may not be sufficient to compel a finding that listing may be warranted. The information must 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 a "threatened species:" or an "endangered species" under the Act.

In making this 90-day finding we evaluated whether information regarding threats to the nine species that we consider listable entities (*i.e.*, taxonomically valid and not considered extinct), as presented in the petition and other information available in our files is substantial, thereby indicating that listing any of the species in the petitioned action may be warranted. Our evaluation of this information is presented below. The intensity of our

review of the species varied depending on the amount of information presented in the petition and that amount of information available in our files.

Sarah's Hydroptila Caddisfly (*Hydroptila sarahae*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition (p. 612) cites NatureServe (2008) stating "anything that adversely affects water quality, such as pollution, siltation or degradation of surrounding habitat would be a threat to this species." However, it provides no information on actual threats to the species under this factor.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no evidence in our files that this species is facing threats under this factor. The petition (p. 612) states that the species is known from 4 locations on EAFB, but information in our files shows that it is actually extant at 11 locations on the installation. EAFB is managed under an Integrated Natural Resource Plan (INRMP) (Science Applications International Corporation (SAIC) 2006) that was reviewed by and approved by the Service and the Florida Fish and Wildlife Conservation Commission and that is protective of water quality, and the steepheads, spring runs, and creeks where this species occurs. Eglin's overall ecosystem management benefits the species. All mission activities are required to avoid disturbing wetlands, including the creeks inhabited by this species. In addition, the Service has partnered with EAFB and conducts routine biological, chemical, and physical habitat assessments of aquatic environments in order to assist with conservation efforts (SAIC 2006, p. 1–5). Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range may present a threat to Sarah's hydroptila caddisfly such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information on this factor, and does not

assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to Sarah's hydroptila caddisfly such that the petitioned action may be warranted.

Factor C. Disease or Predation

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to Sarah's hydroptila caddisfly such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition (p. 612) states, "It is unknown if it is appropriately protected from activities that would degrade water quality and eliminate the species."

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files indicating the species is threatened by the inadequacy of existing regulatory mechanisms. Water quality on EAFB is protected in part through an approved INRMP (SAIC 2010, pp. 7–55 through 7–60). EAFB is also subject to the Federal Clean Water Act of 1972 and State water quality regulations. The Service has partnered with EAFB and conducts routine biological, chemical, and physical habitat assessments of aquatic environments in order to assist with conservation efforts (SAIC 2010, pp. 1–5). The protections in place through the INRMP, Clean Water Act, and State regulations appear to be adequately protecting Sarah's hydroptila caddisfly from poor water quality. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to Sarah's hydroptila caddisfly such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to Sarah's hydroptila caddisfly such that the petitioned action may be warranted.

Rogue Creek Hydroptila Caddisfly (*Hydroptila okaloosa*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition (p. 611), citing NatureServe (2008), states, "Because it is dependent on clean water, this caddisfly is threatened by any form of pollution, siltation or degradation of surrounding habitat." However, the petition fails to cite any specific instance of habitat degradation within the range of the Rogue Creek hydroptila caddisfly, or provide any information that the caddisfly is negatively affected by habitat degradation.

Evaluation of Information Provided in the Petition and Available in Service Files

As with Sarah's hydroptila caddisfly, we have no evidence in our files that this species is facing threats under this factor. This species is known from eight locations on EAFB, all of which are managed under the installation's INRMP (SAIC 2006). In addition, the Service has partnered with EAFB and conducts routine biological, chemical, and physical habitat assessments of aquatic environments in order to assist with conservation efforts (SAIC 2010, pp. 1–5). Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range may present a threat to the Rogue Creek hydroptila caddisfly such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information on this factor, and does not

assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Rogue Creek hydroptila caddisfly such that the petitioned action may be warranted.

Factor C. Disease or Predation

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the Rogue Creek hydroptila caddisfly such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition (p. 611) states that the species is found only on EAFB, and that it is "unknown if it is appropriately protected from activities that would degrade water quality and eliminate the species."

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files indicating the species is threatened by the inadequacy of existing regulatory mechanisms. The INRMP and Federal and State water quality laws and regulations are protective of water quality, and the steepheads, spring runs, and creeks where this species occurs. EAFB's overall ecosystem management benefits the species. All mission activities are required to avoid disturbing wetlands, including the creeks inhabited by this species. Water quality on EAFB is also protected in part through an approved INRMP (SAIC 2006, pp. 7–55 through 7–60). EAFB is also subject to the Federal Clean Water Act of 1972 and State water quality regulations. The Service has partnered with EAFB and conducts routine biological, chemical, and physical habitat assessments of aquatic environments in order to assist with conservation efforts (SAIC 2006, pp. 1–5). The protections in place through the INRMP, Clean Water Act, and State regulations appear to be adequately

protecting the Rogue Creek hydroptila caddisfly from poor water quality. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the Rogue Creek hydroptila caddisfly such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the Rogue Creek hydroptila caddisfly such that the petitioned action may be warranted.

Florida Brown Checkered Summer Sedge (*Polycentropus floridensis*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition states according to NatureServe (2008), the habitat of this species is "subject to pollution, siltation, and other forms of environmental degradation." However, the Petition also notes, based on Rasmussen *et al.* (2008) that the species is believed to be relatively stable 'as long as stream habitats supporting populations on EAFB are protected.'

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files that this species is facing threats under this factor. This species' locations on EAFB are managed under the installation's INRMP (SAIC 2006). In addition, the Service has partnered with EAFB and conducts routine biological, chemical, and physical habitat assessments of aquatic environments in order to assist with conservation efforts (SAIC 2006, pp. 1–5). Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or

range may present a threat to the Florida brown checkered summer sedge such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Florida brown checkered summer sedge such that the petitioned action may be warranted.

Factor C. Disease or Predation

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the Florida brown checkered summer sedge such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states that no existing regulatory mechanisms protect this species, and despite its stability on EAFB, that issues of national security are prioritized over species protection.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files that issues of national security are negatively affecting the species or will do so in the foreseeable future. In addition, water quality on EAFB is protected in part through an approved INRMP (SAIC 2010, pp. 7–55 through 7–60). The INRMP and Federal and State water quality laws and regulations are protective of water quality and the stream habitats where this species occurs. EAFB's overall ecosystem management benefits the species. All mission activities are required to avoid disturbing wetlands, including the creeks inhabited by this species. EAFB is also subject to the Federal Clean Water Act of 1972 and State water

quality regulations. The protections in place through the INRMP, Clean Water Act, and State regulations appear to be adequately protecting the species from poor water quality. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the Florida brown checkered summer sedge such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the Florida brown checkered summer sedge such that the petitioned action may be warranted.

Ouachita Creekshell (*Villosa arkansasensis*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition (p. 1125) asserts that the species is threatened by habitat degradation and fragmentation in the Glover River drainage (Vaughan 2003) due to gravel mining, by proposed reservoirs (Galbraith *et al.* 2008), by siltation from forestry and agricultural activities, and from second home development (Spooner and Vaughan 2007); and from "pollution from municipal and industrial point sources, by recreation, development, nutrient loading, confined animal feeding operations, grazing, sedimentation, and road construction" (Arkansas Game and Fish Commission 2005). The petition fails to identify any specific details showing these potential threats actually affect the Ouachita creekshell, or identify the significance of these threats to the status of the Ouachita creekshell.

Evaluation of Information Provided in the Petition and Available in Service Files

In 2007, the Service concluded a status assessment of the Ouachita creekshell (Davidson 2007), in which

we assessed the status and threats based on the five listing factors. We concluded that an absence of comprehensive mussel surveys within the Ouachita creekshell historic range has resulted in difficulty assessing long term population trends (Davidson 2007, p. 30). Limited information is available on the species prior to the 1980s and prior to most anthropogenic (human-caused) impacts that may have affected populations when the area was industrialized and urbanized.

We further concluded in the assessment that construction of 12 major dams and impoundments probably contributed to the historic decline of the Ouachita creekshell as the species does not occur in reservoirs lacking riverine characteristics and is unable to successfully reproduce and recruit under reservoir or tailwater conditions (Davidson 2007, pp. 31–32). We have no information in our files indicating that any new reservoirs are proposed or that the existing reservoirs currently threaten the Ouachita creekshell.

Similarly, the demise of the mussel population in the lower Poteau River system has been attributed, at least in part, to sedimentation and farming chemicals (Davidson 2007, pp. 32–33). In the early 1990's the upper Mountain Fork and Glover Rivers may have been impaired by clearcutting and conversion of surrounding lands to pasture and confined animal feeding operations (R. Standage, U.S. Forest Service, pers. comm. 2007). DeClerk *et al.* (2006) assessed the threats and stressors to the upper Saline River (Ouachita River basin) headwaters and concluded that stressors are likely to be localized and moderately degrade aquatic biota and habitat over a portion of the watershed if conditions remain unchanged over the next 10 years. Lastly, we concluded in the assessment that the impacts of mining should be localized and have a minimum effect on the species rangewide (Davidson 2007, p. 33).

Sedimentation, including siltation, resulting from such activities as grazing, home development, and road construction is a pervasive problem across the United States, including the range of the Ouachita creekshell. As the Ouachita creekshell relies on visual-feeding host fishes for reproduction, clear silt-free water is essential for successful recruitment. However, use of best management practices, which in some cases are mandatory and others voluntary, significantly reduces sediment and erosion from construction and development, timber, and agricultural practices. Additionally, approximately 85 percent of the Ouachita River basin upstream of Lake

Ouachita is within Ouachita National Forest. Therefore, populations of this species are substantially protected from habitat destruction and alteration from sedimentation.

The Service's Partners for Fish and Wildlife program (PFW) has identified priority watersheds in the Ouachita Mountains for habitat restoration. The PFW has funded one project to enhance riparian habitat on the Middle Fork Saline River. Other PFW projects are scattered throughout priority watersheds (M. Tobin, USFWS, pers. Comm., 2006). Additionally, resource managers are teaming together to develop strategies to restore mussel populations in various watersheds. These efforts have been largely focused on the Upper Saline River watershed (Ouachita River basin) in the Ouachita creekshell range. These strategies have emphasized actions to aid in the restoration of mussel populations.

In summary, the threats alleged in the Petition are largely historical and not currently acting on the species or are not a threat of sufficient magnitude such that they affect the species continued existence.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information on this factor, and does not assert it is a threat. Information in our files (Davidson 2007, p. 36) indicates this species has never been valuable in the commercial pearl button or cultured pearl industry. Similarly, there is no other information in our files that would suggest overutilization for recreational, scientific or education purposes is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Ouachita creekshell such that the petitioned action may be warranted.

Factor C. Disease or Predation

The petition does not provide any information on this factor, and does not assert it is a threat. Information in our files indicates that there are several natural predators of mussels, including the muskrat, raccoon, mink, otter, hogs, turtles and aquatic birds. However, threats from these species are not currently deemed significant (Davidson 2007, p. 37). Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial

information to indicate that disease or predation may present a threat to the Ouachita creekshell such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition (p. 1126) states, "There are no existing regulatory mechanisms that protect the Ouachita Creekshell." However, the petition fails to provide any substantial information detailing the significance of this potential threat or how it may be acting on the species.

Evaluation of Information Provided in the Petition and Available in Service Files

In contrast to the above statement in the petition, there are several regulatory mechanisms in place to protect the Ouachita creekshell. The Arkansas Game and Fish Commission prohibits taking of Ouachita creekshell without a State collecting permit (Davidson 2007). The Clean Water Act prohibits water quality degradation, and administration of this authority has improved over the last several years in AR and OK (Davidson 2007). Hydropower Dams are regulated by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act (FPA). The FPA provides for cooperation between FERC and other Federal and State agencies, including resource agencies, in licensing and relicensing power projects, including the authority to alter flow regimes such that they might reduce or avoid adverse effects to mussels downstream.

Many Ouachita creekshell extant and historical populations occur on public lands (*e.g.*, Ouachita National Forest, State parks, and wildlife management areas). Approximately 85 percent of the Ouachita River basin upstream of Lake Ouachita is within Ouachita National Forest. Accordingly, populations of this species are substantially protected from habitat destruction and alteration. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the Ouachita creekshell such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition (p. 1126), citing Harris *et al.* (1997) states that zebra mussel (*Dreissena polymorpha*) invasion is a

threat to the native mussels of the Arkansas and White Rivers. However, it does not provide any specific information on the significance of the threat or extent of the invasion into Ouachita creekshell habitat.

Evaluation of Information Provided in the Petition and Available in Service Files

Davidson (2007, pp. 38–39) evaluated the existing threats to the Ouachita creekshell using the five listing factors and, while he discusses the exotic Asian clam as firmly entrenched in the Ouachita creekshell range, he also finds that the Asian clam may not cause native mussels in dense beds to decline when it invades their habitat. Davidson (2007) does not mention the zebra mussel as a possible threat. As noted previously, phylogenetic analysis suggests that Ouachita creekshell (*Villosa arkansasensis*) may be the same species as the southern hickorynut mussel, considerably increasing the range and population numbers of the Ouachita creekshell. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the Ouachita creekshell such that the petitioned action may be warranted.

Crystal darter (*Crystallaria asprella*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition (p. 286), citing numerous sources, states that habitat destruction is a primary threat to the crystal darter. On page 286 the Petition states, "The crystal darter now occurs as declining, fragmented populations that are highly vulnerable to extirpation from habitat loss and degradation." NatureServe (2008) reports that this fish is threatened by "siltation and other forms of pollution from urbanization, strip-mining, logging, natural gas exploration, and improper agricultural practices, as well as stream alteration projects, such as damming, dredging, and channelization." Dredging for navigation is believed to be a major threat in the upper Mississippi River system.

Reasons outlined for habitat loss include siltation and other water-quality concerns in streams and rivers (Boschung and Mayden 2004, NatureServe 2008, Jelks *et al.* 2008,

Arkansas Game and Fish Commission (AGFC) 2005 as cited in the Petition, pp. 285–286), dams and impoundments (Boschung & Mayden 2004, NatureServe 2008, and AGFC 2005, as cited in the Petition, p. 286), and mountaintop removal coal mining (Boschung & Mayden 2004, Wood 2009, and Wood and Raley 2000 as referenced in the Petition, p. 286).

Evaluation of Information Provided in the Petition and Available in Service Files

In the Service's crystal darter status assessment (2009), we acknowledge that extensive human disturbance over the past 100 years has contributed to the extirpation of the crystal darter from portions of its former range including Ohio, Indiana, Illinois, Tennessee, Kentucky, and Iowa (Etnier and Starnes 1993 as reported in FWS 2009). It has long been recognized that siltation alters aquatic habitats by reducing light penetration, changing heat radiation, covering the stream bottom, and retaining organic material and other debris (Ellis 1936). This translates into the disruption of reproductive behavior and alteration of food resources utilized by stream fish communities (Ellis 1936).

The crystal darter was broadly distributed in tributaries of the Ohio River until high silt loading and the subsequent smothering of sandy substrates occurred (Trautman 1981). Impoundment and channelization were thought to have caused the extirpation of crystal darter populations from the Tombigbee River, a part of the Mobile River system (Stewart 1992). According to Etnier and Starnes (1993), as reported in FWS (2009), impoundments at Lake Cumberland, Cordell Hull, and Dale Hollow reservoirs in Tennessee have caused the apparent extirpation of the crystal darter by altering big-river habitat in the region. Schmidt (1995) lists dredging for commercial navigation as the greatest threat to crystal darter populations in the Mississippi River. On the other hand, Schmidt (1995) also notes that collections made in a pool designated as a dredge disposal site may provide suitable substrates to accommodate the crystal darter's burying behavior. The positive and negative impacts have yet to be fully sorted out. Hatch (1998) suggests that the rarity of crystal darters in the Upper Mississippi River could be a result of the velocity reduction and particle deposition associated with navigation controls. However, Schmidt (1995) notes that crystal darters have been repeatedly detected in association with wing dam structures, which are

abundant throughout the Mississippi River system.

While habitat modification and destruction have occurred in the past, the Petition fails to present new substantial information that this factor continues to affect the crystal darter or would in the future. Similarly, while dredging, dams, stripmining, and mountaintop mining represent generalized threats to the species as stated in the Petition as well as in our own status assessment (2009), neither the Petition nor information in our files present substantial information detailing the significance of these threats to the species. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range may present a threat to the crystal darter such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition does not provide any information on this factor, and does not assert it is a threat.

Evaluation of Information Provided in the Petition and Available in Service Files

Although the crystal darter has no commercial value, live specimens may be collected for the aquarium trade (Walsh *et al.* 2003). However, Schmidt (2003) asserted that current inefficiencies in collection techniques preclude overutilization from becoming a major threat to crystal darter populations. Inadvertent collection of crystal darters while sampling for other fish species could occur, but is unlikely considering the low encounter rate for this species. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the crystal darter such that the petitioned action may be warranted.

Factor C. Disease or Predation

Information Provided in the Petition

The petition does not provide any information on this factor, and does not assert it is a threat.

Evaluation of Information Provided in the Petition and Available in Service Files

Viral hemorrhagic septicemia (VHS) is an infectious disease of fish that was diagnosed in 2005 in fish in the Great Lakes, and was confirmed as the cause of fish kills in Lakes Huron, St. Clair, Erie, and Ontario and the St. Lawrence River in 2005 and 2006. VHS was detected for the first time in 2007 in fish from Wisconsin waters, and fish biologists believe the virus may soon be in fish from the upper Mississippi River and their tributaries or may already be present.

The Great Lakes strain of VHS is genetically different than the strains from Europe and the Pacific Northwest, in that it seems to affect a wider range of freshwater species over a broader range of water temperatures. Some percid (perch) species are known to be susceptible to VHS; however, it has been noted only in the sport fish, and no darters have been reported with VHS so far.

Natural predation by piscivorous fish and wildlife likely occurs (Page 1983). Newly introduced species may act as predators and/or competitors of native fish, including the varieties of nonnative, invasive Asian carp now occurring and reproducing in the Mississippi River and some of its tributaries, including the grass carp, silver carp, bighead carp, and black carp. Asian carp are becoming abundant and persistent residents of the lower reaches of the Upper Mississippi River System (UMRS; Koel *et al.* 2000). However, we have no information that Asian carp are adversely affecting the crystal darter.

Gobies are another invasive fish species that could adversely affect crystal darter. As a benthic species, they might compete with darters for food and space, and their high reproductive rate could overwhelm the natural recruitment of the crystal darter. However, at this time gobies appear to be restricted to the Great Lakes. Whether gobies would occur in the swift waters preferred by the crystal darter is not known.

The zebra mussel has invaded the Mississippi River and can be quite abundant at certain locations. When abundant, zebra mussels can significantly alter the water quality of the river by filtering out the food in the water column that larval fish and other organisms depend on. They can also deplete the river of oxygen, both while alive (for respiration) or once dead (from decomposition). They can completely alter the structure of the bottom of the

river, making it a solid mass of live zebra mussels or their shells. Crystal darters prefer stable sand gravel bars in fast-flowing reaches, where zebra mussels are not as abundant. It is, therefore, unlikely that zebra mussels will have a significant direct impact on these kinds of habitats. We have no information to indicate they represent a threat to the crystal darter at this time.

Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the crystal darter such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The petition (p. 286) states that “no existing regulatory mechanisms adequately protect this species or its habitat,” and citing NatureServe (2008) explains that few populations are “appropriately managed and protected.” NatureServe (2008) reports that few (1 to 3) occurrences of this species are appropriately protected and managed, stating: “At least one site is known to be protected, the lower Bayou Pierre complex in Claiborne and Copiah Counties, Mississippi. For the most part, the species is protected from harvest, but generally there is no protection from upstream siltation or pollution sources.”

Evaluation of Information Provided in the Petition and Available in Service Files

In contrast to the above statement in the Petition, there are a number of regulatory mechanisms in place to protect the crystal darter. In 11 of the 15 States where the species is known to occur, the crystal darter receives special designated protective status as a species of concern, threatened or endangered within the State. While the specific designation in each State provides slightly different protections, they generally protect the species from direct harm, but do not protect its habitat. However, habitat protections across the range of the species are provided through section 404 of the Clean Water Act. The Clean Water Act prohibits water-quality degradation, and administration of this authority has improved over the last several years in AR and OK (Davidson 2007). Hydropower dams are regulated by FERC under the FPA. The FPA provides for cooperation between FERC and other Federal and state agencies, including resource agencies, in licensing and relicensing power projects, including the authority to alter flow regimes such

that they might reduce or avoid adverse effects to aquatic biota downstream. Sedimentation and siltation from construction, development, and timber practices are effectively minimized and or avoided through the implementation of best management practices, which are variably required or voluntary in nature. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that inadequacy of existing regulatory mechanisms is a threat to the crystal darter such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition (p. 286), citing Bauer and Clemmer (1983) and NatureServe (2008), states that the species could be affected by the introduction of nonnative fish species, and across its range is threatened by water pollution from a variety of sources. However, no specific evidence of these threats, or of the crystal darter's response to them, is given. The Petition (p. 286), citing NatureServe 2008, also claims that the crystal darter is “vulnerable to stochastic genetic and environmental events because of its distribution in localized populations.”

Evaluation of Information Provided in the Petition and Available in Service Files

We have no specific information on the crystal darter's response to various introduced nonnative fish species or to the general threat of water pollution. However, Alabama established a rule in 2003 that makes it unlawful to intentionally stock or release any fish, mussel, snail, crayfish or their embryos, including baitfish, into the public waters of Alabama under the jurisdiction of the Division of Wildlife and Freshwater Fisheries. This rule, if enforced, could bolster protection of crystal darters and other imperiled biota.

We next considered information in our files concerning other potential Factor E threats to the crystal darter. Loss of genetic variation through population bottlenecks, genetic drift, and inbreeding can result in increased homozygosity (sameness of genes), loss of additive variance, and increased expression of deleterious recessive alleles (Meffe 1986). Through these processes, loss of genetic variance leads to a decrease in fitness. Small and increasingly isolated crystal darter

populations may continue to suffer from decreasing within-population diversity as inbreeding among close relatives, which can lead to problems such as reduced fertility and fitness, increases in likelihood (Noss and Cooperrider 1994). Similarly, the random loss of adaptive genes through genetic drift may function to limit the ability of crystal darters to respond to changes in their environment (Noss and Cooperrider 1994). Small population sizes and inhibited gene flow between crystal darter populations caused by habitat fragmentation may increase the likelihood of local extinction (Gilpin and Soulé 1986). Unique genetic lines such as those from the Elk River population in West Virginia (Wood and Raley 2000) are of great importance for the long-term goals of maintaining genetic diversity and allowing future adaptation to changing conditions (Meffe 1986). These unique gene pools allow for the maintenance of between-population variance and can be sources of genetic stock for future management efforts (Meffe 1986) and adaptive potential in response to environmental change (Meffe 1987).

Morrison *et al.* (2006) compared the genetic variation of the disjunct populations of the crystal darter from the Upper Mississippi River (Zumbro River, Minnesota), Lower Mississippi River (Saline River, Arkansas), Gulf Coast drainages (Pearl River, Louisiana and Cahaba River, Alabama), and the Ohio River Basin (Elk River, West Virginia). She compared the populations genetically using two different genetic systems and compared that to previous genetic studies of Wood and Raley (2000). She also compared the populations morphometrically (by body physical characteristics) and determined that the four populations are distinctly different. Based on her analysis, she concluded that the Elk River population constituted a distinct species. Welsh and Wood (2008) confirmed the uniqueness of the Elk River population and subsequently described that population of *Crystallaria* as *Crystallaria cincotta*, the diamond darter. They concluded the Elk River population to be the only extant population of this species and that the small size of the population makes it quite vulnerable to local extinctions. The Service has elevated the diamond darter to candidate status (75 FR 69222). So while we previously thought that loss of genetic variation represented by the Elk River population might pose a potential threat to the crystal darter, we now realize that this population is, in fact, a different species, and not the

crystal darter. Further, we did not find evidence of potential loss of other genetically unique and important populations of the crystal darter that could pose a Factor E threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the crystal darter such that the petitioned action may be warranted.

Spotted darter (*Etheostoma maculatum*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition asserts that the spotted darter is threatened by sedimentation, impoundments, and stream channelization (Mayasich *et al.* 2004, Simon 2005, as cited in Petition, p. 435). Citing Simon 2005, the Petition (p. 435) states that the species faces specific water-quality threats in many States, including Kentucky, New York, Ohio, Pennsylvania, and West Virginia. The Petition (p. 435, citing various sources) asserts that the species is threatened by water pollution stemming from "mountaintop removal" coal mining in West Virginia.

Evaluation of Information Provided in the Petition and Available in Service Files

Although few quantitative data have been gathered directly linking the effects of sedimentation, impoundment, chemical water quality, and other habitat modifications on spotted darter declines, the best available information strongly suggests that these factors resulted in historical extirpations of some populations (*e.g.*, Mahoning River, Deer Creek, North Fork Kentucky River) and are a contributing factor in recent declines in parts of the range (*e.g.*, Tippecanoe River, Barren River system). These threats, however, have not been linked to recent widespread declines throughout the range of the species. The effects of environmental legislation such as the Clean Water Act and Surface Mining Control and Reclamation Act (SMCRA), and conservation programs including the Conservation Reserve Program and Conservation Reserve Enhancement Program have contributed to improvements in water quality and habitat quality in many stream systems with remaining extant populations of the species. In addition, the relatively

intact (*i.e.*, heavily forested) composition of some watersheds helps ameliorate the effects of activities that degrade local stream quality (*e.g.*, in the Allegheny River watershed). Overall, the best available information does not indicate that the present or threatened destruction, modification, or curtailment of the spotted darter's habitat or range is a significant threat or that it will cause substantial losses of population distribution or viability in all or a significant portion of the species range. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range may present a threat to the spotted darter such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition does not provide any information on this factor, and does not assert it is a threat.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information to indicate that overutilization of spotted darters for commercial, recreational, scientific, or educational purposes is a threat to spotted darters. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the spotted darter such that the petitioned action may be warranted.

Factor C. Disease or Predation

Information Provided in the Petition

The petition (pp. 435–436), citing various sources, states that predation from domestic and introduced predatory fishes following impoundment construction, as well as the introduction and spread of the exotic invasive fish the round goby (*Neogobius melanostomus*), threaten the spotted darter. However, the petition does not provide information demonstrating predation impacts to the spotted darter and how it may affect the species' status.

Evaluation of Information Provided in the Petition and Available in Service Files

We have no information in our files that suggests or identifies predation as a threat to spotted darter. Some natural predation by piscivorous fish and wildlife occurs (Page 1983, p. 172). Commonly reported parasites of darters include metacercarial trematodes (black-spot disease) flukes, nematodes, leeches, spiny-headed worms, and copepods (Page 1983, p. 173), but none of these are a significant threat to the spotted darter. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the spotted darter such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states that, "A portion of spotted darter populations occur in streams on the Hoosier and Allegheny National Forests, where they are listed as sensitive species (Simon 2005). This designation, however, does not provide protection for the spotted darter's habitat. Instead, it requires the Forest Service to consider the impacts of their actions on the darter, but not to choose a benign alternative or to stop a project because of impacts to the species. Likewise, the darter is listed as endangered or threatened in several states, but these designations do not provide regulatory protection for the darter's habitat." The Petition provides no specific information indicating what threats require adequate regulation by the U.S. Forest Service or the States.

Evaluation of Information Provided in the Petition and Available in Service Files

While a U.S. Forest Service designation as a sensitive species does not by itself provide habitat protections, the U.S. Forest Service is held to the same Clean Water Act section 404 requirements as a private entity as well as additional guidelines per the Forest Service's Land and Resource Management Plans.

Except for West Virginia, all States within the range of the spotted darter have legislation that provides protections for rare animal species. The spotted darter is on the State list of protected species in New York, Pennsylvania, and Ohio. Of these three, only the New York law extends protection beyond prohibiting the

possession, sale, transportation, or killing of listed species. The New York law also prohibits any alteration of occupied habitat that is likely to negatively affect one or more essential behaviors of such species (6 NYCRR, part 182). Except for in New York, State threatened and endangered species laws do not address the primary threat to spotted darters: The present or threatened destruction, modification, or curtailment of its habitat or range.

In summary, existing regulatory mechanisms, including the Clean Water Act and State endangered species regulations provide some protection to spotted darters. The Petition did not present more specific information as to the nature of the threats that require additional regulation, and we have no additional information in our files. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the spotted darter such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition cites NatureServe (2008) that "Remaining populations of spotted darter are small and isolated and therefore vulnerable to stochastic extinction, inbreeding depression, and other perils that face small populations with low genetic diversity."

Evaluation of Information Provided in the Petition and Available in Service Files

A few spotted darter populations appear to be small and isolated. Individuals in small populations are more likely to suffer from decreased fitness (*i.e.*, ability to produce viable offspring) as inbreeding among close relatives occurs and results in greater expression of deleterious recessive genes (Allendorf and Luikart 2007, pp. 306, 315). Genetic drift (*i.e.*, random change in gene frequencies) is also more likely to result in reduced genetic diversity in small populations, which may cause loss of genes that could allow the population to adapt to environmental change. These factors can increase the likelihood of extirpation (Allendorf and Luikart 2007, p. 355). The specific effects of genetic isolation on population dynamics in extant spotted darter populations, however, are not clear.

Climate change is expected to result in rising average temperatures throughout the range of the spotted darter and altered precipitation patterns, likely resulting in elevated stream temperature regimes and lower summer base-flows (Karl *et al.* 2009, pp. 107, 111–112, 117–120). Higher stream temperatures may result in reduced reproductive success, and low base flows favor more tolerant stream fishes. Migration of spotted darters as an adaptation to climate changes is unlikely, due to their limited mobility, restriction to defined stream systems, and extensive impoundment throughout the Ohio River basin. According to the NatureServe Climate Change Vulnerability Index, release 2.01, spotted darters are considered moderately vulnerable to climate change, which means their abundance and/or range extent are likely to decrease by 2050 (Applegate 2010). Specific impacts to spotted darters resulting from climate change are not clear.

In summary, both limited genetic variation and the effects of climate change are potential future threats to spotted darter. However, the information provided by the Petition and readily available in our files is not adequate to determine specific impacts to the species, or to identify either as a significant threat affecting the species' viability. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the spotted darter such that the petitioned action may be warranted.

Florida Bog frog (*Rana okaloosae*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The Petition states: "The greatest threats to the Florida Bog Frog are stream impoundment and habitat succession (Molar 1992). This frog is particularly vulnerable to habitat destruction and modification because of its limited range and habitat specificity (NatureServe 2008). This species' habitat has been degraded by improper watershed management, siltation stemming from poor road placement, and poor forest management in surrounding uplands (Molar 1992, NatureServe 2008)."

The petition continues “Enge (2005) cites logging, groundwater use, siltation from dirt roads and cleared lands, impoundment, and poor management of adjacent upland habitat as threats to amphibian species in ravine habitats in the Florida Panhandle, including *R. okaloosae*. The Florida Fish and Wildlife Conservation Commission (2009) cites threats to the Bog Frog as siltation, pollution, and excess surface runoff where roads cross slopes above streams, damming, and altered fire regime which allows hardwood succession along streams (http://www.fwc.state.fl.us/docs/FWCG/florida_bog_frog.pdf). The Commission cites altered fire regime, altered hydrologic regime, groundwater withdrawal, surface water diversion, and altered community structure as threats to the Bog Frog’s habitat (http://myfwc.com/docs/WildlifeHabitats/Legacy_Shrub_Swamp.pdf). The Florida Dept. of Environmental Protection lists the Florida Bog Frog as occurring at Rocky Bayou State Park where its habitat is threatened by potential loss of submerged and emergent vegetation due to increased residential housing along the preserve boundary, and by high use of the preserve as a water skiing area which may have an impact on the natural submerged and emergent vegetation. There are also recurring issues with high bacteria counts in the preserve waters adjacent to the state park (<http://www.dep.state.fl.us/coastal/sites/rocky/info.htm>).”

Evaluation of Information Provided in the Petition and Available in Service Files

Based on the information in our files, we disagree with the interpretation of the information in the sources cited in the Petition. For instance, while the Petition states that, “This frog is particularly vulnerable to habitat destruction and modification because of its limited range and habitat specificity (NatureServe 2008).” NatureServe (2008) also states that “many to very many occurrences are appropriately protected and managed.” Additionally, the Petition’s claim that “This species’ habitat has been degraded by improper watershed management, siltation stemming from poor road placement, and poor forest management in surrounding uplands (Molar 1992, NatureServe 2008),” is qualified by NatureServe (2008) based on Molar (1992) stating that frog populations are “often not negatively affected by this [meaning * * * improper watershed management, siltation stemming from poor road placement, and poor forest

management in surrounding uplands].” Further, since EAFB contains upwards of 90 percent of the known range and at least 95 percent of the known sites for this species, many of the threats are most appropriately applied to the 5 percent of sites remaining that are in private ownership, as habitat management activities specific to the Florida bog frog have been ongoing on EAFB for approximately 5 years.

Monitoring and management activities are laid out in the Draft Threatened and Endangered Species Component Plan (EAFB 2006, pp. 12–20 to 12–24) guided by the recommendations of the Florida Bog Frog Management Plan (Jackson 2004), and an Integrated Natural Resources Management Plan (EAFB 2010). The Draft Threatened and Endangered Species Component Plan (2006) lays out a comprehensive strategy to monitor and manage the species on EAFB including 100 percent resurvey of known sites, resample of 25 percent of previously visited sites, and survey of 20 new sites annually. Management for the bog frog includes prescribed burning, invasive species control, and erosion control not only at known bog frog sites, but also throughout entire Conservation Management Units, as necessary (EAFB 2006, pp. 12–21 to 12–22).

In addition the State of Florida (2006) acquired substantial acreage located between EAFB and Blackwater River State Forest, which is intended to help protect the areas upstream of and located outside of EAFB. Based on the existing management and protection of these areas, the threats cited in the Petition have been largely alleviated. The persistence of the Florida bog frog is tied strongly to management actions on the base. Although funding for management of State-listed species is not mandatory, EAFB provides beneficial management actions for the Florida bog frog while managing for overall ecosystem health and Federally listed species (EAFB 2006). Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species’ habitat or range may present a threat to the Florida bog frog such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition states: “Amphibians are collected from the wild for use as food, pets, and for the biological and medicinal supply markets (AmphibiaWeb 2009: <http://amphibiaweb.org/declines/exploitation.html>). Dodd (1997) states: “Collecting specimens for the pet trade or biological laboratories probably has had some impact on local (Southeast) amphibian populations, but few data are available” (p. 183).”

Evaluation of Information Provided in the Petition and Available in Service Files

While we agree that amphibian collection in the southeastern United States is a potential threat to amphibians, it is unlikely that this species would receive substantial collection pressure as 90 percent of the known range is located on EAFB, and access to the Base is restricted. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Florida bog frog such that the petitioned action may be warranted.

Factor C. Disease or Predation

Information Provided in the Petition

The petition states, “New diseases and increased susceptibility of amphibians to existing diseases are known to be contributing to the decline of amphibian species (Blaustein *et al.* 1994, Laurance *et al.* 1996, Berger *et al.* 1998, Daszak 2000, Kiesecker *et al.* 2001, reviewed in AmphibiaWeb 2009, <http://amphibiaweb.org/declines/diseases.html>). Stress from factors such as habitat loss and fragmentation, chemical pollution, climate change, invasion of exotic species, increased UV-B radiation, and natural population fluctuations may increase the susceptibility of amphibians to disease (Carey 1993, Dodd 1997, Fellers *et al.* 2001, Kiesecker *et al.* 2001, AmphibiaWeb 2009). Pathogens known to cause infectious disease in amphibians include bacterial, fungal, viral, metazoan, water mold, and trematode agents (Wright and Whitaker 2001 in AmphibiaWeb 2009). Chytridiomycosis (chytrid fungus, *Batrachochytrium dendrobatidis*) has had severe impacts on amphibian

populations worldwide. Chytrid fungus is known to be present in the southeastern United States (AmphibiaWeb 2009) and potentially threatens the Florida bog frog. In addition to disease, there has been a widespread increase of amphibian deformities and malformations (<http://amphibiaweb.org/declines/deformities.html>).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition, while identifying potential threats to amphibians in the Southeast under this factor, does not cite to any specific known threat to the Florida bog frog, and we have no information in our files to indicate that disease or predation are presently affecting the species. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to the Florida bog frog such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition states: "The Florida Bog Frog is considered a Species of Special Concern in Florida, but this designation does not provide any regulatory protection for its declining habitat. Approximately 90 percent of the total range may be within Eglin Air Force Base, but national security concerns take precedence over wildlife management (NatureServe 2008)."

Evaluation of Information Provided in the Petition and Available in Service Files

Based on the continued and comprehensive management of the Florida bog frog for the last several years on EAFB, the species is being adequately protected and managed throughout approximately 90 percent of its range. In addition, State efforts have furthered the protection of the remaining three sites located outside of EAFB. We have no information in our files, nor has any specific information been provided in the Petition, to support that national security is affecting or limiting the management of this species. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the

Florida bog frog such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition states: "Dodd (1997) lists rarity as a potential threat to the Florida Bog Frog. *Rana okaloosae* is potentially threatened by hybridization with *R. clamitans clamitans* (Gorman *et al.* 2009). Enge (2005) cites water pollution, recreation, and trash dumping as threats to amphibians in the Florida Panhandle. The Florida Wildlife Conservation Commission cites water pollution and invasive species as threats to the Bog Frog (http://myfwc.com/docs/WildlifeHabitats/Legacy_Shrub_Swamp.pdf). Enge (2005) cites feral hogs as a threat to amphibians in the Florida Panhandle.

The petition continues "Other factors which threaten imperiled amphibian populations in the Southeast include water pollution from acidification, toxins, and endocrine disrupting chemicals, reduced prey availability, climate change, UV-B radiation, invasive species, and synergistic effects from these and other threats. Acidification of soils and water bodies is detrimental for amphibians. Acidification of amphibian habitat can result from acid precipitation and from acid mine drainage. Acid disrupts ion balance in both terrestrial and aquatic life stages of amphibians, impairs chemosensory reception, and inhibits larval feeding (Dodd 1997). Embryos and larvae are particularly sensitive to decreased pH.

Terrestrial salamanders avoid acidified soils. Acidification also has indirect effects which can kill embryos, larvae, and adults by interfering with egg development, disrupting trophic interactions, and inducing chronic environmental stress. Low pH also makes amphibians more susceptible to deleterious effects from heavy metals and increased UV-B radiation (Dodd 1997)."

The petition further states that "Environmental toxins pose a threat to amphibians in the Southeast due to lethal and sub-lethal effects which can include mortality, decreased growth rate, behavioral and developmental abnormalities, lowered reproductive success, weakened immunity, and hermaphroditism (see <http://amphibiaweb.org/declines/ChemCon.html>). Amphibians are particularly vulnerable to toxic substances because of the permeable nature of their skin. A wide range of

chemical stressors are known to negatively affect amphibians including heavy metals, pesticides, phenols, carbon tetrachloride, nitrogen based fertilizers, and road salt (Dodd 1997, AmphibiaWeb 2009). The presence of toxins can also make amphibians more susceptible to disease (Dodd 1997). Amphibians are also threatened by endocrine-disrupting chemicals in the environment (Hayes *et al.* 2006). Dodd (1997) states: "Amphibians are likely to be especially sensitive to the action of endocrine mimics because they are in close direct contact with chemicals in their environment, and the amphibian skin and egg capsule are highly permeable. Because hormones normally function in minute quantities and are vital to normal development, susceptibility to xenobiotics could be devastating during the complex changes that occur during hormonally-induced amphibian metamorphosis (p. 182)." Toxins and other chemicals can also harm amphibians by reducing food availability. Dodd (1997) states: "If species that are preyed upon by amphibians decline or disappear, amphibian populations may be expected to follow suit. The use of pesticides and the influence of toxics, pH, and habitat alteration may be expected to affect amphibian prey populations (p. 184)."

The petition continues "Climate change poses a threat for amphibians because it will alter rainfall and temperature patterns and affect soil moisture (Dodd 1997, Field *et al.* 2007). Amphibians are particularly sensitive to minute changes in moisture and temperature, and changes in climate can affect breeding behavior, reproductive success, and immune function (see <http://amphibiaweb.org/declines/ClimateChange.html>). Amphibians which breed in temporary ponds or in water bodies that are sensitive to changes in groundwater level are particularly susceptible to climate change effects. Drought can lead to localized extirpation, which combined with habitat fragmentation and impaired dispersal, can contribute to extinction (Dodd 1997). During the past few decades, levels of UV-B radiation in the atmosphere have significantly increased. For amphibians, UV-B radiation can cause direct mortality as well as sublethal effects including decreased hatching success, decreased growth rate, developmental abnormalities, and immune dysfunction (Dodd 1997, AmphibiaWeb 2009: <http://amphibiaweb.org/declines/UVB.html>).

Southeastern amphibians are also threatened by the invasion of nonnative species which prey on or compete with

native amphibians. Nonnative fishes can negatively affect amphibian populations through predation, competition, and disease introduction. Introduced nonnative amphibians such as the marine toad (*Bufo marinus*) and Cuban tree frog (*Osteopilus septentrionalis*) are potentially harmful for native amphibians in the Southeast. Rossi (1981) found that anuran species richness was reduced in an area where *B. marinus* was established (in Dodd 1997). Introduced mammals, such as armadillos and wild hogs, and introduced birds like cattle egrets “may exact a substantial toll on amphibian populations” (Dodd 1997). Invasive fire ants (*Solenopsis invicta*) are also a potential threat for Southeastern amphibians. Dodd (1997) states: “Ground dwelling vertebrates are especially sensitive to this ravenous predator, and fire ants have been reported to kill endangered Houston toads (*Bufo houstonensis*) as they metamorphose. Fire ants are especially abundant in the moist perimeter surrounding ponds and lakes, and they can float in mats across ponds from vegetation clump to vegetation clump. Fire ants have few predators and have expanded their range throughout the Southeast” (p. 183). See: <http://amphibiaweb.org/declines/IntroSp.html>. Synergisms between multiple threats could contribute to the extinction of Southeast amphibians. Multiple factors acting together have both lethal and sublethal effects (<http://amphibiaweb.org/declines/synergisms.html>). For example, increased UV-B radiation increases the susceptibility of amphibians to the effects of contaminants, pathogens and climate change. Dodd (1997): “The amphibians of this area (the Southeast), and particularly the fully aquatic species, face a multitude of threats to their long-term existence. These threats generally do not act independently, but instead act in concert to have potentially serious long-term effects (p. 185).”

Evaluation of Information Provided in the Petition and Available in Service Files

While the petition lists a multitude of potential threats to amphibians in the Southeast, many of these likely have limited relevance to the Florida bog frog. For instance, the only nonnative species that have been reported as problematic for this species are feral hogs, Chinese tallow, and other invasive plants. With respect to 90 percent of the range, ongoing management for these species is already occurring on EAFB. Acidification, effects from UV-B

radiation, endocrine-disrupting chemicals, reduced prey availability, climate change, and drought have not been reported as problems for this species. We have no specific evidence, nor does the Petition provide any, that any of these factors are affecting populations of the Florida bog frog. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species’ continued existence may present a threat to the Florida bog frog such that the petitioned action may be warranted.

Greensboro Burrowing Crayfish (*Cambarus catagius*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species’ Habitat or Range

Information Provided in the Petition

The petition (p. 170) states “*Cambarus catagius* occurs in Abbotts Creek and Pounders Fork which flow into High Rock Reservoir. Both streams are part of the Yadkin-Pee Dee River Drainage that is impounded by dams of Alcoa Power Generating, Inc. The ongoing effects of these impoundments are unknown.” The petition also states that the known range of this species is restricted and affected by urban development, based on McGrath (1994).

Evaluation of Information Provided in the Petition and Available in Service Files

Based on the information in our files, this species has never been found in surface waters (e.g., streams, creeks) and instead prefers ‘grassed areas which have been cleared at some point in the past. In a few suburban areas the yards graded into woods and burrows could be found continuing into the woods.’ Therefore, instream impoundments should not constitute a threat to this species. While McGrath (1994) did suggest urban development is a threat, he also conceded that parks and utility corridors in urbanized settings could support populations. We also already know they have been found largely in previously disturbed areas (e.g., yards in urban and suburban areas). Further, NatureServe (2008) notes that, while decline in habitat quality is occurring, no decline has been noted in populations or occurrences, at least in the short term. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present

or threatened destruction, modification, or curtailment of the species’ habitat or range may present a threat to the Greensboro burrowing crayfish such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to Greensboro burrowing crayfish such that the petitioned action may be warranted.

Factor C. Disease or Predation

The petition does not provide any information on this factor, and does not assert it is a threat. We have no information in our files to indicate this is a threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to Greensboro burrowing crayfish such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition asserts that while the species occurs in Uwharrie National Forest in North Carolina, this does not confer regulatory protection to the species or habitat. Additionally, the Petition states that no existing regulatory mechanisms adequately protect the species.

Evaluation of Information Provided in the Petition and Available in Service Files

Based on information in our files, the majority of the locations where the species is found are areas that have been disturbed. It is likely that there are many urbanized areas that can support populations (e.g., parks and utility corridors), as long as the entire area is not converted to impervious surface. It does not appear that there is a lack of or inadequacy of necessary regulations protecting this species, because the species seems to thrive in these seemingly less than ideal areas. While

the petition asserts the species occurrence in the Uwharrie National Forest in North Carolina does not confer regulatory protection to the species or habitat, the petition did not provide any evidence that a lack of regulatory mechanisms on the Forest has resulted in impacts to the species or its habitat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the Greensboro burrowing crayfish such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition lists generalized threats presented by nonnative species of crayfish in North Carolina, but does not provide any specific examples of impacts to this species.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does point to an observance of *Procambrus clarkii* in High Rock Reservoir near the mouth of South Potts Creek, but as we have pointed out previously, we have no records of this species occurring in surface waters and find it unlikely that these species would co-occur. Further, we do not have any information in our files indicating that impacts from nonnative crayfish are occurring or likely to become so for this species. Therefore, we do not believe a threat exists for this factor specific to this species. We find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the Greensboro burrowing crayfish such that the petitioned action may be warranted.

Blood River Crayfish (*Orconectes burri*)

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

Information Provided in the Petition

The petition, citing NatureServe (2008), states that impoundment in the lower part of the drainage has contributed to the loss of suitable

habitat. It also lists other threats to habitat including recreational fishing pressure and rechannelization of the drainage.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files indicates that the species occupies streams in rural watersheds that are not subjected to significant point-source pollution or other contaminants associated with urban runoff. However, these basins are influenced by general nonpoint-source storm water pollutants, primarily from agricultural sources, that affect the majority of stream basins in Kentucky. Potential pollutants include sediment (siltation), organic waste (from livestock or failing septic systems), pesticides, herbicides, lawn fertilizers, and other pollutants associated with roadways (e.g., gasoline, oil, antifreeze, road salt). Streams in these basins are also physically impaired as evidenced by narrow riparian zones and poor canopy cover (causing elevated stream temperatures and reduced energy inputs), entrenched and straightened channels (limiting the amount of instream habitat), eroded stream banks (causing increased bank scour and increased sedimentation), and widely fluctuating stream hydrographs (resulting in reduced base flows and more elevated and frequent flood events). Some of these physical impairments are caused by poor agricultural practices, but others are likely caused by improperly sized bridges and/or culverts, especially on county or unpaved roads.

Despite these general threats, the Kentucky Division of Water has not included any streams from the Blood River basin on their 303d list of impaired waters (KDOW 2008, pp. 179–188). In fact, assessments conducted on four *O. burri* streams, Beechy Creek, Panther Creek, Wildcat Creek (the type locality), and the Blood River mainstem, revealed that all of these streams were fully supporting of the Warm Water Aquatic Habitat use designation (KDOW 2002, p. 168). Two of these streams, Panther Creek and Blood River (at Grubbs Lane), are routinely used by KDOW as reference reach streams (KDOW 2006, p. 33).

Although the Blood River basin is influenced by nonpoint-source pollutants and some of its tributaries are physically impaired, there is no evidence that these problems constitute a serious threat to the Blood River crayfish. The overall threat level is low based on the scope (localized), intensity (low), and exposure (small) of these

threats. While impoundments in the lower part of the drainage may have contributed to historic habitat loss, neither the Petition nor information in our files indicate this is a current or future threat to the species. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the present or threatened destruction, modification, or curtailment of the species' habitat or range may present a threat to the Blood River crayfish such that the petitioned action may be warranted.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition does not directly list any threats under this factor, but cites crayfish use as fishing bait for other factors.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files does indicate that crayfish are frequently used in Kentucky as fishing bait. Any person who has obtained a Kentucky resident or nonresident fishing license is permitted to possess up to 500 crayfish (301 KAR 1:130). This requirement pertains to any Kentucky species; no restrictions are in place for any KSNPC-listed, rare, or uncommon species. Overutilization of some species could be a problem, especially for those species that have limited distributions. The Blood River crayfish may be used occasionally as a bait species, but we have no information that overutilization for recreational purposes is a significant problem. Scientific or educational researchers wishing to collect Blood River crayfish or any other aquatic species (fish, mussels) in Kentucky for scientific purposes must obtain a Scientific or Educational Wildlife Collection Permit from the Kentucky Department of Fish and Wildlife Resources (KDFWR). These annual permits cost \$10 (Educational) or \$200 (Scientific) and require that the permit holder provide an annual report of their findings to KDFWR. All Kentucky crayfishes, including *O. burri*, are also threatened by an increasingly popular crayfish pet industry. Many crayfishes are highly valued due to their large size and attractive features (color, morphology). Kentucky species are being collected, transported, traded, and sold domestically and internationally under existing State regulations that

allow the capture and possession of 500 individuals. Kentucky species can be found on several Web sites of crayfish vendors.

While the Blood River crayfish could be harvested for scientific research, by collectors for sale/trade, or by fishermen, we have no information that the species is in high demand by collectors or researchers at the present time based on numbers of individuals observed by Taylor and Sabaj (1998) and recently by KSNPC (Ryan Evans, KSNPC, personal communication 2008). In general, we have no information that this listing factor represents a significant threat to the species. The overall threat level is low based on the scope (localized), immediacy (nonimminent), intensity (low), and exposure (small) of the threat. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat to the Blood River crayfish such that the petitioned action may be warranted.

Factor C. Disease or Predation

Information Provided in the Petition

The petition does not provide any information on this factor, and does not assert it is a threat.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files indicates that disease and predation are not known to be a significant threat for this species and is, instead, a normal part of its life history. Some natural predators of the species include the raccoon (*Procyon lotor*), river otter (*Lontra canadensis*), great blue heron (*Ardea herodias*), mudpuppy (*Necturus maculosus*), queen snake (*Regina septemvittata*), water snakes (*Nerodia* spp.), bullfrog (*Rana catesbeiana*), and various sunfishes (*Micropterus* and *Lepomis* spp.). Mortality from disease or predation likely occurs but has not eliminated this and other crayfish species in the past, and we have no information that disease or predation poses a substantial threat to the species in the future. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that disease or predation may present a threat to Blood River crayfish such that the petitioned action may be warranted.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition lists the designation of the species as threatened in Kentucky, but points out that this designation does not protect habitat for the species.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files is summarized below. The Blood River crayfish and its habitats are afforded some protection from water quality and habitat degradation under the Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*), Kentucky's Forest Conservation Act of 1998 (KRS 149.330–355), Kentucky's Agriculture Water Quality Act of 1994 (KRS 224.71–140), additional Kentucky laws and regulations regarding natural resources and environmental protection (KRS 146.200–360; KRS 224; 401 KAR 5:026, 5:031), and Tennessee's Water Quality Control Act of 1977 (T.C.A. 69–3–101).

The Blood River crayfish is not State-listed in Tennessee, but it has been designated as a threatened species in Kentucky (KSNPC 2005, p. 11). However, this designation conveys no legal protection. The Blood River crayfish may be collected for bait or captured for use as pets (possession limit of 500) under current Kentucky law (301 KAR 1:130), and the species may also be collected for scientific or educational research reasons by obtaining an Educational or Scientific Wildlife Collection Permit from KDFWR.

Based on numbers of individuals observed by Taylor and Sabaj (1998) and recently by KSNPC (Ryan Evans, KSNPC, personal communication 2008), the species is not being significantly reduced in number by bait collecting, the pet trade, or scientific research. The overall threat level is low for this listing factor. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that the inadequacy of existing regulatory mechanisms may present a threat to the Blood River crayfish such that the petitioned action may be warranted.

Factor E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Information Provided in the Petition

The petition lists the introduction of invasive species, which are used for fishing bait as a potential threat.

Evaluation of Information Provided in the Petition and Available in Service Files

Information in our files indicates that the Blood River crayfish could be threatened by the introduction of nonnative crayfish species into its habitat. Species such as *Orconectes rusticus* (rusty crayfish) have been widely introduced across the United States because of their popularity as bait species. These species have the potential to displace native crayfishes through a variety of mechanisms such as direct competition or reproductive interference (Taylor and Schuster 2004, p. 20). At present, we have no information that *O. rusticus* occurs in the same streams as *O. burri* as no individuals were observed during the most recent surveys by KSNPC (Ryan Evans, KSNPC, personal communication, 2008). We also conclude that it is unlikely that *O. rusticus* will be introduced directly into Blood River tributaries because these streams are not heavily used for fishing. On the other hand, it is possible that *O. rusticus* could invade the Blood River system at a later date because it has the potential to be used as bait species in Kentucky Lake, thereby providing a mechanism for introduction into the Blood River and its upstream tributaries (Guenter Schuster, ECU, personal communication, 2008). At present, this listing factor is not considered to be a significant threat, but future introductions of *O. rusticus* into the Blood River basin are possible. Therefore, we find that the petition and information readily available in our files do not provide substantial scientific or commercial information to indicate that other natural or manmade factors affecting the species' continued existence may present a threat to the Blood River crayfish such that the petitioned action may be warranted.

Finding

In summary, the petition included 404 species that are primarily aquatic and found mainly in the southeastern United States. After a careful review of the Petition and information readily available in our files, we have found that the Petition does not present substantial information regarding 11 of these species.

Sarah's Hydroptila Caddisfly

The petition states that Sarah's hydroptila caddisfly faces threats under Factors A and D, but does not provide specific examples or additional information. After review of the information in our files, we find that the

species is located in more locations (11 versus 4) within EAFB than indicated in the Petition, and that the species is adequately protected from threats through EAFB's INRMP and existing State and Federal laws and regulations.

Rogue Creek Hydroptila Caddisfly

The Petition states that the Rogue Creek hydroptila caddisfly faces threats under Factors A and D, but does not provide specific examples or additional information. After review of the information in our files, we find that the species is located in eight locations within EAFB, and that the species is adequately protected from threats through EAFB's INRMP and existing State and Federal laws and regulations.

Florida Brown Checkered Summer Sedge

The petition states that the Florida brown checkered summer sedge faces threats under Factors A and D, but does not provide specific examples or additional information. After review of the information in our files, we find that the species is widespread, but not common on EAFB, and that the species is adequately protected from threats through EAFB's INRMP and existing State and Federal laws and regulations. We currently have no information on other populations outside of EAFB or any threats acting on those populations, though the occurrence in Hamilton County, Florida, is disputed.

Ouachita Creekshell

The petition claims that the Ouachita creekshell is threatened by Factors A, D and E. However, the petition, as well as the information available in our files concerning threats to the species, lacks detail on the species response to these general threats. For example, many Ouachita creekshell extant and historical populations occur on public lands (e.g., Ouachita National Forest, State parks, and wildlife management areas). Approximately 85 percent of the Ouachita River basin upstream of Lake Ouachita is within Ouachita National Forest. Accordingly, populations of this species are substantially protected from habitat destruction and alteration. Furthermore, we concluded in our 2009 status assessment that stressors are likely to be localized and moderately degrade aquatic biota and habitat over a portion of the watershed and that the impacts of mining are localized and have a minimum effect on the species rangewide. We concluded in the status assessment that the species did not warrant listing, and neither the petition nor information in our files provided any substantial new information.

Crystal Darter

The petition (pp. 285–286) claims that the crystal darter faces threats under Factors A, D, and E. However, the petition, as well as the information available in our files concerning threats to crystal darter populations, lacks detail on the response of these populations to general threats. The Service conducted a species assessment of the crystal darter in 2009 and found that low threat levels do exist under Factors A and E. However, we concluded in the status assessment that these factors do not threaten the darter to the point it meets the definition of a “threatened species” or an “endangered species.” Biologists among different States have indicated that new technologies have allowed for more effective sampling of crystal darters and suggest that they are more abundant and widely distributed than originally believed. Furthermore, there exists little information that known populations have either declined or increased in their abundance. The main source of information for identifying the species as uncommon is based largely on the fact that historically specimens had been rarely collected. In the species assessment we conducted in 2009 (Service 2009), we found that, along with the current status information, the information on the threats to the species did not support a proposal to list the species and, therefore, it was not elevated to candidate status. Neither the petition nor information in our files provides any substantial new information on the threats to the crystal darter.

Spotted Darter

The petition cites threats from factors A, C, D, and E. However, many of these are only general threats and there is no information that they are acting negatively on the species, including those threats identified from inadequate regulatory mechanisms, limited genetic variation, climate change, and predation. The information provided by the petition and readily available in our files is not specific enough to determine impacts to the species from these threats, or to identify any of these as a significant threat affecting the species viability.

The petition does present information on historical habitat degradation, however, the information in our files does not indicate that the present or threatened destruction, modification, or curtailment of the spotted darter's habitat or range is a significant threat or that it will cause substantial losses of

population distribution or viability in the species range.

Florida Bog Frog

The petition cites threats under Factors A, B, C, D, and E. However, threats from habitat destruction and modification and from the inadequacy of existing regulatory mechanisms are largely alleviated through existing management and protection of habitat on EAFB, while the threats listed under Factors B, C, and E are largely general threats and likely have very limited relevance to this species. In addition, EAFB management is targeting emerging threats to the species already (like those presented by invasive plants).

Greensboro Burrowing Crayfish

The petition asserts that threats from Factors A, D, and E are affecting this species but does not provide specific examples or information to demonstrate this. Based on information in our files, this species is more widespread than originally thought and seems to prefer previously disturbed areas in urban and suburban areas. Further, NatureServe (2008) notes that while decline in habitat quality is occurring, no decline has been noted in populations or occurrences, at least in the short term.

Blood River Crayfish

The petition states that the Blood River crayfish faces threats under Factors A, D, and E, but does not provide specific examples or additional information. As demonstrated by the threats analysis above, there is no known significant threat to the Blood River crayfish as a result of any of the five listing factors. The species currently occupies watersheds that are subjected to water quality impairment and physical habitat disturbance, but it does not appear that these threats are adversely affecting the species' status. The Blood River crayfish appears to be maintaining its populations and remains the dominant crayfish species in these watersheds.

Florida Fairy Shrimp and South Florida Rainbow Snake

Because the information presented by petitioners as well as information in our files suggests that the species are already extinct, they do not meet the definition of an endangered species or a threatened species under the Act (section 3(6) and 3(20), respectively). Therefore, an analysis of the five threat factors was not appropriate.

In summary, we reviewed the information presented in the petition and evaluated that information in relation to information readily available

in our files. On the basis of our determination under section 4(b)(3)(A) of the Act, we conclude that the petition does not present substantial scientific or commercial information to indicate that listing the Sarah's hydroptila caddisfly, Rogue Creek hydroptila caddisfly, Florida brown checkered summer sedge, Florida fairy shrimp, South Florida rainbow snake, Ouachita creekshell, crystal darter, spotted darter, Florida bog frog, Greensboro burrowing crayfish, and Blood River crayfish under the Act as endangered or threatened may be warranted at this time. There is no evidence either presented in the petition or available in our files, to indicate that any of these species are affected by the five factors, acting either singly or in combination, to the point that the species may meet the definition of a "threatened species" or an "endangered species" under the Act. The information does not contain

evidence sufficient to suggest that these factors may be operative threats that act on these species.

Although we will not review the status of any of these species at this time, we encourage interested parties to continue to gather data and submit information that will assist with the conservation of Sarah's hydroptila caddisfly, Rogue Creek hydroptila caddisfly, Florida brown checkered summer sedge, Ouachita creekshell, crystal darter, spotted darter, Florida bog frog, Greensboro burrowing crayfish, and Blood River crayfish. We likewise encourage interested parties to submit any information they possess on the Florida fairy shrimp, and South Florida rainbow snake. You may submit your information or materials to Chief, Division of Endangered Species, Southeast Region Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Southeast Ecological Services Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this document are the staff members of the Southeast Region Ecological Services Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: September 26, 2011.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011-25672 Filed 10-5-11; 8:45 am]

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