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Federal Register

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

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, July 19, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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

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FEDERAL ELECTION COMMISSION

11 CFR Part 9004

[Notice 2005–15]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Announcement of effective date.

SUMMARY: The Commission is announcing the effective date for amendments to the regulations regarding the proper rates and timing for payment for travel on behalf of Presidential candidates during the general election on means of transportation that are not offered for commercial passenger service, including government conveyances. The publication of these final rules in the **Federal Register** occurred on December 15, 2003 and included an announcement that the effective date would be published at a later date once the regulations had been before Congress for 30 legislative days pursuant to the Presidential Election Campaign Fund Act. Publication of the effective date notice was inadvertently delayed. Further information is provided in the supplementary information that follows.

DATES: The effective date for the revisions to 11 CFR 9004.6 and 9004.7 at 68 FR 69595, and published on December 15, 2003, was April 2, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On December 15, 2003, the Commission published the ''Final Rules and Transmittal of Regulations to Congress for Travel on Behalf of Candidates and Political Committees'' in order to implement several changes to its rules governing travel in connection with a Federal election. 68 FR 69583 (Dec. 15, 2003). The final rules provided new and revised regulations regarding the proper rates and timing of payment for travel on behalf of political committees and candidates by means of transportation that are not offered for commercial passenger service, including government conveyances. One portion of the rulemaking amended regulations in 11 CFR 9004.6 and 9004.7, promulgated pursuant to the Presidential Election Campaign Fund Act, 26 U.S.C. 9009(c) (pertaining to Presidential candidates receiving public funding for the general election).

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 *calendar* days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 *legislative* days before they are finally promulgated. The final rules at 11 CFR 9004.6 and 9004.7 were transmitted to Congress on December 10, 2003. Thirty legislative days expired in both the Senate and the House of Representatives on March 31, 2004.

In the December 15, 2003 Final Rules and Transmittal to Congress, the Commission stated that a separate notice would be published to announce the effective date of the amendments to 11 CFR 9004.6 and 9004.7. This publication provides that separate notice, which was inadvertently delayed. Accordingly, the Commission hereby announces the effective date of amended 11 CFR 9004.6 and 9004.7, as published at 68 FR 69583, *et seq.* (Dec. 15, 2003), as April 2, 2004, which was more than thirty legislative days after the transmittal of the final rules to Congress.

The Commission notes that the 2003 publication of the Final Rules, in combination with the inadvertent delay in the publication of this effective date notice, may have caused some confusion as to which regulations were applicable to publicly funded Presidential candidates in the 2004 general election. In light of these circumstances, the Commission intends to exercise its discretion by not pursuing potential violations of the travel reimbursement rules in 11 CFR 9004.6(b)(2) and 9004.7(b)(5) and (8) that occurred between April 2, 2004, and June 9, 2005, so long as the reimbursement for campaign travel was provided in accordance with either pre- or post-revision 11 CFR 9004.6 or 9004.7. In addition, the Commission notes that, for reimbursement of travel that occurred during the 2004 general election cycle, calculations based on either pre-or post-revision 11 CFR 9004.6 or 9004.7 will be permissible in the context of audits or repayment of public funds pursuant to 26 U.S.C. 9007.

Dated: June 3, 2005.

Bradley A. Smith,

Commissioner, Federal Election Commission.

[FR Doc. 05–11422 Filed 6–8–05; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AC90

Deposit Insurance Coverage; Accounts of Qualified Tuition Savings Programs Under Section 529 of the Internal Revenue Code

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comments.

SUMMARY: The FDIC is revising its insurance regulations for accounts of qualified tuition savings programs under section 529 of the Internal Revenue Code.

Qualified tuition programs that are savings plans or prepaid tuition plans may be established by states or state instrumentalities under section 529 of the Internal Revenue Code. Interests in qualified tuition savings programs are ''securities'' under the federal securities laws. Under the FDIC's existing insurance regulations, a state public instrumentality that issues securities is treated as a corporation for deposit

insurance purposes. As a result, the deposits of the state public instrumentality are insured up to a total of only $100,000 in the aggregate. The deposits are not insured on a ''pass-through'' basis to the holders of the securities. Under the FDIC's new rule, the deposits of the state public instrumentality may be insured on a ''pass-through'' basis (*i.e.*, up to $100,000 for the beneficial interest of each participant) if the deposits represent interests or accounts in a state public instrumentality that is part of a qualified tuition savings program under section 529 of the Internal Revenue Code.

DATES: The amendment is effective June 9, 2005. Written comments must be received by the FDIC no later than August 8, 2005.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments.
- E-mail: *comments@fdic.gov.* Include ''Part 330—Accounts of Qualified Tuition Programs'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 550 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions must include the agency name and use the title ''Part 330—Accounts of Qualified Tuition Programs.'' The FDIC may post comments on its Web site at: *http://www.fdic.gov/regulations/laws/federal/propose.html.*

- Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. The FDIC's Existing Regulation

Under the applicable section of the FDIC's insurance regulations, the deposits of a corporation are insured up to $100,000 in the aggregate. See 12 CFR 330.11(a)(1). This rule applies to ordinary corporations as well as to certain business or investment trusts. The applicable subsection of the FDIC's regulations is 12 CFR 330.11(a)(2), which provides as follows: ''Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage.''

When this rule was proposed in 1976, the FDIC explained the purpose as follows: ''It has been recognized that certain trusts, commonly known as 'business trusts,' so closely resemble corporations that they may in essence be viewed as de facto corporations. Such trusts are generally characterized by the fact that the trust corpus consists of funds or other property originally contributed by the beneficiaries themselves for the purpose of making a profit through the conduct of a business. In this respect, the beneficiaries are in fact closely analogous to shareholders in a corporation. Where such trusts or other business entities are engaged in the business of soliciting funds from the public for investment purposes, they are, with certain exceptions, subject to the Investment Company Act of 1940. Heretofore, where such funds have been invested in bank certificates of deposit, there has existed some confusion as to whether the deposits are insured according to each individual investor's beneficial interest in the trust or, alternatively, according to the aggregate deposits held by the trust in each insured bank. The Board seeks to relieve that confusion by announcing its intention to determine the extent of federal deposit insurance of accounts held by such investment companies by application of the same rules which govern the insurance of accounts held by corporations.'' 41 FR 49492, 49493 (November 9, 1976).

The FDIC's rule applies to business or investment trusts that must file registration statements with the Securities and Exchange Commission (SEC). The rule also applies to investment trusts that would be required to file such statements ''but for'' certain sections of the Investment Company Act, including section 2(b). Governmental entities, including state public instrumentalities, are generally not required to register with the SEC under the Investment Company Act because section 2(b) makes the Investment Company Act inapplicable to them. See 15 U.S.C. 80a–2(b).[1]

II. Qualified Tuition Programs

Section 529 of the Internal Revenue Code provides tax benefits for ''qualified tuition programs,'' including qualified tuition savings plans. See 26 U.S.C. 529(a). Section 529 authorizes the creation of prepaid tuition plans and tuition savings plans. Tuition savings plans under section 529 must be sponsored by a state or state public instrumentality.[2] See 26 U.S.C. 529(b)(1). Section 529 defines the tuition savings programs that are required to be sponsored by a state or state public instrumentality as programs under which a person ''may make contributions to an account which is established for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account'' (and which meets certain requirements). 26 U.S.C. 529(b)(1)(A)(ii).

Some state programs have permitted participants to have the option of investing their tuition savings payments directly in bank deposits. In past reviews of a few of these programs, the FDIC staff has advised program representatives that the deposits may be insured to the participants if the participants are the actual owners of the deposits.

More recently, the FDIC has learned that the SEC has taken the position that, under the federal securities laws, the offer and sales of interests in section 529 tuition savings plans will not be exempt from registration under the Securities Act of 1933 unless such interests are in or directly with a state public instrumentality, such as a state investment trust, or other state entity. This means that a participant in a state qualified tuition savings program must

[1] In 1988, the FDIC reconsidered its treatment of investment trusts. Specifically, the FDIC put forth a proposed rule that would have drawn a distinction between most business or investment trusts and so-called ''unit investment trusts,'' in which the trust assets are invested in ''an identified, static portfolio of time deposits with the same or nearly the same maturity dates.'' 53 FR 39746 (October 12, 1988). The FDIC's proposed rule was never adopted as a final rule. Rather, the proposed rule was withdrawn. *See* 54 FR 52399 (December 21, 1989).

[2] Section 529 also authorizes the creation of prepaid tuition programs by states or by educational institutions under certain conditions.

acquire an interest or account in the state public instrumentality (a state trust) and may not directly acquire a bank deposit. Assuming that the assets of the state's 529 tuition savings program include bank deposits, these deposits will be owned by the state instrumentality (*i.e.*, the investment trust) and not by the individual participants or investors.

The Investment Company Act does not apply to state public instrumentalities pursuant to section 2(b). Under the FDIC's existing regulation, as previously discussed, a state public instrumentality that would be required to register under the Investment Company Act but for the general inapplicability of the Investment Company Act to state public instrumentalities under section 2(b) is treated as a corporation. This means that the deposits of the state public instrumentality or investment trust will be subject to aggregation. In other words, the aggregated deposits will be insured up to a total of only $100,000 and will not be insured up to $100,000 for the interest of each participant or investor. See 12 CFR 330.11(a).

This result is unwarranted. In the case of those qualified tuition savings programs brought to the attention of the FDIC, the qualified tuition savings programs do not function in the manner of ordinary business trusts or investment companies. In providing participants with bank deposit options for the monies paid for their interests or accounts in the state public instrumentality, the tuition savings programs are structured so that the funds held in accounts or representing interests of particular investors in the state public instrumentality can be traced to particular certificates of deposit. Thus, the deposits are equivalent to deposits placed at banks by or through deposit brokers. Under the FDIC's regulations, brokered deposits are not aggregated and insured up to $100,000 to the broker. Rather, such deposits are insured up to $100,000 on a ''pass-through'' basis to the broker's customers. See 12 CFR 330.7. This means that each customer's funds are aggregated with the customer's other accounts at the same insured depository institution (if any) and insured separately up to the $100,000 limit. See 12 CFR 330.7.

• ''Pass-through'' coverage as described above is contingent upon the satisfaction of certain requirements. First, the account records of the insured depository institution must reveal the fact that the nominal accountholder (*e.g.*, the broker) is a mere agent or custodian and not the actual owner of the funds. See 12 CFR 330.5(b)(1). Second, the interests of the actual owners must be revealed in records maintained by the depository institution or the broker or some other party. See 12 CFR 330.5(b)(2). Third, the deposits actually must be owned by the alleged actual owners and not by the nominal accountholder. See 12 CFR 330.3(h); 12 CFR 330.5(a)(1).

In the case of those qualified tuition savings programs brought to the attention of the FDIC, an issue exists as to whether the deposits are owned by the state public instrumentality or investment trust as opposed to being owned by the participants or investors. While the participants or investors are the beneficial owners of the accounts of or interests in the state public instrumentality, the participants' monies paid to the state trust for accounts or interests are assets of the state public instrumentality and are, in many cases, invested by the state trust as instructed by the participants or investors. Otherwise, however, the requirements for ''pass-through'' coverage have been satisfied.

As stated above, in the plans reviewed by the FDIC, the funds of particular investors can be traced to particular certificates of deposit. This fact strongly suggests that the deposits should be insured up to $100,000 for the beneficial interest of each investor as opposed to being insured up to only $100,000 for the entire state 529 tuition savings plan. Accordingly, the FDIC has decided to amend its insurance regulations so that the deposits of a state public instrumentality that is an investment trust for a qualified tuition savings program under section 529 of the Internal Revenue Code may be insured on a ''pass-through'' basis provided that (1) each deposit may be traced to one or more particular investors; and (2) the FDIC's disclosure rules for ''pass-through'' coverage have been satisfied.

The FDIC is not amending its rules for other investment trusts governed by the FDIC's regulation at 12 CFR 330.11(a)(2). Generally, such trusts do not function in a manner similar to qualified tuition savings programs. In addition, such trusts do not exist for the same purpose as qualified tuition savings programs. In providing tax benefits for state-sponsored qualified tuition savings programs, Congress intended ''to encourage persons to save to meet post-secondary educational expenses.'' S. Rep. No. 104–281, at 106 (1996), reprinted in 1996 U.S.C.C.A.N. 1474, 1580. Providing ''pass-through'' coverage for the deposits of qualified tuition savings programs will be consistent with this purpose. Without ''pass-through'' coverage, persons may choose not to participate in these programs.

III. Interim Final Rule and Request for Comments

Under the Administrative Procedure Act (APA), an agency generally must publish a proposed rule prior to adopting a final rule. An exception exists for cases in which ''the agency for good cause finds * * * that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interests.'' 5 U.S.C. 553(b)(3)(B). In such cases, the agency must incorporate and explain this finding in the published final rule. *Id.*

Here, the publication of a proposed rule is contrary to the public interest because a few states—relying upon advice from the FDIC staff—already have established qualified tuition savings programs with bank deposit options.[3] Consequently, an issue exists as to the insurance coverage of funds already invested by the participants in these programs. In making these investments, the participants may have relied upon the availability of ''pass-through'' insurance coverage. As previously discussed, ''pass-through'' coverage may not be available under the FDIC's existing regulation in interaction with the tax and federal securities laws.

In order to safeguard participants' funds, the FDIC has decided to revise its regulations through this interim final rule as opposed to leaving the insurance coverage of the funds in doubt during a comment period.

Under the APA, a rule generally must be published at least 30 days prior to the rule's effective date. An exception exists for ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). Another exception exists for cases in which the agency finds ''good cause.'' 5 U.S.C. 553(d)(3). In this case, the new rule grants an exemption to the FDIC's regulation providing that investment or business trusts must be treated as corporations for purposes of determining deposit insurance coverage. See 12 CFR 330.11(a)(2). This exemption is necessary in order to safeguard the funds invested by participants in qualified tuition savings programs. Accordingly, the FDIC finds good cause for making the new rule effective immediately.

Although good cause exists for the promulgation of a final rule, the FDIC is

[3] The advice rendered by the FDIC staff was based upon the plan documents submitted to the FDIC. These documents described the participants or investors as the owners of the deposits.

interested in receiving comments as to how the rule might be improved. Therefore, comments are requested. Following the comment period, the FDIC will make needed changes, if any.

Paperwork Reduction Act

This rule contains no new collections of information as defined by the Paperwork Reduction Act. See 44 U.S.C. 3501 *et seq.* Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

A regulatory flexibility analysis is required only when the agency must publish a notice of proposed rulemaking. See 5 U.S.C. 603, 604. Because the amendment to part 330 is being published in interim final form without a notice of proposed rulemaking, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act, the FDIC will report this rule to Congress so that the rule may be reviewed. See 5 U.S.C. 801 *et seq.*

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trust and trustees.

■ For the reasons set forth in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation hereby amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(l), 1813(m), 1817(i), 1818(q), 1819(Tenth), 1820(f), 1821(a), 1822(c).

■ 2. Section 330.11(a)(2) is revised to read as follows:

§ 330.11 Accounts of a corporation, partnership or unincorporated association.

(a) * * *

(2) Notwithstanding any other provision of this part, any trust or other business arrangement which has filed or is required to file a registration statement with the Securities and Exchange Commission pursuant to section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) or that would be required so to register but for the fact it is not created under the laws of the United States or a state or but for sections 2(b), 3(c)(1), or 6(a)(1) of that act shall be deemed to be a corporation for purposes of determining deposit insurance coverage. An exception to this paragraph (a)(2) shall exist for any trust or other business arrangement established by a state or that is a state agency or state public instrumentality as part of a qualified tuition savings program under section 529 of the Internal Revenue Code (26 U.S.C. 529)). A deposit account of such a trust or business arrangement shall not be deemed to be the deposit of a corporation provided that: The funds in the account may be traced to one or more particular investors or participants; and the existence of the trust relationships are disclosed in accordance with the requirements of § 330.5. If these conditions are satisfied, each participant's funds shall be insured to the participant.

* * * * *

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 16th day of May, 2005.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 05–11212 Filed 6–8–05; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19463; Directorate Identifier 2004–NE–14–AD; Amendment 39–14029; AD 2005–07–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–45A, CF6–50A, CF6–50C, and CF6–50E Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2005–07–05. That AD applies to General Electric Company (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003. We published AD 2005–07–05 in the **Federal Register** on March 30, 2005, (70 FR 16096). A descriptive phrase was inadvertently left out of compliance paragraph (f). This document corrects compliance paragraph (f). In all other respects, the original document remains the same.

DATES: Effective June 9, 2005.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc. 05–6107, that applies to (GE) CF6–45A, CF6–50A, CF6–50C, and CF6–50E series turbofan engines that have not incorporated GE Service Bulletin (SB) No. CF6–50 S/B 72–1239, Revision 1, dated September 24, 2003, or that have not incorporated paragraph 3.B. of GE SB No. CF6–50 S/B 72–1239, original issue, dated May 29, 2003, was published in the **Federal Register** on March 30, 2005, (70 FR 16096). The following correction is needed:

§ 39.13 [Corrected]

■ On page 16098, in the first column, in compliance paragraph (f), the third line, ''cycles-since-new (CSN), or 3,000 cycles-'' is corrected to read ''cycles-since-new (CSN) on the TMF assembly, or 3,000 cycles-''.

Issued in Burlington, MA, on June 2, 2005.

Francis A. Favara,

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

[FR Doc. 05–11442 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2004–17773; Airspace Docket No. 04–ASW–11]

RIN 2120–AA66

Modification of Restricted Areas 5103A, 5103B, and 5103C and Revocation of Restricted Area 5103D; McGregor, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule (Airspace Docket No. 04–ASW–11) published in the **Federal Register** on December 13, 2004 (69 FR 72113). That action modified Restricted Areas 5103A

(R–5103A), 5103B (R–5103B), and 5103C (R–5103C) and revoked Restricted Area 5103D (R–5103D), at the request of the United States (U.S.) Army. Subsequent to the issuance of the final rule, the U.S. Army identified an error in their requested boundaries for R–5103C. This action corrects that error.

DATES: Effective 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 13, 2004, Airspace Docket No. 04–ASW–11 was published in the **Federal Register** (69 FR 72113) modifying R–5103A, R–5103B, and R–5103C and revoking R–5103D, at the request of the U.S. Army. Subsequent to the issuance of the final rule, the U.S. Army identified an error in their requested boundaries for R–5103C in that, the phrase ''then along the Southern Pacific Railroad'' was inadvertently omitted. Also, there were some minor errors in the coordinates that defined the boundaries of two ''cut-out'' areas of R–5103C. This action corrects those errors. Because the requested corrections reduce the size of the geographic boundaries of R–5103, we find that issuance of a notice of proposed rulemaking is not necessary.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the boundaries for R–5103C, Airspace Docket No. 04–ASW–11, as published in the **Federal Register** on December 13, 2004 (69 FR 72113), are hereby corrected as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.51 [Corrected]

■ 2. Section 73.51 is corrected to read as follows:

* * * * *

R–5103C McGregor, NM (Corrected)

* * * * *

Boundaries. Beginning at lat. 32°45′00″ N., long. 105°53′02″ W.; to lat. 32°45′00″ N., long. 105°52′22″ W.; to lat. 32°33′20″ N., long. 105°30′02″ W.; to lat. 32°26′20″ N., long. 105°30′02″ W.; to lat. 32°15′00″ N., long. 105°42′02″ W.; to lat. 32°15′00″ N., long. 106°10′02″ W.; then along the Southern Pacific Railroad to lat. 32°28′00″ N., long. 106°02′02″ W.; to lat. 32°27′40″ N., long. 106°00′02″ W.; to lat. 32°36′00″ N., long. 106°00′00″ W.; to lat. 32°45′00″ N., long. 105°59′02″ W.; to the point of beginning, excluding that airspace within a 2 NM radius of lat. 32°39′02″ N., long. 105°40′36″ W.; from the surface to 1,500′ AGL and also excluding that airspace beginning at lat. 32°42′49″ N., long. 105°48′12″ W.; to lat. 32°40′47″ N., long. 105°49′40″ W.; to lat. 32°39′42″ N., long. 105°47′44″ W.; to lat. 32°41′48″ N., long. 105°46′14″ W.; to the point of beginning from the surface to 1,500′ above the surface.

* * * * *

Issued in Washington, DC, on May 17, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–10902 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 041222360–5141–02]

RIN [0694–AD24]

Licensing Policy for Entities Sanctioned Under Specified Statutes; License Requirement for Certain Sanctioned Entities; and Imposition of License Requirement for Tula Instrument Design Bureau

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This document makes final, without change, a previously published interim final rule that stated the Bureau of Industry and Security's licensing policy regarding transactions involving entities sanctioned by the State Department under three specified statutes, imposed a new license requirement for certain entities sanctioned by the State Department, and identified one specific entity subject to this new license requirement, Tula Instrument Design Bureau of Russia.

DATES: Effective date: June 9, 2005.

FOR FURTHER INFORMATION CONTACT: William Arvin, Regulatory Policy Division, Office of Exporter Services at *warvin@bis.doc.gov* or 202–482–2440.

SUPPLEMENTARY INFORMATION: On March 7, 2005, the Bureau of Industry and Security (BIS) published an interim final rule with a request for comments. The comment period expired on May 6, 2005. BIS received no comments on the interim final rule and is now adopting it without change in this final rule.

The interim final rule of March 7 set forth BIS's licensing policy for entities subject to sanctions imposed by the State Department under the Iran-Iraq Arms Nonproliferation Act of 1992 (Pub. L. 102–484), the Iran Nonproliferation Act of 2000 (Pub. L. 107–178) and section 11B(b)(1) of the Export Administration Act of 1979 (also known as the Missile Technology Control Act of 1990). The interim final rule also imposed a new license requirement for certain entities sanctioned by the State Department, and identified one specific entity, Tula Instrument Design Bureau of Russia (Tula), subject to this new license requirement. The interim final rule placed Tula on the Entity List (15 CFR part 744, supp. No. 4), thereby informing the public that a license is required to export or reexport to Tula any item subject to the EAR other than EAR99 items, that License Exceptions may not be used for exports or reexport to Tula, and that BIS's policy is generally to deny applications for licenses to export or reexport such items to Tula.

The interim final rule requested comments no later than May 6, 2005. BIS has received no comments on the interim final and is now adopting it without change in this final rule. In doing so, BIS is not negating or in any way modifying the changes to the Entity List made subsequent to the March 7, 2005 publication of the interim final rule and prior to publication of this final rule. Specifically, the additions to the Entity List at 70 FR 11861 (March 10, 2005) are unaffected by this final rule.

Although the Export Administration Act of 1979 (EAA), as amended, expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)) as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act (IEEPA).

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission.

Burden hours associated with the Paperwork Reduction Act and Office and Management and Budget control number 0694–0088 are not impacted by this regulation. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, OMB Desk Officer, by e-mail at *david_rostker@omb.eop.gov* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.,* are not applicable.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

■ Accordingly, BIS adopts, without change, the interim final rule published at 70 FR 10865, March 7, 2005 as a final rule.

Dated: June 3, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–11418 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 2004N–0416]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its bottled water quality standard regulations by revising the existing allowable level for the contaminant arsenic. As a consequence, bottled water manufacturers are required to monitor their finished bottled water products for arsenic at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers are also required to monitor their source water for arsenic as often as necessary, but at least once every year unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. This final rule will ensure that the minimum quality of bottled water, as affected by arsenic, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards.

DATES: This rule is effective January 23, 2006. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in 21 CFR 165.110(b)(4)(iii), as of January 23, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2030.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 22, 2001 (66 FR 6976), EPA published a final rule issuing a National Primary Drinking Water Regulation (NPDWR) containing a maximum contaminant level (MCL) of 0.01 milligram per liter (mg/L) or 10 parts per billion (ppb) and a Maximum Contaminant Level Goal (MCLG) of zero for arsenic to address potential public heath effects from the presence of arsenic in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of June 22, 2000 (65 FR 38888). EPA's effective date of March 23, 2001, for this rule was temporarily delayed for 60 days to a new effective date of May 22, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan'' (66 FR 7702, January 24, 2001). On May 22, 2001, EPA announced that it would further delay the effective date for the rule until February 22, 2002, to allow time to complete a reassessment of the information on which the revised arsenic standard is based. On February 22, 2002, the arsenic MCL of 0.01 mg/L in public drinking water rule became effective, and water systems must comply with the new standard for arsenic in public drinking water by January 23, 2006. On March 25, 2003 (68 FR 14501 at 14503), EPA revised the rule text in its January 2001 final rule that established the 10 ppb arsenic drinking water standard to express the standard as 0.010 mg/L, in order to clarify the implementation of the original rule. EPA made this change in response to a concern raised by a number of States and other stakeholders that State laws adopting the Federal arsenic standard as 0.01 mg/L might allow rounding of monitoring results above 0.01 mg/L so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L (10 ppb).

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), FDA is required to issue a standard of quality regulation for a contaminant in bottled water not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g–1), or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

In accordance with section 410 of the act, FDA published in the **Federal**

Register of December 2, 2004 (69 FR 70082), a proposal to adopt EPA's MCL for arsenic as an allowable level in the quality standard for bottled water. In the 2004 proposal, FDA tentatively concluded that the MCL that EPA had established based on available toxicological information for arsenic in public drinking water was adequate for the protection of public health. As a consequence, bottled water manufacturers would be required to monitor their finished bottled water products for arsenic at least once each year under the CGMP regulations for bottled water. Bottled water manufacturers would also be required to monitor their source water for arsenic as often as necessary, but at least once every year unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. Interested persons were given until January 31, 2005, to submit comments.

II. Comment on the Proposed Rule

FDA received four letters, each containing one or more comments, in response to the December 2, 2004, proposal. The comments were received from two trade associations and two consumers. Two letters generally support the proposal with one containing comments suggesting modifications to various provisions of the Analysis of Economic Impacts section. The agency's responses to these suggestions are addressed in that section. Two letters raised issues that are outside the scope of this rulemaking (the appropriate agency to regulate bottled water and EPA's requirements for testing frequency) and therefore are not addressed here.

III. Conclusion

The agency is adopting the allowable level for arsenic in the quality standard for bottled water as proposed (69 FR 70082). Therefore, FDA is establishing in § 165.110(b)(4)(iii)(A) (21 CFR 165.110(b)(4)(iii)(A)), which includes allowable levels for inorganic substances, an allowable level for arsenic at 0.010 mg/L and removing the existing entry for arsenic in § 165.110(b)(4)(i)(A).

With respect to analytical methods for the determination of chemical contaminants, FDA is making the following changes in § 165.110(b)(4)(iii). In the new § 165.110(b)(4)(iii)(E)(14), FDA is incorporating by reference EPA approved analytical methods (66 FR 6975 at 6988) for determining compliance with the quality standard for arsenic in bottled water. These methods are contained in the manual entitled ''Methods for the Determinations of Metals in Environmental Samples-Supplement 1,'' EPA/600/R–94/111, May 1994, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The source for this manual containing the two methods is the National Technical Information Service (NTIS), PB95–125472, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161. FDA believes that these methods are sufficient to use for determining the level of arsenic in bottled water.

Therefore, upon the effective date of this rule, January 23, 2006, any bottled water that contains arsenic at a level that exceeds the applicable allowable level will be deemed misbranded under section 403(h)(1) of the act (21 U.S.C. 343(h)(1)) unless it bears a statement of substandard quality as provided by § 165.110(c)(3).

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (69 FR 70082, December 2, 2004). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Analysis of Economic Impacts

A. Final Regulatory Impact Analysis

FDA has examined the economic implications of this final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, public safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action as defined by Executive Order 12866.

This final regulatory impact analysis revises the analysis set forth in the proposed rule (69 FR 70082) in response to comments received. Except as we indicate below, the analysis in this final rule is the same as the analysis of the proposed rule.

1. Need for Regulation

We did not receive any comments on the discussion of the need for regulation in the analysis of the proposed rule. To briefly summarize the discussion in the analysis of the proposed rule, under section 410 of the act, when the Environmental Protection Agency (EPA) issues a regulation establishing an MCL for a particular contaminant in drinking water, FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is unnecessary to protect the public health. FDA's quality standard must also include appropriate monitoring requirements. If FDA does not issue a quality standard for arsenic in bottled water by 180 days before the effective date of EPA's regulations or make a finding that such a regulation is not necessary to protect the public health, then EPA's regulation becomes applicable to bottled water as well as drinking water.

2. Regulatory Options

We considered five regulatory options in the analysis of the proposed rule:

Option One—Re-establish a quality standard for arsenic in bottled water that maintains the current allowable level of 0.05 mg/L.

Option Two—Take no action. Under this option, EPA's regulation on arsenic in drinking water would become applicable to bottled water.

Option Three—Establish a quality standard for arsenic in bottled water that adopts EPA's MCL for arsenic in drinking water of 0.010 mg/L. Under this option, bottled water producers would be subject to CGMP monitoring requirements in 21 CFR 129.35 and 129.80.

Option Four—Establish a quality standard for arsenic in bottled water that sets the allowable level of arsenic at 0.02 mg/L.

Option Five—Establish a quality standard for arsenic in bottled water that sets the allowable level of arsenic at 0.005 mg/L.

One comment stated that bottled water should be regulated by EPA, not FDA. This comment maintained that economies of scale suggest that EPA should oversee bottled water as well as tap water and that it is wasteful for us to spend public money to change bottled water regulations in a way that mirrors EPA's regulations for tap water.

This option is outside the scope of this rulemaking and would not be legally feasible at this time. In addition, changing the jurisdiction of bottled water from FDA to EPA would generate costs in addition to cost savings. We do not have information suggesting that the net benefits of this option would be likely to be greater than the net benefits of the options that we considered in the proposed rule. Therefore, we have not addressed this option in this analysis.

3. General Comments

(Comment 1) One comment argued that some bottled water establishments may need to purify their water using reverse osmosis or other methods in order to meet an allowable level of 0.010 mg/L. This comment suggested that these establishments would need to change the identification of their products from ''spring water'' to ''purified water.'' The comment noted that this could lead to a loss of utility for consumers who prefer spring water if they have limited choices for home or office water delivery and can no longer obtain spring water from other establishments. Finally, the comment noted that this change in how consumers value bottled water could reduce sales for the establishments producing that water, although the comment noted that that it was unable to estimate this cost.

(Response) The comment is correct that if bottled water establishments need to adopt treatment methods that require them to change the identity of their product, (e.g., from ''spring water'' to ''purified water'') then some consumers might place a lower value on that water. If some consumers choose not to continue to consume the water after the identity change, then some bottled water establishments could face a decline in sales and profits. We would classify any loss of profit from shifts in consumer demand as a distributive impact rather than a social cost because the sales and profit losses for some firms would be offset by countervailing sales and profit increases for other firms. The comment did not provide sufficient information to estimate the loss in consumer utility or the distributive impact on industry. Although the comment only discussed this effect in relation to an allowable level of 0.010 mg/L (corresponding to Options 2 and 3), the same effect might also be relevant to any reduction in the current allowable level of 0.05 mg/L, including reductions to allowable levels of 0.02 mg/L (Option 4) and 0.005 mg/L (Option 5). The likelihood of this effect would be greater the lower the allowable level. Thus, this effect would be largest under Option 5 and smallest under Option 4.

(Comment 2) One comment suggested that our estimate of the benefits of specifying a maximum arsenic level of 0.005 mg/L was too high because EPA based their benefit estimate on a flawed interpretation of the available data, and we based our benefit estimate on EPA's benefit estimate. This comment cited a report issued by the National Academy of Sciences (NAS) that the comment claimed concluded that arsenic does not cause bladder or lung cancer at levels up to 0.05 mg/L (50 ppb) in drinking water (Ref. 1). Although the comment made this point in relation to our benefit estimates for Option 5 (allowable level of 0.005 mg/L), it is also relevant to our benefit estimates for Options 2 and 3 (allowable level of 0.01 mg/L) and Option 4 (allowable level of 0.02 mg/L). The comment also argued that EPA based its risk assessment on extrapolating cancer risks from relatively high levels of arsenic investigated in some epidemiological studies to the relatively low levels that EPA considered when setting an MCL for arsenic. According to the comment, the NAS study highlighted the uncertainty associated with this extrapolation and also suggested there might be a threshold below which arsenic in water would not increase the risk of cancer at all. The comment noted that EPA reviewed this study prior to issuing a regulation establishing a MCL of 0.01mg/L. Finally, the comment cited an article that was published after EPA's regulation that reportedly found no association between bladder cancer and arsenic in drinking water at a level of 0.10 mg/L and another article that ostensibly made a similar point.

(Response) The 2001 NAS study concluded that arsenic in drinking water increases the risk of bladder or lung cancer at concentrations at least as low as 0.003 mg/L (Ref. 2). Although the study noted that a threshold was theoretically possible, it noted that there was no experimental data to identify a threshold and concluded that any threshold was likely to occur below concentrations that are relevant to the U.S. population (Ref. 3). The study did note that there was insufficient mode-of-action data on arsenic to provide a biological basis for using either a linear or nonlinear extrapolation to estimate low dose health risks and that the choice of extrapolation method was, in part, a policy decision (Ref. 4). However, the study supported the use of a linear extrapolation in conjunction with a discussion of the uncertainties associated with that approach (Ref. 5). EPA acknowledged uncertainty about the impact of reducing arsenic to the levels under consideration in this rule and carried out a sensitivity analysis to reflect that uncertainty. The range of potential benefits that we estimated in the proposed rule reflects that uncertainty. However, EPA could not have considered the two articles cited in the comment that were published after the publication of the regulation. One of these articles found no increase in the risk of bladder cancer from arsenic in drinking water at levels up to 0.1 mg/L (Ref. 6). The other article found no increase in the risk of death from bladder cancer from arsenic in drinking water at concentrations between 0.003 mg/L and 0.06 mg/L (Ref. 7). We based our benefit estimates on reductions of bladder cancer and lung cancer. EPA's estimated health benefit from reductions in bladder cancer were approximately 30 percent of the total health benefits from reductions in both bladder and lung cancer. Therefore, we have reduced the lower bound of our estimated range of benefits to reflect the possibility that none of the options under consideration reduce the risk of bladder cancer.

4. Option One—Re-establish a Quality Standard for Arsenic in Bottled Water That Maintains the Current Allowable Level of 0.05 Mg/L

We used this option as the baseline in the analysis of the proposed rule. We did not receive any comments on the use of this option as the baseline. We did receive one comment that noted that an allowable level of 0.05 mg/L might not lead to the same health benefits as an allowable level of 0.01 mg/L. This observation is consistent with the analysis of the proposed rule in which we attributed health benefits to moving from the baseline to an allowable level of 0.01 mg/L.

5. Option Two—Take No Action

Benefits of option two.

(Comment 3) One comment from a trade group that stated it represented 270 bottled water establishments argued that we may have overestimated the benefits of taking no action and allowing EPA's regulations governing arsenic in drinking water to become applicable to bottled water. The trade group that submitted this comment stated that it has required its members to meet a maximum arsenic level of 0.010 mg/L (10 ppb) since 2002 as a condition of membership. The comment also noted that California's Department of Health Services established a standard of quality specifying an allowable level of 0.01 mg/L (10 ppb) for arsenic in bottled water in 2000. This comment argued that most medium and

large bottled water establishments of ''natural water'' belong to this trade group or sell water in California. Finally, the comment noted that approximately 25 percent of the bottled water sold in the United States is ''purified water'' and that most purified water is produced using the reverse osmosis method, which removes a substantial amount of any existing arsenic from the final product. The comment concluded that the vast majority of bottled water sold in the United States already meets an allowable level of 0.010 mg/L and that any potential health benefits from revising the allowable level of arsenic from 0.05 mg/L to 0.01 mg/L may have already been realized.

(Response) In the analysis of the proposed rule, we based our benefit estimates on EPA's analysis of its drinking water regulations. EPA's analysis found that 5.3 percent of the ground water sources used by community water systems failed to meet a maximum arsenic level of 0.010 mg/L. We used the same percentage as the percentage of bottled water establishments that would fail to meet that level of arsenic. Thus, our benefit estimate accounted for the fact that the vast majority of bottled water establishments use water that already meets a maximum arsenic level of 0.010 mg/L. The 270 establishments that this comment stated belonged to the trade group in question represent 73 percent of the 370 establishments that we identified in the analysis of the proposed rule. Thus, the information provided by the comment is consistent with the 5.3 percent estimate.

Abatement.

(Comment 4) One comment argued that some bottled water establishments might not be able to choose some of the 13 abatement methods that EPA discussed in their analysis. The comment noted that we used the average cost of these abatement methods in our analysis. According to this comment, establishments that bottle natural water containing naturally occurring arsenic may face abatement costs substantially higher than the average of the 13 methods discussed in the EPA report because of the commercial and financial restraints on their ability to selectively remove arsenic while maintaining the standard of identity for natural water. The comment also noted that abatement costs would depend on the initial level of arsenic found in the water (e.g., reductions from 0.03 mg/L to 0.01 mg/L is more expensive than reductions from 0.02 mg/L to 0.01 mg/L).

(Response) We acknowledged in the analysis of the proposed rule that some bottled water establishments might be unable to use some of the 13 potential abatement methods EPA discussed in their analysis. Our rationale for using the average cost of those methods was that some establishments might be able to use the less expensive methods while other establishments might need to use the more expensive methods. Using average cost is appropriate in this context because we are estimating total costs rather than the costs that any particular facility might face. The comment did not provide sufficient information to revise this approach. EPA's cost estimates, on which we based our cost estimates, accounted for the fact that abatement costs depend on the initial level of arsenic in the water.

Testing.

(Comment 5) One comment argued that we overstated the potential benefit from reduced testing costs under this option and suggested that this option would probably not reduce testing costs at all. This comment noted that we estimated that adopting this option would eliminate between 163 and 745 tests per year. The comment said that such a reduction is highly unlikely because bottled water establishments that sell bottled water in more than one State might need to apply for waivers for each State in which they sell their product but may be unable or unwilling to pay for multiple waivers. The comment also noted that some States regulate bottled water as a food product and require annual testing for contaminants including arsenic. The comment said that only two of the States that regulate bottled water as food offer testing waivers for bottled water. In addition, the authors of the comment noted that they were unaware of any State granting a bottled water establishment a 9-year waiver for any contaminant. The comment claimed that adopting EPA's testing schedule for arsenic could result in additional tests because EPA's testing schedule would not coincide with States' testing schedules. Finally, the comment noted that the delay in testing requirements that we discussed in the analysis of the proposed rule would probably not affect bottled water establishments that operate in States that regulate bottled water as a food.

(Response) In the analysis of the proposed rule, we assumed that between 0 and 90 percent of bottled water establishments might operate under a waiver in any given year. The low end of this range is consistent with the comment's assertion that few bottled water establishments would be able or willing to obtain waivers. The comment provided some reasons why the upper bound of 90 percent may be unrealistically high, but it did not provide an alternative upper bound estimate. The comment also did not provide sufficient information to estimate any additional testing that the comment claimed could be required under this option because of discrepancies between EPA's testing schedule and States' testing schedules, or the additional cost of tracking EPA's testing schedule if it differs from States' testing schedules, or the proper adjustment for the start of our testing requirements to account for the fact that some establishments must test annually because of State regulations. In the analysis of the proposed rule, we estimated that the change in testing costs generated by this option would round to $0 million per year. Attempting to further refine this estimate to account for these factors would have little effect on the overall results.

(Comment 6) One comment argued that we failed to include some of the costs associated with testing requirements under this option. This comment noted that we previously allowed EPA regulations on maximum levels for nine other contaminants in drinking water to become effective for bottled water. The nine contaminants were antimony, beryllium, cyanide, nickel, thallium, diquat, endothall, glyphosate, and 2,3,7,8–TCDD (dioxin). The comment argued that implementing EPA testing requirements for these contaminants created confusion and inconsistencies because EPA designed their testing requirements for municipal water systems rather than for bottled water establishments. The comment suggested that this experience showed that implementing EPA testing requirements for arsenic would also create confusion about testing requirements for bottled water establishments.

(Response) We are not addressing previous actions regarding the nine contaminants in this analysis. However, experiences generated by past actions may be relevant to this analysis. In this case, the comment claims that past experience suggests that adapting EPA's testing requirements for bottled water establishments could create some initial confusion. However, the comment did not provide sufficient information to allow us to quantify this cost. Therefore, we have added this cost as an unquantified cost.

Administrative costs.

We did not receive any significant comments on this section.

Public notification.

(Comment 7) One comment noted that we said that under this option (i.e., if we take no action and EPA's regulations are applied to bottled water establishments according to section 410 of the act) EPA's requirement that community water systems prepare and distribute public notifications of water analyses might apply to bottled water establishments, but we were unsure how EPA would apply or adapt these public notification requirements to bottled water establishments. The comment argued that if we take no action, then EPA's public notification requirements for community water systems would not become applicable to bottled water establishments and that the only change in our current regulations would be that EPA's MCL for arsenic and testing requirements would replace the existing maximum arsenic level and testing requirements. In addition, the comment noted that bottled water would remain under our jurisdiction.

(Response) If we take no action, then EPA's NPDWR for arsenic in public drinking becomes applicable to bottled water. In addition to MCLs and monitoring requirements, EPA's NPDWRs (40 CFR part 141) contain other requirements such as analytical requirements (e.g., use of certified labs), reporting (e.g., test results submitted to the states), public notification (e.g., consumer confidence reports), and recordkeeping (chemical test results to be kept for at least 10 years). As such, EPA's public notification requirements would be applicable to bottled water. However, we agree with the comment that bottled water would remain under our jurisdiction and that we would be responsible for enforcing EPA's public notification requirements for bottled water establishments.

Total costs and benefits of option two.

Based on the analysis of the proposed rule and the preceding discussion, we estimate that taking no action and allowing EPA's NPDWR for arsenic to become applicable to bottled water would generate quantified benefits of $6 to $36 million per year (revised from $9 to $36 million per year in the analysis of the proposed rule), quantified costs of $11 to $15 million in the first year and $7 to $11 million in every year after the first year, plus any costs associated with public notification requirements, any costs associated with potential confusion associated with adapting EPA's testing requirements and any loss of consumer utility associated with product identity changes. This option could also cause some firms that produce bottled spring water to lose profits and firms producing competing products to increase profits.

6. Option Three—Establish a Quality Standard for Arsenic in Bottled Water That Adopts EPA's MCL for Arsenic in Drinking Water of 0.010 Mg/L

(Comment 8) One comment noted that one advantage of this option is that the vast majority of bottled water establishments would not need to change their current testing procedures and States could easily harmonize their regulations with FDA regulations.

(Response) This option would maintain current testing requirements and would therefore probably not disrupt existing testing schedules or otherwise create confusion about monitoring requirements. We did not attribute these costs to this option in the analysis of the proposed rule.

7. Option Four—Establish a Quality Standard for Arsenic in Bottled Water That Sets the Allowable Level of Arsenic at 0.02 Mg/L

We did not receive any significant comments on this section.

8. Option Five—Establish a Quality Standard for Arsenic in Bottled Water but That Sets the Allowable Level of Arsenic at 0.005 Mg/L

Benefits.

We discussed the only comment that we received on the benefits of this option (that some bottled water establishments may need to purify their water and change the identification of their products from ''spring water'' to ''purified water'' to meet this requirement) in the preceding section entitled General Comments because that comment was relevant to all of the options.

Cost.

(Comment 9) One comment noted that this option would affect more establishments than would Option 2 because this option involves a lower allowable level for arsenic. The comment suggested that this would generate a further increase in costs that is unknown but could be substantial.

(Response) We estimated the costs of this option by adjusting our cost estimate for Option 2 upward by 232 percent based on the change in EPA's estimate of overall abatement costs associated with MCLs of 0.005 mg/L and 0.01 mg/L. EPA's cost estimate accounted for the fact that a MCL of 0.005 mg/L would affect more community water systems than would a MCL of 0.01 mg/L. Thus, our estimate already indirectly accounted for an increase in the number of affected establishments under this option.

Summary of benefits and costs for regulatory options.

We present a summary of our revised cost and benefit estimates in table 1 of this document. Option 3 (adopting EPA's allowable arsenic level) appears likely to generate higher net benefits than either maintaining the current allowable level of arsenic in bottled water of 0.05 mg/L or taking no action and allowing EPA's NPDWR for arsenic to become applicable to bottled water. The estimated net benefits of adopting an allowable level of 0.010 mg/L overlap significantly with the estimated net benefits of adopting an allowable level of 0.005 mg/L. The lower end of the range of potential net benefits is substantially higher for 0.010 mg/L, but the higher end of the range is substantially higher for 0.005 mg/L.

Table 1.—Summary of Costs and Benefits ($ millions)

Option	Cost	Benefit	Net Benefit
Option 1–Maintain 0.05 mg/L	Baseline	Baseline	Baseline

Table 1.—Summary of Costs and Benefits ($ millions)—Continued

Option	Cost	Benefit	Net Benefit
Option 2–Take no action	$11 to $15 in first year, $7 to $11 every year after first year, plus public notification costs, any costs associated with potential confusion associated with adapting EPA testing requirements, and any loss of consumer utility associated with product identity changes	$6 to $36 plus unquantified health benefits	-$9 to $25 plus unquantified benefits minus unquantified costs in first year, -$5 to $29 plus unquantified benefits minus unquantified costs in subsequent years
Option 3–Adopt 0.010 mg/L	$7 to $11, plus any loss of consumer utility associated with product identity changes	$6 to $36 plus unquantified health benefits	-$5 to $29 plus unquantified benefits minus unquantified costs
Option 4–Adopt 0.02 mg/L	$3 to $4, plus any loss of consumer utility associated with product identity changes	$3 to $14 plus unquantified benefits	-$1 to $10 plus unquantified benefits minus unquantified costs
Option 5–Adopt 0.005 mg/L	$17 to $26, plus any loss of consumer utility associated with product identity changes	$9 to $64 plus unquantified benefits	-$17 to $47 plus unquantified benefits minus unquantified costs

B. Small Entity Analysis

We have examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would lessen the economic effect of the rule on small entities. We find that this rule would have a significant economic impact on a substantial number of small entities.

In the analysis of the proposed rule, we discussed allowing small firms to produce bottled water containing a higher level of arsenic than larger firms as one possible approach to reducing the burden on small firms.

(Comment 10) One comment argued that such an approach would provide less protection to consumers and would be difficult to communicate to consumers. The comment suggested that we instead consider delaying the effective date of the rule for small businesses.

(Response) We acknowledged the impact on benefits that would occur if we allowed small firms to produce bottled water containing a higher level of arsenic than larger firms in the analysis of the proposed rule. We did not discuss the difficulty of communicating the existence of different maximum arsenic levels to consumers. However, this cost is not an additional cost but an alternative to the health costs that we discussed in the Small Entity Analysis section of the proposed rule. If we successfully communicated the existence of different arsenic levels to consumers, then consumers would presumably choose bottled water with lower levels of arsenic, and we would not expect to see a decline in health benefits. We do not have sufficient information to evaluate the cost or effectiveness of educating consumers on different arsenic levels as an alternative or partial alternative to the health costs of allowing small firms to produce bottled water containing more arsenic than bottled water produced by larger firms. Delaying the effective date for small firms would delay the onset of abatement costs but would not otherwise reduce those costs. Delaying costs would reduce the present value of those costs due to discounting. However, delaying the effective date would also delay the onset of the corresponding health benefits.

(Comment 11) One comment argued that some bottled water establishments may need to purify their water using reverse osmosis or other methods in order to meet a maximum arsenic level of 0.010 mg/L. This comment suggested that some of these methods would require those establishments to change the identification of their products from ''spring water'' to ''purified water.'' The comment noted that this might change how consumers value the water and could reduce sales for the firms producing that water. The comment noted that it was unable to estimate this cost. We discussed this comment in the preceding impact analysis of this document. However, this comment is also relevant to this section because it noted that any loss of profit was more likely to affect smaller firms than larger firms because smaller bottlers have more limited treatment options and distribution areas.

(Response) The comment is correct that any changes in product identity that might take place if bottled water establishments found it necessary to adopt certain treatment methods might lead to changes in how consumers value the water and could reduce sales and profits for some small firms. The comment did not provide sufficient information to estimate this potential impact on small firms.

VI. Paperwork Reduction Act

FDA concludes that this final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to

''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.''

Section 403A(a)(1) provides that

''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce-(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such

standard of identity or that is not identical to the requirement of section 403(g) * * *.'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this rule has pre-emptive effect in that it would preclude States from issuing requirements for arsenic levels in bottled water that are not identical to the allowable level for arsenic as set forth in this rule, this pre-emptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive Order further requires that ''any regulatory preemption of State law shall be restricted to the minimum level necessary'' to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the SDWA (42 U.S.C. 300g–1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. FDA has determined that the MCL for arsenic that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this final regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for arsenic in public drinking water provided notice of possible FDA action for a standard of quality for arsenic in bottled water. FDA did not receive any correspondence from State and local officials regarding an arsenic standard for bottled water subsequent to EPA's NPDWR on the MCL for arsenic or in response to FDA's proposed rule (69 FR 70082, December 2, 2004) to adopt EPA's MCL for arsenic as an allowable level in the quality standard for bottled water. Moreover, FDA is not aware of any States that have requirements for arsenic in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for arsenic that is consistent with EPA's standard for public drinking water. For the reasons set forth previously in this document, the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the pre-emptive effects of the final rule are consistent with Executive Order 13132.

VIII. References

The following references have been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Arsenic in Drinking Water: 2001 Update, National Academy Press, Washington, DC, 2001, available on the Internet at *http://www.nap.edu/books/0309076293/html/*.

2. Ibid., p. 13.

3. Ibid., pp. 6–7, 11.

4. Ibid., pp. 6, 11.

5. Ibid., p. 11.

6. Steinmaus, C., Yuan, Y., Bates, M.N., et al., 2003, ''Case-Control Study of Bladder Cancer and Drinking Water Arsenic in the Western United States,'' *American Journal of Epidemiology*, 158(12):1193–1201.

7. Lamm, S., Engel, A., Kruse, M., et al., 2004, ''Arsenic in Drinking Water and Bladder Cancer Mortality in the United States: An Analysis Based on 133 U.S. Counties and 30 Years of Observation,'' *Journal of Occupational and Environmental Medicine*, 46(3):298–306.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 165 is amended as follows:

PART 165—BEVERAGES

■ 1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

■ 2. Section 165.110 is amended by removing the entry for ''Arsenic'' in the table in paragraph (b)(4)(i)(A), by revising paragraph (b)(4)(iii)(A) and the introductory text of paragraph (b)(4)(iii)(E), and by adding paragraph (b)(4)(iii)(E)(*14*) as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(A) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligramsper liter (or as specified)
Arsenic	0.010
Antimony	.006
Barium	2
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.0
Cyanide	0.2
Lead	0.005
Mercury	0.002
Nickel	0.1
Nitrate	10 (as nitrogen)
Nitrite	1 (as nitrogen)
Total Nitrate and Nitrite	10 (as nitrogen)
Selenium	0.05
Thallium	0.002

* * * * *

(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(*1*) through (b)(4)(iii)(E)(*14*) of this section and described, unless otherwise noted, in ''Methods for Chemical Analysis of Water and Wastes,'' U.S. EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45258 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

* * * * *

(*14*) Arsenic shall be measured using the following methods:

(*i*) Method 200.8—''Determination of Trace Elements in Waters and Wastes by Inductively Coupled Plasma-Mass Spectrometry,'' Revision 5.4, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Method 200.8 is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples—Supplement 1,'' EPA/600/R–94/111, May 1994. Copies of this publication are available from the National Technical Information Service (NTIS), PB95–125472, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(*ii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Graphite Furnace Atomic Absorption,'' Revision 2.2, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Method 200.9 is contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples—Supplement 1,'' EPA/600/R–94/111, May 1994. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*14*)(*i*) of this section.

* * * * *

Dated: May 20, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–11406 Filed 6–8–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

RIN 1076–AE54

Conforming Amendments To Implement the No Child Left Behind Act of 2001

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rule renumbers certain sections of 25 CFR part 39 in order to conform to the amendments published on April 28 and to rationalize the number system in part 39. It also eliminates two obsolete cross references.

DATES: Effective June 9, 2005.

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103–1430; Phone 505–248–7240; e-mail: *cfreels@bia.edu.*

SUPPLEMENTARY INFORMATION: On April 28, 2005, the Department published in the **Federal Register** (70 FR 22178) the final rule implementing the No Child Left Behind Act of 2001 (the Act). The April 28 rule revised subparts A through H of part 39, while leaving subparts I through L unaffected. Although subparts I through L were unchanged by publication of the April 28 rule, the section numbers used in those subparts were used for some of the sections in the revised subparts A through H. Through an unintentional oversight, the Department did not renumber the sections of subparts I through L to eliminate duplication. This rectifies this oversight by renumbering all sections in subparts I through L in order to remove potential conflicts from Title 25. It also removes two obsolete cross references.

Compliance Information

1. *Regulatory Planning and Review (E.O. 12866).* This document is not a significant rule and the Office of Management and Budget has not reviewed this rule under Executive Order 12866.

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

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. It makes only changes necessary to ensure that these sections of 25 CFR conform to the changes made by the new rule being published in final today.

2. *Regulatory Flexibility Act.* The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regualtory Flexibility Act (5 U.S.C. 601 *et seq.*).

3. *Small Business Regulatory Enforcement Fairness Act (SBREFA).* This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

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

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

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

4. *Unfunded Mandates Reform Act.* This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule makes only changes necessary to ensure that these sections of 25 CFR conform to the changes made by the new rule being published in final today.

5. *Takings (E.O. 12630).* In accordance with Executive Order 12630, the rule does not have significant takings

implications. No rights, property or compensation has been, or will be taken. A takings implication assessment is not required.

6. *Federalism (E.O. 13132).* In accordane with Executive Order 13132, this rule does not have federalism implications that warrant the preparation of a federalism assessment.

7. *Civil Justice Reform (E.O. 12988).* In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

8. *Consultation with Indian tribes (E.O. 13175).* In accordance with Executive Order 13175, we have evaluated this rule and determined that it has no potential negative effects on federally recognized Indian tribes. In drafting the No Child Left Behind rule published today, we consulted extensively with tribes; tribal members of the negotiated rulemaking committee participated in the writing of the rule. These conforming amendments make only changes necessary to ensure that the remainder of 25 CFR is consistent with the provisions of the No Child Left Behind rule.

9. *Paperwork Reduction Act.* This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

10. *National Environmental Policy Act.* This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

11. *Justification for Issuing a Direct Final Rule.* The Department has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rule because of the good cause exception under 5 U.S.C. 553(b)(3)(B). This exception allows the agency to suspend the notice and public procedure requirements when the agency finds for good cause that those requirements are impracticable, unnecessary, or contrary to the public interest. This rule renumbers (redesignates) certain sections of 25 CFR part 39 in order to conform to the amendments published on April 28, it makes no substantive changes. Failure to immediately make these redesignations would lead to confusion and cause errors in vital educational programs. For these reasons, public comments are unnecessary and would be impracticable.

Similarly, failure to immediately make the redesignations in this rule would result in a serious disruption of the Bureau of Indian Affairs' ability to provide necessary educational services, with accompanying confusion to employees and the public. This disruption and confusion would be contrary to public and tribal interests. For these reasons, the Department has determined it appropriate to waive the requirement of publication 30 days in advance of the effective date. As allowed by 5 U.S.C. 553(d)(3), this rule is effective immediately because it is in the public interest not to delay implementation of this amendment.

List of Subjects in 25 CFR Part 39

Indians—education, Schools, Elementary and secondary education programs, Government programs—education.

Dated: May 23, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

■ For the reasons given in the preamble, part 39 of title 25 of the Code of Federal Regulations is amended as set forth below.

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

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

Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110.

■ 2. In Subparts I through L, §§ 39.110 through 39.143 are redesignated as shown in the following table:

Current section number	Redesignated section number
39.110	39.900
39.111	39.901
39.112	39.902
39.113	39.903
39.114	39.904
39.120	39.1000
39.121	39.1001
39.122	39.1002
39.123	39.1003
39.130	39.1100
39.131	39.1101
39.140	39.1200
39.141	39.1201
39.142	39.1202
39.143	39.1203

§ 39.1100 [Amended]

■ 3. In newly redesignated § 39.1100, in the last sentence, the words ''detailed in § 39.19'' are removed.

■ 4. In newly redesignated § 39.1202(c), the words ''as set forth in § 39.19'' are removed.

[FR Doc. 05–11445 Filed 6–8–05; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA58

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Dealers in Precious Metals, Stones, or Jewels

AGENCY: Financial Crimes Enforcement Network (''FinCEN''), Treasury.

ACTION: Interim final rule; request for comments.

SUMMARY: FinCEN is issuing this interim final rule to prescribe minimum standards applicable to dealers in jewels, precious metals, or precious stones, pursuant to the provisions in the USA PATRIOT Act of 2001 that require financial institutions to establish anti-money laundering programs. This rule is being issued as an interim final rule because FinCEN is seeking additional public comment on several aspects of the interim final rule. These issues are addressed in the **SUPPLEMENTARY INFORMATION** section under the heading ''Request for Comments.'' We also are providing questions and answers to assist businesses in understanding how the interim final rule operates, and in determining whether and when a business's operations are covered by the interim final rule. These questions and answers appear in the **SUPPLEMENTARY INFORMATION** section under the heading ''Frequently Asked Questions.''

DATES: Effective Date: This interim final rule is effective July 11, 2005.

Applicability Date: The requirement that dealers develop and implement an anti-money laundering program applies as provided in 31 CFR 103.140(d).

Submission of Comments: Comments on the issues raised in the ''Request for Comments'' portion of this document must be received before July 25, 2005.

ADDRESSES: You may submit comments, identified by RIN 1506–AA58, by any of the following methods:

- *Federal e-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regcomments@fincen.treas.gov.* Include RIN 1506–AA58 in the subject line of the message.
- *Mail:* FinCEN, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AA58 in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov,* including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division (FinCEN), (800) 949–2732 (toll-free).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

The Bank Secrecy Act (BSA), Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, or in the conduct of intelligence or counter-intelligence activities to protect against international terrorism, and to implement counter-money laundering programs and compliance procedures.[1] Regulations implementing Title II of the BSA (codified at 31 U.S.C. 5311 *et seq.*) appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The provisions of 31 U.S.C. 5318(h), added to the BSA in 1992 by section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, authorize the Secretary of the Treasury ''[i]n order to guard against money laundering through financial institutions * * * [to] require financial institutions to carry out anti-money laundering programs.'' 31 U.S.C. 5318(h)(1). Those programs may include ''the development of internal policies, procedures, and controls;'' ''the designation of a compliance officer;'' ''an ongoing employee training program;'' and ''an independent audit function to test programs.'' 31 U.S.C. 5318(h)(1)(A–D).

On October 26, 2001, the President signed into law the USA Patriot Act. Section 352 of the USA Patriot Act, which became effective April 24, 2002, amended 31 U.S.C. 5318(h) of the BSA to require, and not merely authorize, anti-money laundering programs for all financial institutions defined in the BSA. Section 352(c) of the USA Patriot Act directs the Secretary to prescribe regulations for anti-money laundering programs that are ''commensurate with the size, location, and activities'' of the financial institutions to which such regulations apply.

Although a dealer in ''precious metals, stones, or jewels'' (''dealer'') has long been listed as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(N), FinCEN has not previously defined the term or issued regulations regarding dealers. On April 29, 2002, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to a number of new industries, including dealers. The purpose of the deferral was to provide FinCEN with time to study the industries and to consider how anti-money laundering controls could best be applied to them.[2] This rule defines the term dealer and describes the required elements of a dealer's anti-money laundering program.

B. Money Laundering Cases Involving Dealers

The statutory mandate that financial institutions establish an anti-money laundering program is a key element in the national effort to prevent and detect money laundering and the financing of terrorism, and recognizes that financial institutions other than depository institutions (which have long been subject to BSA requirements) are vulnerable to money laundering. Precious metals, precious stones, and jewels are easily transportable, highly concentrated forms of wealth and can be highly attractive to money launderers and other criminals, including those involved in the financing of terrorism. Recent cases demonstrate various ways in which precious metals, precious stones, and jewels can be used for illicit purposes. In particular, these cases demonstrate the risks involved in accepting third-party payments, and the importance of conducting reasonable inquiries when a customer's requests seem unusual.

Although the following two examples involve dealers who were acting in complicity with the illegal activity of their customers, they demonstrate money laundering methodologies that also could be conducted through unwary dealers. First, a Federal grand jury indictment illustrates the money laundering risks associated with the use of third-party payments.[3] A jewelry wholesaler pled guilty to laundering money by accepting third-party payments in drug proceeds for merchandise purchased by its retailer clients. A review of the wholesaler's records revealed several unusual patterns, including:

- Many instances in which the wholesaler received payment for merchandise from a party other than the purchaser (third-party payments); and
- Numerous examples of unusual check activity including payment in the form of sequentially numbered checks, multiple checks from the same account drawn on the same date, checks with no identified payor, payments drawn on a bank located in a county different from the country in which the purchaser lived, and checks paid through foreign countries.

Second, the results of the recently conducted Operation Meltdown demonstrate the importance of conducting reasonable inquiries when a customer's requests seem unusual. This money laundering scheme involved the use of couriers to deliver cash to gold dealers. The dealers exchanged the cash for gold and other precious commodities, which were then smuggled out of the United States. To make the gold less easily detected by inspectors, the gold dealers sometimes molded the gold into common items, such as tools, belt buckles, or light switches, or painted it.[4]

A review of suspicious activity reports filed with FinCEN by depository institutions also reveals instances in which banks and others suspected the involvement of dealers in unusual transactions. Several suspicious activity reports describe the use of bulk amounts of sequentially numbered U.S. money orders and traveler's checks deposited abroad. The money orders and traveler's checks were purchased for the maximum face value, and then were used to purchase diamonds and gems at

[1] Language expanding the scope of the BSA to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the USA Patriot Act), Public Law 107–56.

[2] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

[3] *U.S.* v. *Speed Joyeros, S.A.,* 204 F. Supp. 2d 412 (E.D.N.Y. 2002).

[4] *U.S.* v. *Ramerez,* 313 F. Supp. 2d 276 (S.D.N.Y. 2004).

dealers located in foreign countries. One suspicious activity report was filed by a U.S. bank that became suspicious about a series of checks payable to U.S. suppliers and issued on behalf of a foreign gold and gem company from a correspondent account at the bank. The bank contacted the correspondent for additional details about the transactions, and found that the invoice amounts did not correspond with the check amounts. Although there can be legitimate reasons for both making payments that do not match invoices and using sequentially numbered money orders or traveler's checks (such as limitations on the maximum face amount of these instruments), their use can be indicia of money laundering.

The Guidance for Financial Institutions in Detecting Terrorist Financing issued by the Financial Action Task Force on Money Laundering (the ''FATF'')[5] identifying vulnerabilities in financial industries on the financing of terrorism, includes an example involving a dealer. In this case, suspicious activity reports filed by several banks on two individuals and a diamond trading company identified high-volume unusual funds transfer activity to and from foreign countries, and the deposit of several large-value checks denominated in U.S. dollars. The financial intelligence unit of the country in which the filing banks are located learned from the police that, through these transactions, funds had been wired to a person suspected of buying diamonds on behalf of a terrorist organization.[6]

The vulnerabilities described above help demonstrate the need for an anti-money laundering program requirement for dealers to minimize the opportunity for abuse in this industry.

II. Notice of Proposed Rulemaking

This interim final rule is based on the notice of proposed rulemaking published February 21, 2003 (the ''NPRM'') (68 FR 8480). The NPRM sought to require dealers in jewels, precious metals, and precious stones to develop and implement written anti-money laundering programs appropriately tailored to the risk of money laundering or terrorism financing presented by their businesses. The NPRM focused on dealers, that is, businesses that both buy and sell these items, given FinCEN's conclusion that the most significant risks of money laundering or the financing of terrorism lie within those businesses that do both. Furthermore, the NPRM excluded most retailers from the scope of the regulation, based on the conclusion that retailers simply do not face the same level of risk. The elements of the anti-money laundering program outlined in the NPRM mirror those found in FinCEN's regulations for other types of financial institutions. The NPRM contained proposed definitions for the terms ''dealer,'' ''jewel,'' ''precious metal,'' and ''precious stone.''

The comment period for the NPRM ended on April 22, 2003. FinCEN received a total of 29 comment letters. Of these, 16 were submitted by dealer and pawnbroker trade associations, five by law firms, four by individuals, three by pawnbrokers, and one by a manufacturer.

III. Summary of Comments and Revisions

A. Introduction

The format of this interim final rule is generally consistent with the format of the rule proposed in the NPRM. The terms of the rule, however, differ from the terms of the NPRM in the following significant respects:

- The definitional threshold for a dealer has been revised from persons engaged in the purchase or sale, to persons engaged in the purchase and sale, of more than $50,000 in covered goods.
- The interim final rule contains a new defined term, ''covered goods,'' which includes jewels, precious metals, and precious stones, and finished goods (including jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods. The references to ''jewelry containing jewels, precious metals, or precious stones'' have been removed because such items are more specifically addressed within the new ''covered goods'' definition.
- Language has been added to clarify that the interim final rule only applies to U.S. dealers, *i.e.,* dealers with a physical presence in the U.S.
- An explicit exception for pawnbrokers has been added to the interim final rule.
- An exception from the meaning of the terms ''purchase'' and ''sale'' for purposes of the definition of ''dealer'' has been created for certain trade-in transactions, as a result of which such transactions would not count toward the $50,000 definitional thresholds.
- The exception relating to the fabrication of finished goods containing minor amounts of jewels, precious metals, or precious stones is no longer necessary (and therefore has been removed) as a result of (1) the new ''covered goods'' definition, and (2) a new exception from the definition of ''dealer'' and the anti-money laundering program requirement for the purchase of jewels, precious metals, and precious stones that are incorporated into equipment and machinery to be used for industrial purposes, and the purchase and sale of such equipment and machinery.
- The definition of ''retailer'' appears as a separate definition, and clarifies that the term applies only to a U.S. person who sells covered goods primarily to the public.
- The $50,000 thresholds in the rule to determine whether a person is a dealer and whether a retailer is eligible for the retailer exemption have been clarified to provide that, with respect to finished goods, only the value of the jewels, precious metals, or precious stones contained in or attached to such finished goods needs to be taken into account.
- The rule has been revised to provide that the anti-money laundering program of a retailer that does not qualify for the retailer exception due to purchases from persons other than dealers or other retailers need only cover such purchases.
- Language has been added to require a dealer, when making the risk assessment required by the rule, to take into account the extent to which it engages in transactions with persons other than dealers subject to the rule.
- The definition of ''precious stone'' has been revised to include tanzanite.
- A risk factor has been revised to apply to attempts by a customer to maintain an ''unusual,'' rather then a ''high,'' degree of secrecy with respect to a transaction.
- The applicability date of the interim final rule has been extended to January 1, 2006, or not later than six months after the date a person becomes a dealer for purposes of the interim final rule.

[5] The FATF is an inter-governmental body whose purpose is the development and promotion of policies to combat money laundering. Originally created by the G–7 nations, its membership now includes Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Hong Kong, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States, as well as the European Commission and the Gulf Cooperation Council.

[6] Financial Action Task Force on Money Laundering, Guidance for Financial Institutions in Detecting Terrorist Financing, April 24, 2002, at page 4 (*see http://www.faft-gafi.org/pdf/GuidFITFOI_en.pdf*).

B. Public Comments on the NPRM—Overview and General Issues

Comments on the NPRM concentrated on three matters: (1) Application of the retail exception to retailers that buy from foreign-located sources; (2) application of the rule to pawnbrokers; and (3) application of the definition of ''purchase'' to trade-in transactions.

1. Application of Retailer Exception to Retailers that Purchase from Foreign-Located Sources

The focus of a dealer's anti-money laundering program must be twofold: prevention and detection of money laundering and terrorist financing through the dealer by its customers, and prevention and detection of money laundering and terrorist financing through the dealer by its sources of supply. As explained in the NPRM, however, FinCEN has concluded that the risks of money laundering or terrorist financing are less significant in those businesses that engage primarily in retail sales of such products. As a result, the NPRM proposed to exclude certain retailers from the rule. To qualify for the proposed exception under the NPRM, a retailer would have had to purchase its products predominantly from other dealers subject to the NPRM. Specifically, under proposed section 103.140(a)(1)(ii)(A), the anti-money laundering program requirement would not apply to a retailer unless that retailer purchased annually more than $50,000 in jewels, precious metals, precious stones, or jewelry from persons that are not dealers. Persons that are not dealers subject to the rule would include members of the public, other U.S. persons not subject to the rule, and—for reasons of jurisdiction—foreign (non-U.S.) dealers in precious metals, precious stones, or jewels.

Several commenters asserted that FinCEN did not provide proper notice required under the Administrative Procedure Act with respect to whether purchases by a retailer from non-U.S. sources would be included within the $50,000 threshold which, if exceeded, would disqualify a dealer from utilizing the retailer exception. FinCEN disagrees. The preamble to the NPRM stated that ''there is substantially less risk that a retailer who purchases goods exclusively or almost exclusively *from dealers subject to the proposed rule* will be abused by money launderers.'' *See* 68 FR 8482 (emphasis supplied). Although the NPRM did not explicitly state that the rule would only apply to dealers located in the United States, such dealers are the only persons that could have been the subject of the NPRM.

Several commenters urged FinCEN to revise the retailer exception so that it would apply to retailers that purchase jewels, precious metals, precious stones, or jewelry, predominately from foreign-located sources. However, this approach would ignore the risk of money laundering and terrorist financing through a dealer's international source of supply.[7] One commenter suggested extending the exception to retailers that purchase from foreign sources that are located in countries that are members of the FATF. The application of anti-money laundering measures to dealers has been emphasized by the international community as a key element in combating money laundering and terrorist financing.[8] However, the fact that a country is a member of the FATF does not mean that the country requires dealers located within its borders to implement an anti-money laundering program, much less an anti-money laundering program that is similar to that contained in this interim final rule.[9] Thus, to extend the exception in the manner suggested would be contrary to the rationale underlying the exception. Finally, several commenters suggested permitting retailers that buy from foreign sources to be excepted from the anti-money laundering requirement to the extent that they receive written assurances that their foreign sources of supply have taken steps to prevent and detect money laundering. Given the importance of the anti-money laundering requirement, FinCEN has determined that written assurances from a source of supply that is not subject to the requirements of this rule does not justify a complete exception from the rule. Such assurances, however, could be a factor in assessing the degree of risk inherent in a particular relationship and the degree of scrutiny that accordingly should be brought to bear on it.

For all of the foregoing reasons, the interim final rule continues to provide that a retailer that sold more than $50,000 in covered goods during the prior year is not required to implement an anti-money laundering program unless it purchased during the prior year more than $50,000 in covered goods from persons other than dealers as defined in the interim final rule. In addition, language has been added to the retailer exception to ensure that a retailer's purchases from other retailers as defined in the interim final rule will not prohibit a retailer from taking advantage of the retailer exception. This change is intended to recognize the fact that retailers often purchase covered goods from other retailers, and that such purchases should not result in requiring a retailer to be covered by the rule. However, FinCEN recognizes that a retailer that would otherwise be completely exempt from the rule because of its lack of significant purchases from persons other than dealers or retailers should not have to implement a program directed at customer risk merely because it exceeds the $50,000 threshold in purchases from persons other than dealers and/or other retailers. Rather, an appropriate program for such a retailer would be limited to guarding against the risks presented by its sources of supply other than dealers and other retailers. FinCEN believes that this targeted approach presents the right balance between the money laundering risks of such businesses and the intent of the statute. Therefore, language has been added to section 103.140(b) of the interim final rule to provide that, to the extent that a retailer's purchases from persons other than dealers subject to the rule and other retailers exceeds the $50,000 threshold contained in the retailer exception, the anti-money laundering compliance program required of the dealer need address only such purchases; such a program would not be required to address sales, or other types of purchases.

2. Application of the Rule to Pawnbrokers

Several commenters requested clarification on whether the rule is

[7] *See* discussion of money laundering cases involving dealers, *supra* part I.B.

[8] In June 2003, FATF revised its Forty Recommendations to extend counter-money laundering and terrorist financing principles to dealers in precious metals and stones. Among the recommendations now applicable to dealers in precious metals and stones to the extent of transactions equal to or above $15,000 are those requiring customer due diligence, suspicious activity reporting, and record-keeping requirements. In addition, Recommendation 16 extends the development of anti-money laundering and terrorist financing programs to dealers in precious metals and stones.

[9] Although several FATF member countries have enacted anti-money laundering legislation that applies to dealers, the applicable requirements operate differently than those contained in this interim final rule. Directive 2001/97/EC of the European Parliament and of the Council Amending Council Directive 91/308/EEC on Prevention of the Use of the Financial System for the Purpose of Money Laundering (December 4, 2001) requires dealers in high-value goods such as precious stones or metals (when transactions involve cash payments of 15,000 euro or more) to establish internal control and communication procedures for the purposes of detecting and preventing money laundering, including employee training. Many European Union members have enacted legislation consistent with this Directive. *See, e.g.*, United Kingdom Statutory Instrument 2003 No. 3075 Financial Services, Money Laundering Regulations 2003 (November 28, 2003).

intended to apply to pawnbrokers. Although pawnbrokers take in covered goods from the public in return for funds, they do so in the context of extending short-term, non-recourse collateralized loans. Most often, such loans are repaid and the collateral is returned to the borrower. However, if the borrower fails to repay the loan, the pawnbroker forecloses on the collateral, subsequently selling the collateral to the general public. FinCEN has determined not to treat this type of transaction as the purchase and sale of covered goods for purposes of this rule.

Pawnbrokers are defined as financial institutions for BSA purposes (*see* 31 U.S.C. 5312(a)(2)(O)), and are therefore subject to the statutory requirement to implement an anti-money laundering program requirement. As noted above, FinCEN deferred the anti-money laundering program requirement contained in 31 U.S.C. 5318(h) that would have applied to many entities that are financial institutions in 31 U.S.C. 5312, including pawnbrokers. FinCEN intends to address at a later time the applicability of the anti-money laundering program requirements of 31 U.S.C. 5318(h) to pawnbrokers, but at this time, such a requirement for pawnbrokers remains deferred. For this reason, the interim final rule contains an explicit exception, found at new section 103.140(a)(2)(ii)(B), providing that the term dealer does not include a person licensed or authorized under the laws of any State (or local government) to do business as a pawnbroker, but only to the extent such person is engaged in pawn transactions, including the sale of pawn loan collateral.

3. Trade-in Transactions

As explained above, section 103.140(a)(1)(ii)(A) of the NPRM provided an exception from the anti-money laundering program requirement for retailers that do not purchase from persons other than dealers more than $50,000 in jewels, precious metals, precious stones, or jewelry during the prior year. Commenters indicated that many retailers, rather than purchasing jewels, precious metals, precious stones, or jewelry containing such items from retail customers for cash or cash equivalents, often accept such an item from the customer, a ''trade-in,'' and credit the value of the trade-in toward a new purchase by the customer at the retailer. Several commenters asserted that a trade-in transaction should not be deemed a ''purchase'' for purposes of the retailer exception because the money laundering risks involved in trade-in transactions are low. According to commenters, the average value of a trade-in is under $1,000. Many retailers limit the use of trade-ins to transactions in which the price of the item to be purchased is at least twice the value of the trade-in item, and do not permit a customer to obtain cash or cash equivalents in the course of a trade-in transaction. Moreover, some retailers will only accept a trade-in that was originally purchased from the retailer itself. Even if trade-ins were to be considered a ''purchase'' in the context of the retailer exception, commenters argued that certain types of trade-ins, for example trade-ins of low value (under $10,000), or trade-ins of jewelry worth 50 percent or less of the total purchase, should be exempted. According to commenters, if the rule were to treat all trade-in transactions as purchases, a large percentage of retailers would be unable to take advantage of the retailer exception.

In response to comments, and in order to balance the risks posed by trade-in transactions against the burdens imposed by the requirement to implement an anti-money laundering program, the interim final rule has been revised to specifically exempt certain trade-in transactions for purposes of the definition of ''dealer,'' including the retailer exception that appears in that definition. New section 103.140(a)(2)(iii) provides that for purposes of meeting the definition of a ''dealer,'' the ''purchase'' and ''sale'' of covered goods does not include retail transactions in which a dealer or retailer accepts from a customer covered goods, the value of which the dealer or retailer credits to the account of the customer, or to another purchase by the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods (the ''trade-in exception''). As a result of this exception, a person is not required to count a trade-in transaction toward the $50,000 threshold for the purchase and sale of covered goods for purposes of determining that person's status as a dealer under the rule.[10] It should be noted that the trade-in exception is only an exception from the ''dealer'' definition, and not an exception to the scope of the anti-money laundering program required of a person other than a retailer who otherwise meets the definition of ''dealer.''

IV. Section-by-Section Analysis

A. 103.140(a)—Definitions[11]

1. 31 CFR 103.140(a)(1)—Definition of ''Covered Goods''

Section 103.140(a) continues to define the key terms used in the rule. Section 103.140(a)(1) contains a new defined term, ''covered goods,'' which includes jewels, precious metals, and precious stones (as each is defined in paragraphs (3), (4), and (5), respectively, of subsection (a)), and finished goods that derive 50 percent or more of their value from jewels, precious metals, and precious stones contained in or attached to such finished goods. Such finished goods include, but are not limited to, jewelry, numismatic items, and antiques. The new defined term was added to replace the undefined term ''jewelry'' that was used in the NPRM and to clarify and broaden the scope of an exception in the NPRM for transactions in jewels, precious metals, and precious stones for purposes of fabricating finished goods, to the extent that the finished goods contain ''minor amounts of,'' or the value of the goods is ''not significantly attributable to,'' jewels, precious metals, or precious stones.[12] Commenters suggested that the rule provide more specificity on what is meant by the phrases ''minor amounts'' and ''not significantly attributable to.'' One commenter suggested that the exception apply to the extent that finished goods contain gems, precious metals, or precious stones worth not more than 10 percent of the product value, and two commenters suggested using a threshold of 50 percent of the product value. FinCEN believes that 50 percent constitutes a threshold that is consistent with the rule's definition of ''precious metal,'' which adopts a minimum purity level of at least 500 parts per 1000. Thus, the defined term ''covered goods'' adopts the 50 percent threshold for determining whether finished goods containing jewels, precious metals, or precious stones are products subject to the interim final rule.

2. 31 CFR 103.140(a)(2)—Definition of ''Dealer''

Section 103.140(a)(2)(i) defines ''dealer'' as any person who is engaged ''as a business in the purchase and sale of covered goods'' in excess of the dollar

[10] Similarly, a person is not required to count a trade-in transaction toward the $50,000 threshold for the purchase of covered goods from persons other than dealers and other retailers, for purposes of excluding a ''retailer'' from the ''dealer'' definition.

[11] FinCEN notes that these definitions apply only with respect to the interim final rule and not with respect to any other law or regulation.

[12] See also the discussion in the following part of the preamble regarding a new exception in section 103.140(a)(2)(iii)(B) of the interim final rule for purchases and sales of jewels, precious metals, and precious stones used in industrial products.

thresholds. This language differs slightly from the language contained in the NPRM, which had defined a dealer as a person engaged ''in the business of purchasing and selling'' jewels, precious metals, precious stones, or jewelry composed of jewels, precious metals, or precious stones. The change was made for purposes of consistency of terms and, except for the use of the new term ''covered goods,'' is not a substantive change. The terms ''purchase'' and ''sale'' are used throughout the rule, and as discussed below, new sections have been added to the rule excepting certain transactions from the meaning of ''purchase'' or ''sale.''

The rule applies only to persons that *both* purchase items that meet the definition of covered goods, *and* sell items that meet the same definition, in sufficient quantity to meet the $50,000 definitional thresholds. Therefore, a person that engages only in the sale of such products, for example a mining company that only sells precious metals that it mines, would not be covered by the definition. Similarly, a person who only engages in the purchase of such products, for example a person who purchases gold coins for gifts to family members, would not be covered by the rule.[13] Additionally, a manufacturer of jewelry that in one year purchases over $50,000 worth of gold of sufficient purity (for example, 14 carat gold) to meet the definition of ''precious metal,'' but that does not sell jewelry composed of gold of sufficient purity (for example, 10 carat gold after manufacturing) to be deemed ''covered goods,'' would not be a dealer for purposes of this rule. Finally, the rule would not generally apply to persons who merely facilitate the purchase and sale of covered goods. For example, persons who facilitate estate sales or conduct auctions, bankruptcy trustees, school districts that sponsor class ring sales, and persons who host in-home sales of a company's jewelry would not be ''dealers'' for purposes of the rule based on such activity.

The interim final rule contains language clarifying that the anti-money laundering program requirement applies only to a person engaged within the United States as a business in the purchase and sale of covered goods. This would include, for example, a person with a U.S. office, a person who comes to the United States to make purchases and sales of covered goods above the threshold amount at U.S. trade shows, and a foreign-located person who maintains sales staff engaged in such purchases and sales within the United States. However, it would not include, for example, a foreign dealer who ships products into the United States without conducting further business activity within the United States, or a foreign dealer that merely advertises in the United States or attends a trade-show in the United States at which it does not purchase and sell covered goods above the threshold amounts. This is consistent with the general applicability of BSA regulatory requirements to U.S. persons.[14] It should be noted that, under FinCEN's regulations, the status of a person's corporate parent, subsidiary, or affiliate does not affect the determination whether the person is itself a financial institution for BSA purposes. Thus, a person that does not engage in the business of dealing in covered goods would not be deemed a dealer solely by virtue of the fact that it is the parent, subsidiary, or affiliate of a dealer.

The interim final rule retains the minimum dollar threshold that was proposed in the NPRM, but has been modified to apply the threshold to both purchases and sales. Thus, sections 103.140(a)(2)(i)(A) and (B) provide that a person is a ''dealer'' only if, during the prior calendar or tax year, the person both (1) purchased more than $50,000 in covered goods, and (2) received more than $50,000 in gross proceeds from the sale of covered goods.[15] This change reflects FinCEN's determination that a person that does not reach the $50,000 threshold for both purchases and sales is not of sufficient size or risk to be required to implement an anti-money laundering program. A few commenters suggested that, instead of a yearly dollar volume threshold, the rule should contain a threshold based on a single transaction amount. These commenters argued in favor of a $10,000 transaction level, in light of the requirement that dealers, as non-financial trades or businesses, must report transactions involving currency in excess of $10,000 pursuant to 26 U.S.C. 6050I and 31 CFR 103.30.

This suggestion is not adopted in the interim final rule because it is not consistent with the risk-based approach that is taken in the rule. Imposition of a high-dollar transaction threshold would exempt dealers that conduct large volumes of business on an annual basis, even dealers engaging in numerous transactions at the $5,000 to $10,000 level, while covering a dealer that conducts a far lower annual volume of business that engages in as little as one transaction over $10,000. Although ensuring compliance with the currency reporting requirement found at 31 CFR 103.30 is an important part of a dealer's anti-money laundering program, the requirement to implement an anti-money laundering program is intended to accomplish the broader purpose of requiring a dealer to assess money laundering risks posed by its business model, and to take reasonable steps to lessen such risks. For these reasons, FinCEN believes that the $50,000 annual volume threshold for both sales and purchases best ensures that those dealers whose businesses pose the most significant risk of abuse for money laundering and terrorist financing (whether through transaction size or volume) are covered by the rule.

The NPRM contained two exceptions from the definition of dealer. The first exception applied to retailers, other than retailers that during the prior calendar or tax year, purchased more than $50,000 in jewels, precious metals, precious stones, or jewelry from persons other than dealers. The second exception applied to a person who engages in transactions in jewels, precious metals, or precious stones for purposes of fabricating finished goods that contain minor amounts of, or the value of which is not significantly attributable to, such precious metals, precious stones, or jewels. The substance of these exceptions has been retained in the interim final rule, but the exceptions have been re-structured and additional exceptions have been added. The interim final rule contains four exceptions, two relating to the definition of ''dealer,'' and two relating to the meaning of the terms ''purchase'' and ''sale.''

Section 103.140(a)(2)(ii) provides two exceptions from the definition of ''dealer.'' As described in Part III.B.1, above, the first exception provides that a retailer is a dealer only if it purchased more than $50,000 in covered goods from persons other than dealers or other retailers (*e.g.*, from the general public or

[13] In contrast, a person who buys and sells coins containing metals of a sufficient purity to meet the definition of ''precious metal'' would be treated as a dealer for purposes of this rule assuming the $50,000 purchase and sale thresholds were met and the person is not a retailer as defined in the rule.

[14] See, *e.g.*, the definition of financial institution in 31 CFR 103.11(n), which includes ''each agent, agency, branch or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern. * * *''

[15] The reference to ''calendar or tax year'' is intended to provide flexibility for dealers in determining whether they have reached the $50,000 thresholds. In the case of a dealer whose tax year is not the calendar year, this language is intended to avoid causing such dealer to keep two sets of records in order to determine if the threshold has been met. However, a dealer must continue to use whatever basis it initially chooses for determining whether it has reached the $50,000 thresholds, whether calendar year or tax year, unless it experiences a change in its taxable year.

from foreign persons not subject to the interim final rule) during the prior calendar or tax year. A retailer that is a dealer pursuant to this provision, however, would only have to address in its anti-money laundering program purchases from persons other than dealers and other retailers. As discussed further below, the definition of ''retailer'' has been taken out of the exception itself, and a separate definition of ''retailer'' has been added to the interim final rule.

The second exception from the definition of ''dealer,'' found at section 103.140(a)(2)(ii)(B) has been added to the rule to clarify that a person licensed or authorized under the laws of any State (or local government) to do business as a pawnbroker is not a dealer for purposes of the rule with respect to pawn transactions, including the sale of pawn loan collateral.

As discussed in part III.B.3. above, section 103.140(a)(2)(iii) provides an exception from the meaning of the terms ''purchase'' and ''sale'' as used in section 103.140(a)(2)(i) of the interim final rule for trade-in transactions.

Section 103.140(a)(2)(iv) provides an exception from the definitions of ''purchase'' and ''sale'' for purposes of both the definition of ''dealer'' in section 103.140(a)(2)(i) and the anti-money laundering program requirement in section 103.140(b), for transactions relating to industrial equipment containing covered goods. As discussed in Part IV.A.1. above, section 103.140(a)(1)(ii)(B) of the NPRM provided that a person engaged in transactions in jewels, precious metals, or precious stones for purposes of fabricating finished goods containing minor amounts of, or the value of which is not significantly attributable to, the precious metals, precious stones, or jewels, was not a ''dealer.'' The exception was intended to exempt the purchase and sale of precious metals, precious stones, or jewels in the context of buying, selling, and fabricating finished goods, including industrial products, that contain small amounts of jewels, precious metals, or precious stones, in order to ensure that the anti-money laundering program requirement is imposed on those sectors of the industry that pose the most significant risk of money laundering and terrorist financing.

FinCEN has concluded that the purchase of jewels, precious metals, and precious stones for use in industrial products, and the purchase or sale of such products, appears to be less susceptible to money laundering and terrorist financing risks, due to the fact that precious metals, precious stones, and jewels typically do not constitute a significant component of the value of an industrial product. Accordingly, the interim final rule contains a new exception from the terms ''purchase'' and ''sale'' (section 103.140(a)(2)(iv)) for the purchase of precious metals, precious stones, or jewels that are incorporated into machinery or equipment used for industrial purposes, and the purchase or sale of such machinery or equipment.

Commenters requested clarification as to whether ''toll-refining'' constitutes the purchase and sale of precious metals for purposes of the definition. As described by commenters, toll-refining is a transaction in which a company that uses precious metal in a process that results in scrap metal sends the scrap metal to a refiner that, for a fee, extracts the precious metal from the scrap and returns the precious metal to the company.

Commenters argued that because this type of transaction is not the exchange of metal for cash or other monetary consideration, but rather the payment of a fee in exchange for the performance of the process of extracting precious metal from scrap metal, it should not be deemed the purchase and sale'' of precious metals. FinCEN agrees. Although we believe it is unnecessary for the interim final rule to include a specific exemption for toll-refining, we clarify that toll-refining, as described above, does not constitute a purchase or sale of precious metals for purposes of this interim final rule.

Finally, a few commenters requested exemptive or other relief for specific types of businesses that fall within the definition of dealer, arguing that these businesses pose a low risk of money laundering and terrorist financing. Although it is not appropriate to resolve such fact-specific individualized situations in the context of a general rulemaking, persons wishing to obtain an administrative ruling relating to their specific situation may submit a request pursuant to 31 CFR 103.81. In addition, FinCEN has the authority to make exceptions to, or grant exemptions from, the requirements of 31 CFR part 103 pursuant to 31 U.S.C. 5318(a)(6) and 31 CFR 103.55.

Section 103.140(a)(2)(v) provides that, for purposes of applying the $50,000 definitional thresholds contained in the rule to the purchase and sale of finished goods, only the value of the jewels, precious metals, or precious stones contained in, or attached to, such goods must be taken into account.

3. 31 CFR 103.140(a)(3)—Definition of ''Jewel''

Section 103.140(a)(3) defines the term ''jewel'' to include organic substances that have a market-recognized gem level of quality, beauty, and rarity. FinCEN did not receive comments on the definition of ''jewel'' contained in the NPRM, and has retained the definition in the interim final rule.

4. 31 CFR 103.140(a)(4)—Definition of ''Precious Metal''

Section 103.140 (a)(4) defines ''precious metal'' to include gold, silver, and the platinum group of metals, at a level of purity of 500 parts per 1000 (50 percent) or greater, singly or in any combination. The definition is unchanged from the NPRM. Although one commenter suggested that the purity threshold should be lowered so that the rule would apply to dealers in 10 carat gold, another commented favorably on the purity threshold because it provides an approach that is tailored to cover higher-risk products. In order to balance the burdens associated with the rule against the lower risk of money laundering and terrorist financing with products of a lower purity threshold, the interim final rule retains the 50 percent purity threshold. However, FinCEN will continue to review whether it is appropriate to extend the anti-money laundering program to dealers that purchase and sell lower grade metals.

5. 31 CFR 103.140(a)(5)—Definition of ''Precious Stone''

The term ''precious stone'' is defined in section 103.140(a)(5) to include substances that have a market-recognized gem level of quality, beauty, and rarity. Therefore, precious stones of industrial quality are not included in the definition of precious stones. In response to a comment, the word ''inorganic'' has been removed from the definition. However, this change is not intended to alter the substantive effect of the definition. In addition, tanzanite has been added to the list of substances that will be treated as precious stones. Because it shares the characteristics of market-recognized, gem level quality, beauty, and rarity with other minerals in that category, and because of its significant market value, tanzanite can be used for money laundering and terrorist financing. Therefore, a person engaged as a business in the purchase and sale of tanzanite is covered by the anti-money laundering program requirement, to the extent that all of the other thresholds of the rule are met.

6. 31 CFR 103.140(a)(6)—Definition of ''Person''

Section 103.140(a)(6) provides that for purposes of the interim final rule, the term ''person'' has the same meaning as provided in 31 CFR 103.11(z).

7. 31 CFR 103.140(a)(7)—Definition of ''Retailer''

The retailer exception proposed in section 103.140(a)(1)(ii)(A) of the NPRM defined a retailer as ''a person engaged in the business of sales to the public of jewels, precious metals, or precious stones, or jewelry composed thereof.'' In the interim final rule, a separate section containing the definition of ''retailer'' has been created, and language has been added to the definition to clarify the scope of the definition. New section 103.140(a)(7) provides that a retailer is a U.S. person engaged in the business of sales *primarily* to the public of covered goods. The purpose of this revision is to clarify that the retailer exception found at section 103.140(a)(1)(ii)(A) of the interim final rule applies to those dealers whose sales are made primarily to the public, so that the rule does not apply to a dealer whose sales to persons other than members of the public constitute a minimal portion of the dealer's overall sales. Thus, a dealer whose business is primarily with the public would not be disqualified from the retailer exception solely because of occasional sales to a dealer or retailer. However, a dealer whose business is not primarily with the public, but with other persons such as dealers, would not be treated as a retailer under the interim final rule.

B. 103.140(b)—Anti-Money Laundering Program Requirement

Section 103.140(b) of the interim final rule continues to require that each dealer develop and implement an anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering or the financing of terrorist activities, and clarifies that the program is to apply to the dealer's purchases and sales of covered goods. The program must be in writing and should set forth clearly the details of the program, including the responsibilities of the individuals and/or departments involved. In addition, a dealer's program must be approved by its senior management. A dealer must make its anti-money laundering program available to the Treasury or its designee upon request. While it is permissible for a dealer to delegate certain functions relating to its anti-money laundering program to a third party, the dealer remains responsible for ensuring compliance with these requirements. To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in paragraph (a)(2)(ii)(A), the anti-money laundering compliance program required of the retailer need only address such purchases.

Although ensuring compliance with the requirement to report transactions involving currency in excess of $10,000 pursuant to 26 U.S.C. 6050I and 31 CFR 103.30 should be an element of a dealer's anti-money laundering program, it should not be the sole focus. Rather, as noted above, a dealer's program must be reasonably designed to prevent the dealer from being used to facilitate money laundering or the financing of terrorist activities. Several commenters expressed concern about the standard to which they would be held under the ''reasonably designed'' language. These commenters argued that there is little information available to dealers to consult when evaluating whether a transaction may involve money laundering or terrorist financing, and suggested that FinCEN provide specific sources of reference for dealers to use when determining whether a particular transaction may potentially involve money laundering or the financing of terrorism. Dealers able to demonstrate that they have checked these sources of information, commenters asserted, should be deemed in compliance with the anti-money laundering program requirement. In addition, commenters expressed concern that, while money laundering is a concept that can be understood in terms of objective criteria, terrorist financing is more subjective, making it more difficult for dealers to implement a program designed to prevent it. Commenters suggested that FinCEN provide more information on the methods by which people attempt to finance terrorism through transactions with dealers. Finally, some commenters suggested that FinCEN develop a written program that could be used by dealers.

The use of the phrase ''reasonably designed'' in paragraph (b) is intended to provide dealers with the flexibility to tailor their programs to their specific circumstances so long as the minimum requirements are met. The interim final rule applies to many different types of dealers that engage in purchase and sale transactions involving a variety of products and different types of customers and sources of supply. Dealers must use the expertise that they possess about their industry, their particular business, and their particular customers and suppliers to develop a program that meets the requirements of the rule. However, FinCEN recognizes the importance of providing guidance to assist dealers in assessing the risks related to their businesses, and in identifying transactions that may be indicative of money laundering or terrorist financing. The examples of transactional behavior that may indicate money laundering or terrorist financing contained in the text of the rule, as well as the information about recent cases contained in this preamble, are intended to be the starting point. Going forward, FinCEN is committed to providing dealers with additional guidance, including analysis of relevant trends and patterns of money laundering and terrorist financing, whenever possible.

The interim final rule requires that each dealer develop and implement a program reasonably designed to prevent money laundering. Accordingly, when evaluating a dealer's compliance with the requirements of this rule, the focus will be on the design and implementation of the program. The Treasury and FinCEN recognize that even the best of anti-money laundering programs cannot guarantee that a dealer will not be used by a money launderer.

Finally, in response to comments, FinCEN wishes to clarify that a dealer's anti-money laundering program need not be made available for inspection at each of the dealer's locations. It is sufficient that a dealer maintain a copy of its written program at one location within the United States, for example the dealer's headquarters or the location of the person designated as the dealer's compliance officer.

C. 103.140(c)—Minimum Requirements

Section 103.140(c) continues to set forth the minimum requirements of a dealer's anti-money laundering program.

1. 31 CFR 103.41(c)(1)—Policies, Procedures and Internal Controls

Section 103.140(c)(1) provides that a dealer's anti-money laundering program must incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls must also include provisions for complying with applicable BSA requirements. Thus, a dealer's program must address its obligation to report on Form 8300 the receipt of cash or certain non-cash instruments totaling more than $10,000 in one transaction or in two or more related transactions. If dealers

become subject to additional BSA requirements, their anti-money laundering programs will need to be updated accordingly.

Section 103.140(c)(1)(i) provides that, for purposes of making the risk assessment required under section 103.140(c)(1), a dealer must consider all relevant factors, including the specific factors contained in the rule. The specific risk factors listed in the rule require a dealer to (1) assess the money laundering and terrorist financing risks associated with its products, customers, suppliers, distribution channels, and geographic locations, (2) take into consideration the extent to which the dealer engages in transactions other than with established customers, or sources of supply, or other dealers subject to this rule, and (3) analyze the extent to which it engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified as vulnerable to terrorism or money laundering.[16] The rule is intended to give a dealer the flexibility to design its program to meet the specific money laundering and terrorist financing risks presented by the dealer's business, based on the dealer's assessment of those risks. Language has been added to the second risk assessment factor to require dealers to take into account the potential risks involved in engaging in transactions with persons who are not subject to this rule.

Section 103.140(c)(1)(ii) provides that a dealer's policies, procedures, and internal controls must be reasonably designed to detect transactions that may involve use of the dealer to facilitate money laundering or terrorist financing. In addition, a dealer's program must incorporate procedures for making reasonable inquiries to determine whether a transaction may involve money laundering or terrorist financing. A dealer that identifies indicators that a transaction may involve money laundering or terrorist financing should take reasonable steps to determine whether its suspicions are justified and respond accordingly, including refusing to enter into, or complete, a transaction that appears designed to further illegal activity.[17] The interim final rule continues to list several examples of factors that may indicate that a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing.

The rule provides flexibility to dealers in developing procedures for making reasonable inquiries under section 103.140(c)(1)(ii). For example, a dealer may appropriately determine that reasonable inquiry with respect to a transaction conducted by a new customer or supplier involves considerable scrutiny, including verification of customer identity, or the purpose of a transaction. In contrast, reasonable inquiry with respect to an established customer may not involve additional steps beyond those normally required to complete the transaction, unless the transaction appears suspicious or unusual to the dealer. As explained further below, the determination whether to refuse to enter into, or to terminate, a transaction lies with the dealer. In addition, dealers are encouraged to adopt procedures for voluntarily filing Suspicious Activity Reports with FinCEN and for reporting suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–556–3974).

FinCEN has not at this time proposed a suspicious activity reporting rule for dealers. However, given the importance of ensuring that information relevant to the use of covered products for financial crime or the financing of terrorism is provided to law enforcement, we are considering proposing a suspicious activity reporting rule in the future. We will work closely with law enforcement and the industry as we consider whether such a rule is appropriate.

The list of factors contained in the rule is intended to provide examples of what may indicate illegal activity, and is by no means exhaustive. Determinations as to whether a transaction should be refused or terminated must be based on the facts and circumstances relating to the transaction and the dealer's knowledge of the customer or supplier in question. It is not intended that dealers automatically refuse to engage in or terminate transactions simply because such transactions involve one or more of the factors listed in the rule. Rather, it is intended that dealers will develop procedures for identifying transactions involving potentially illegal activity, and procedures setting forth the actions that a dealer will take in response to such transactions.

The factors in the interim final rule are identical to those contained in the proposed rule, with one exception. One commenter suggested that the factor contained in section 103.140(c)(1)(ii)(C), relating to an attempt by a customer to maintain a high degree of secrecy with respect to a transaction, should be eliminated because in an industry with security concerns stemming from the high dollar value of jewels, precious metals, and precious stones, transactions are typically characterized by secrecy. FinCEN wishes to clarify that this factor is not intended to apply to the level of concern for personal security or the security of valuable merchandise that is customary in the normal course of business for this industry. Rather, it is intended to apply to transactions in which a customer attempts to maintain a level of secrecy that is unusual in light of the level of secrecy that is normal and customary for the industry, or the business of the particular dealer, or the type of transaction. In response to this comment, section 103.140(c)(1)(ii)(C) has been revised to apply to attempts by a customer or supplier to maintain ''an unusual degree of secrecy'' with respect to the transaction.

2. 31 CFR 103.41(c)(2)—Compliance Officer

Section 103.140(c)(2) continues to require that a dealer designate a compliance officer to be responsible for administering the anti-money laundering program. The person (or group of persons) should be competent and knowledgeable regarding BSA requirements and money laundering issues and risks, and should be empowered with full responsibility and authority to develop and enforce appropriate policies and procedures throughout the dealer's business. The role of the compliance officer is to ensure that (1) the program is being implemented effectively, (2) the program is updated as necessary, and (3) appropriate persons are trained in accordance with the rule. The compliance officer also provides an available resource for employees with questions regarding BSA requirements.

[16] Examples of designations to this effect include the Department of State's designation of a jurisdiction as a sponsor of international terrorism under 22 U.S.C. 2371 (see *http://www.state.gov/s/ct/rls/pgtrpt/*), the FATF's designation of jurisdictions that are non-cooperative with international anti-money laundering principles (see *http://www.fatf-gafi.org/NCCT_en.htm*), or the Secretary of the Treasury's designation, pursuant to 31 U.S.C. 5318A of jurisdictions warranting special measures due to money laundering concerns (*http://www.fincen.gov*).

[17] 18 U.S.C. 1956 and 1957 make it a crime for any person, including an individual or company, to engage knowingly in a financial transaction with the proceeds from any of a long list of crimes or types of ''specific unlawful activity.'' Although the standard of knowledge required is ''actual knowledge,'' actual knowledge includes ''willful blindness.'' Thus, a person could be deemed to have knowledge that proceeds were derived from illegal activity if he or she demonstrated ''willful blindness'' to ''red flags'' that indicated illegality. *See, e.g., U.S.* v. *Finkelstein*, 229 F.3d 90 (2nd Cir. 2000) (owner of jewelry/precious metals business convicted for participation in money laundering scheme; sentence enhancement based on willful blindness regarding receipt of funds derived from narcotics trafficking).

Whether the compliance officer is dedicated full time to BSA compliance would depend upon the size and complexity of the dealer's business and the risks posed. In all cases, the person responsible for the supervision of the overall program must be an officer or employee of the dealer.

3. 31 CFR 103.41(c)(3)—Education and Training

Section 103.140(c)(3) continues to require that a dealer provide for training of appropriate persons. Employees of the dealer must be trained in BSA requirements relevant to their functions, including recognizing possible signs of money laundering and terrorist financing. The level, frequency, and focus of the training should be determined by the responsibilities of the employees, and any factors the dealer has identified in its risk assessment.[18] Employees should receive periodic updates and refreshers regarding the anti-money laundering program.

4. 31 CFR 103.41(c)(4)—Independent Testing

Section 103.140(c)(4) continues to require that a dealer conduct periodic testing of its program, to ensure that the program is functioning as designed. Such testing should be accomplished by personnel knowledgeable regarding BSA requirements. The frequency of such a review will vary by dealer, depending upon factors such as the size and complexity of the dealer, the nature of its business, and any relevant factors identified by the dealer in the course of conducting its risk assessment.

Testing may be accomplished either by dealer employees or unaffiliated service providers so long as those same individuals are not involved in the operation or oversight of the program. One commenter expressed concern that the independent testing requirement would place an unfair burden on smaller businesses, requiring them to bear the cost of hiring an outside auditor because their entire staff would be directly involved in the operation or oversight of the program. Under the terms of the rule, however, the required independent review may be performed by an employee of the dealer (or a co-owner), so long as the reviewer is not the designated compliance officer or involved in the operation of the program.

D. 103.41(d)—Effective Date

The NPRM proposed that a dealer must develop and implement an anti-money laundering program within 90 days after publication of the interim final rule, or not later than 90 days after the date a person becomes a dealer for purposes of the rule. Several commenters requested an extension of the effective date to at least 180 days after issuance of the final rule. In view of the diversity of the businesses that constitute dealers in covered goods, coupled with the fact that dealers are not currently regulated as financial institutions, FinCEN agrees that a longer delayed applicability date is warranted. The interim final rule (section 103.140(d)) provides that the a dealer is required to develop and implement an anti-money laundering program not later than January 1, 2006, or six months after the date a dealer becomes subject to the provisions of the interim final rule.

V. Frequently Asked Questions

FinCEN is providing the following questions and answers to assist dealers in precious metals, precious stones, and jewels in understanding the scope of this interim final rule.

1. Why is FinCEN issuing a regulation requiring dealers in precious metals, stones, and jewels to establish an anti-money laundering program?

As with all of FinCEN's regulations requiring the establishment of an anti-money laundering program, FinCEN is issuing this regulation to better protect those who deal in jewels, precious metals, and precious stones from potential abuse by criminals and terrorists, thereby enhancing the protection of the U.S. financial system generally, and the precious metals, jewels and precious stones industry in particular. The characteristics of jewels, precious metals, and precious stones that make them valuable also make them potentially vulnerable to those seeking to launder money. This regulation is a key step in ensuring that the Bank Secrecy Act (BSA) is applied appropriately to these businesses.

Recognizing the need for a more comprehensive anti-money laundering regime, Congress passed, and the President signed into the law, the USA Patriot Act, which, among other things, requires that all persons defined as financial institutions for BSA purposes establish anti-money laundering programs. The Act further directs the Secretary of the Treasury to prescribe through regulation minimum standards for such programs. A dealer in jewels, precious metals, or precious stones is defined as a ''financial institution'' under the BSA, and this regulation fulfills that mandate of the USA Patriot Act.

2. Why is this being issued as an ''Interim Final'' rule? Will it change?

FinCEN is issuing this rule as an interim final rule to give us the flexibility to more narrowly tailor certain aspects of the rule in response to our request within this rule for additional public comment on four discrete issues, while still ensuring that dealers immediately begin to develop anti-money laundering programs.

Through the course of the rulemaking process and in developing a final rule, FinCEN has identified several important issues that would affect the scope of the regulation but on which it received little or no public comment. Thus, to ensure an effective and appropriately focused regulation, FinCEN seeks public comment regarding the following issues (which are discussed more fully under the heading ''Request for Comments''):

(1) Should silver be removed from the definition of a ''precious metal?''

(2) Should ''precious stones'' and ''jewels'' be defined more specifically, for example, by reference to a minimum price per carat, and if so, how?

(3) Is 50 percent the appropriate value threshold for determining whether finished goods (including jewelry) containing jewels, precious metals, or precious stones should be subject to the rule?

(4) In addition, FinCEN is again requesting comments on the potential impact of the rule on small businesses (including manufacturers, dealers, wholesalers, distributors, and retailers) that may be ''dealers'' subject to the provisions of the rule.

FinCEN is soliciting comments until July 25, 2005. After the end of the comment period, FinCEN will review all comments received and determine whether any further changes should be made in the final rule. At this time, FinCEN will only consider comments addressing the issues outlined above, and FinCEN anticipates that changes, if any, will be made before January 1, 2006, the date that dealers are required to implement their anti-money laundering programs.

Dealers covered by the interim final rule are expected to begin developing anti-money laundering programs in accordance with the terms of this interim final rule. Any changes that FinCEN makes to the rule would likely reduce compliance burdens on dealers.

3. Who is covered by this regulation?

[18] Appropriate topics for an anti-money laundering program include, but are not limited to: BSA requirements, a description of money laundering, how money laundering is carried out, what types of activities and transactions should raise concerns, what steps should be followed when suspicions arise, and the need to review OFAC and other government lists.

The interim final rule applies to ''dealers'' in ''covered goods.'' ''Covered goods'' include jewels, precious metals, and precious stones, and finished goods (including but not limited to, jewelry, numismatic items, and antiques) that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods.

FinCEN has defined the term ''dealer'' as it is commonly understood: A person who both purchases and sells covered goods. Additionally, FinCEN has included dollar thresholds in the definition of dealer: A person must have purchased at least $50,000, and sold at least $50,000, worth of covered goods during the preceding year. The dollar threshold is intended to ensure that the rule only applies to persons engaged in the business of buying and selling a significant amount of these items, rather than to small businesses, occasional ''dealers,'' and persons dealing in such items for hobby purposes.

Significantly, the interim rule distinguishes between a dealer and ''retailer'' of covered goods. FinCEN has defined the term retailer as a person engaged within the U.S. in sales of covered goods, primarily to the public. FinCEN believes that retailers, as defined, do not pose the same level of risk for money laundering as do dealers. Thus, most retailers will not be required to establish anti-money laundering programs.

So long as retailers generally purchase their covered goods from U.S.-based dealers and other retailers, the retailers will not be required to establish anti-money laundering programs. Thus, retailers that, for example, purchase excess inventory from other retailers from time to time would still be covered by the retailer exemption.

Under the interim final rule, a retailer that purchases up to $50,000 of covered goods from persons other than U.S.-based dealers or retailers is covered by the retailer exemption. However, if during the prior tax or calendar year a retailer both purchased more than $50,000 of covered goods from persons other than U.S. dealers or retailers (such as non-U.S. dealers and members of the general public), and sold more than $50,000 of covered goods, then the retailer would be deemed to be a ''dealer'' and would have to develop and implement an anti-money laundering program. Under such circumstances, the anti-money laundering program would only be required to address purchases from non-U.S. dealers (including members of the general public) for the following year; the program would not be required to address sales.

Finally, businesses licensed or registered as pawnbrokers under State or municipal law are specifically exempted from the definition of ''dealer'' for purposes of the interim final rule. Thus, a pawnbroker is not required to establish an anti-money laundering program under this rule as long as the pawnbroker is properly licensed or registered with the appropriate State or local government and is engaged in pawn transactions.

3(a) Is the purchase and sale of jewelry and other finished goods containing jewels, precious metals, or precious stones subject to the rule as well?

The purchase and sale of jewelry and other finished goods containing jewels, precious metals or precious stones would subject a person to the rule, only if such jewelry or other finished goods derive at least 50 percent of their value from the jewels, precious metals or precious stones they contain. The purpose of this distinction is to ensure that FinCEN does not regulate a wide variety of goods whose value is not primarily derived from the jewels, precious metals or precious stones they contain.

3(b) How do I determine whether I have purchased and sold $50,000 worth of jewels, precious metals or precious stones?

The $50,000 threshold is based solely on the value of jewels, precious metals, and precious stones that were purchased and sold during the prior year. For example, if a business purchases and sells jewelry, at least 50 percent of the value of which is derived from jewels, precious metals, or precious stones, the $50,000 threshold is calculated based on the value of the jewels, precious metals, and precious stones contained in such jewelry, not on the overall value of the jewelry. This distinction ensures that the focus of the rule remains on jewels, precious metals, and precious stones, not on value due to other reasons.

3(c) How do I determine whether the businesses from which I purchase my covered goods are ''dealers'' or other ''retailers'' for purposes of the interim final rule?

FinCEN expects persons engaged in the business of buying and selling covered goods to take reasonable steps to determine whether a supplier is covered by this interim final rule or whether the supplier is eligible for the retailer exemption. Reasonable steps will depend on the nature of the relationship between the supplier and the person purchasing the items. FinCEN understands that the jewel, precious metal, and precious stone industry is one often characterized by personal relationships. Accordingly, in most cases, FinCEN anticipates that the verbal or written representations of the supplier will be sufficient. However, in other cases, additional due diligence will be required.

3(d) In 2005, I will purchase more than $50,000 in jewels, precious metals, and precious stones that I use to manufacture inexpensive jewelry that I sell to retail stores. Will I be required to have an anti-money laundering program in 2006?

If the jewels, precious metals, and precious stones in your jewelry account for 50 percent or more of the selling price of the jewelry, and the value of the jewels, precious metals and precious stones contained in the jewelry you sell exceeds $50,000, you will be required to have an anti-money laundering program.

If only some of your jewelry derives 50 percent or more of its selling price (the price at which you sell it to the retail stores, not the price that the retail stores will charge their customers) from jewels, precious metals, or precious stones, you only need to count the value of the jewels, precious metals, or precious stones in that jewelry towards your $50,000 ''sales'' threshold.

The focus of this rule is on the jewels, precious metals, and precious stones—not on the jewelry or other finished items. Therefore, only jewelry (and other finished goods) that derive at least 50 percent of their value from the jewels, precious metals, and precious stones are subject to this rule.

The anti-money laundering program should focus on realistic money-laundering risks, based on the experience of the industry and government. FinCEN believes that these thresholds help to better focus the rule on those risks, and will be periodically issuing information to the industry regarding its knowledge and experience with money laundering risks to this industry.

3(e) I sell precious stones primarily to the public, but my supplier is a foreign company. Am I required to establish an anti-money laundering program?

If, during 2005, you purchase more than $50,000 in precious stones from your foreign supplier, and sell more than $50,000 in precious stones, you must develop and implement an anti-money laundering program by January 1, 2006. But, because you are a retailer, your anti-money laundering program would only need to address the money laundering risks associated with the purchases from your foreign supplier.

3(f) Are trade-in transactions ''purchases'' under this rule?

Not for the purpose of defining who is a dealer subject to the rule.[19] FinCEN has learned that it is quite common for dealers and retailers in covered goods to allow retail customers to trade-in existing items for credit against the purchase of a new item. Therefore, so long as the value of the trade-in is credited to the account of the customer, and so long as a dealer or a retailer does not provide funds to the customer in exchange for the trade-in, these transactions need not be taken into account in determining the dollar value of covered goods purchased.

The trade-in exception only applies for purposes of determining who is a ''dealer,'' and not to the scope of the anti-money laundering program required of a dealer. Therefore, a dealer that is not a retailer would be required to evaluate the risks posed by trade-in transactions in determining the appropriate program requirements, as it would with other transactions in covered goods.

3(g) I am a retail jeweler who sometimes buys jewelry from the general public, which I re-sell in my store. Am I required to have an anti-money laundering program?

You would be required to establish an anti-money laundering program only if, during the prior calendar or tax year:

(1) You sold jewelry containing more than $50,000 in jewels, precious metals, and precious stones, and the value of the jewels, precious metals, and precious stones comprised 50 percent or more of the selling price of the jewelry; and

(2) You purchased from the general public jewelry containing more than $50,000 in jewels, precious metals, and precious stones, and the value of the jewels, precious metals, and precious stones comprised 50 percent or more of the purchase price of the jewelry.

If you are required to have an anti-money laundering program, it would only need to address the risks associated with purchases from the public of jewelry that derives 50 percent or more of its value from jewels, precious stones, or precious metals. It would not need to address your sale of covered goods.

3(h) I purchase jewels, precious stones, and precious metals for the purpose of making and selling decorative consumer goods. Do I have to establish an anti-money laundering program?

If you sell your goods primarily to the public, you are a retailer and do not have to establish an anti-money laundering program, unless during the prior tax or calendar year:

(1) The value of the jewels, precious stones and precious metals contained in the goods you sold was more than $50,000, and the value of the jewels, precious stones, and precious metals comprised 50 percent or more of the selling price of those goods; and

(2) You purchased more than $50,000 in jewels, precious stones, and precious metals from either foreign sources or the general public, in which case your program need address only those sources of supply.

If you are not a retailer, you must establish an anti-money laundering program if, during the prior tax or calendar year:

(1) You purchased more than $50,000 in jewels, precious stones, and precious metals from any source of supply; and

(2) The value of the jewels, precious stones and precious metals contained in the goods you sold was more than $50,000, and the value of the jewels, precious stones, and precious metals comprised 50 percent or more of the selling price of those goods.

3(i) I am an antiques dealer who purchases and sells items that contain jewels, precious metals or precious stones. Am I required to have an anti-money laundering program?

If you sell your antiques primarily to the public, you are a retailer and do not have to establish an anti-money laundering program, unless during 2005:

(1) The value of the jewels, precious stones and precious metals contained in the antiques you sold was more than $50,000, and the value of the jewels, precious stones, and precious metals comprised 50 percent or more of the selling price of those antiques; and

(2) You purchased antiques from foreign sources or the general public that contained more than $50,000 in jewels, precious stones, and precious metals, and the value of the jewels, precious stones, and precious metals comprised 50 percent or more of the purchase price of those antiques; in which case your program need address only those sources of supply.

If you are not a retailer because, for example, you sell your antiques equally to other antiques dealers as well as the general public, you must establish an anti-money laundering program if, during 2005:

(1) The value of the jewels, precious stones and precious metals contained in the antiques you purchased was more than $50,000, and the value of the jewels, precious stones, and precious metals accounted for 50 percent or more of the purchase price of those antiques; and

(2) You sold antiques that contained more than $50,000 in jewels, precious stones, or precious metals, and the value of the jewels, precious stones, and precious metals comprised 50 percent or more of the selling price of those antiques.

In all cases, it is only the value of the jewels, precious metals, and precious stones in the antiques that matters, not the value of the antiques themselves.

Because of price ''mark-ups'' it is possible that the precious metals in an antique you purchased accounted for more than 50 percent of its purchase price, but less than 50 percent of its selling price when you sold it. If this is the case, you would need to count the purchase toward your $50,000 ''purchases'' threshold, but the sale would not count toward your ''sales'' threshold.

3(j) What about the purchase of jewels, precious stones, or precious metals for use in machinery or equipment to be used for industrial purposes? If a business manufactures such equipment and sells it, is that business subject to this rule?

No. The purchase of jewels, precious metals, and precious stones for use in industrial products, and the purchase or sale of such products, appears to be less susceptible to money laundering and terrorist financing risks, due to the fact that precious metals, precious stones, and jewels typically do not constitute a significant component of the value of an industrial product. Therefore, persons who engage in these activities are not dealers to the extent of such activities for purposes of the interim final rule.

4(a) What are the requirements for the anti-money laundering program?

At a minimum, dealers must establish an anti-money laundering program that comprises the four elements set forth below. FinCEN offers the following guidance to assist dealers in the development of their program. However, this guidance does not supplant the terms of the interim final rule, and the steps required in any one particular case will depend on the unique circumstances of each business:

(1) Policies, procedures, and internal controls, based on the dealer's assessment of the money laundering and terrorist financing risk associated with its business, that are reasonably designed to enable the dealer to comply with the applicable requirements of the Bank Secrecy Act and to prevent the dealer from being used for money laundering or terrorist financing.

[19] Trade-in transactions also are not considered ''purchases'' for purposes of determining whether a retailer qualifies for the retailer exception to the definition of ''dealer.''

You should learn what the BSA requirements are for your business. For most dealers, the requirements are (1) to establish an anti-money laundering program, (2) to file IRS/FinCEN Form 8300,[20] (3) to file FinCEN Form TD F 90–22.1 [21], and (4) to file FinCEN Form 105.[22] All of these forms and their instructions are available at *http://www.fincen.gov.*

As the preamble to the rule describes, you should assess the extent to which your particular business is susceptible to money laundering and terrorist financing. For example, business you conduct with other U.S. dealers subject to the rule, and established customers or suppliers, presents a relatively low level of risk. On the other hand, business conducted with parties located in, or transactions for which payment or account reconciliation is routed through accounts located in, jurisdictions that have been identified as particularly vulnerable to money laundering or terrorist financing, present a significantly higher risk, and therefore require greater diligence for detecting transactions that may involve money laundering or terrorist financing.

You should look at the FinCEN Web site for information and updates on money laundering and terrorist financing risks, as they apply to your industry.

You should talk with colleagues in your industry and consult industry trade associations to learn what the best practices are among dealers.

Finally, you should consider all of the things that you learn in the context of your own business. FinCEN does not expect that this program can prevent all potential money laundering. What is expected is that your business will take prudent steps, with the same kind of thought and care that you take to guard against other crimes, such as theft or fraud.

(2) A compliance officer who is responsible for ensuring that the program is implemented effectively.

The compliance officer is an employee or group of employees who will be responsible for the day-to-day operation of your anti-money laundering and counter-terrorist financing program. This person will be responsible on a day-to-day basis for ensuring that the steps within your own program are fully implemented. As such, this person should be someone with enough authority to achieve this important task. The amount of time devoted to these duties will depend on the level of risk. A dealer is not required to designate a person to serve on a full-time basis as a compliance officer for purposes of the interim final rule, unless the level of risk or volume of transactions warrants that. If your business faces very high level of risk for money laundering or terrorist financing, then much will be required of this person. If your exposure to these risks is more moderate, then the level of effort will be commensurate with that risk.

In all cases, however, the compliance officer should be thoroughly familiar with the operations of the business itself and with all aspects of your anti-money laundering program, as well as with the requirements of the BSA and applicable FinCEN forms, and should have read carefully all applicable documents issued by FinCEN or on FinCEN's Web page.

(3) Ongoing training of appropriate persons concerning their responsibilities under the program.

You should first consider what training is appropriate for each individual employee. Some employees may require no training on the program, because of their duties. Others may require a great deal of training. The training should be clearly understood by your employees, and the compliance officer should be available to answer all questions posed by employees. Remember that you should periodically retrain your employees on your program as may be necessary to ensure that they understand and can fully implement your program.

(4) Independent testing to monitor and maintain an adequate program.

Some person or group of people who are not working specifically for the compliance officer on the anti-money laundering program should be selected to determine whether the program has been appropriately implemented and is working. For example, if the program requires that a particular employee be trained once every six months, then the independent testing should determine whether the training occurred and whether the training was adequate. Independent testing does *not* mean that an outside party must be hired, although outside parties may be utilized to conduct the independent review. It does mean, though, that the testing should be a fair and unbiased appraisal of the success in implementing the anti-money laundering program, and the results of the independent testing should be put into writing, including any recommendations for improvement.

Independent testers should carefully consider all the decisions made by the compliance officer, such as the level of risk faced by the dealer for money laundering and terrorist financing, the frequency of training, etc. However, the decision as to how best to establish and operate the program is not a task for the independent tester. The independent testing is intended to confirm that the program operates properly.

4(b) What resources are available to help me establish an adequate program?

The preamble to the interim final rule, including these FAQs, provides the foundation for dealers to begin the process of establishing their own anti-money laundering program. Going forward, FinCEN will be issuing additional guidance to this industry. All such guidance will be posted in FinCEN's Web site, *http://www.fincen.gov.* Additionally, FinCEN operates a regulatory helpline, 1–800–949–2732, to provide answers to specific compliance questions. Finally, FinCEN will continue to work with the IRS, which has been delegated the authority to examine dealers for compliance with the interim final rule, to provide outreach and training about anti-money laundering issues.

5(a) When do I have to implement my anti-money laundering program?

As explained above, you first need to determine whether, based on your business activities during calendar year 2005, you are required to have an anti-money laundering program for 2006. (If the calendar year is not the same as your tax year, you may use your tax year instead.) If you are required to have an anti-money laundering program for 2006, it has to be implemented by January 1, 2006, or six months after that date you become subject to the anti-money laundering program requirement. You should start developing your program as soon as you can to be sure you have it in place by that date.

5(b) I am not required to have an anti-money laundering program for 2006. Will I need to have one in 2007?

If you are not required to establish an anti-money laundering program based on your 2005 business activities, you will need to assess your 2006 business activities to see if you have to establish an anti-money laundering program in 2007, which would have to be in place beginning six months after the date you become subject to the anti-money laundering program requirement. The same assessment needs to be made every year to determine if you will be required to have an anti-money laundering program the following year.

[20] Reports relating to currency in excess of $10,000 received in a trade or business, *see* 31 CFR 103.30.

[21] Report of Foreign Bank and Financial Accounts, *see* 31 CFR 103.24.

[22] Report of International Transportation of Currency or Monetary Instruments, *see* 31 CFR 103.23.

5(c) I am required to have an anti-money laundering program for 2006. How long must it continue?

If you are required to establish an anti-money laundering program for 2006, you must maintain it as long as you continue to be a ''dealer'' under the rule. If, based on your business activities for 2006, you no longer satisfy the criteria for being a dealer, you do not need to continue your anti-money laundering program in 2007. But you will need to assess your business activities in 2007 to see if you need to re-implement your program in 2008.

6. Am I required to file Suspicious Activity Reports as part of my anti-money laundering program?

This interim final rule requires dealers to establish anti-money laundering programs but does not require a dealer to file reports of suspicious activity with FinCEN. However, dealers are strongly encouraged to file suspicious activity reports when they suspect the transaction or the funds involved has/have an illegal source or purpose or when the transaction has no apparent business or lawful purpose. Where appropriate, dealers should immediately contact law enforcement or FinCEN through its hotline.

An integral part of the dealer's anti-money laundering program is to assess the risks and vulnerabilities of the business and to develop policies, procedures and internal controls to address those risks. This should include procedures and controls for identifying ''suspicious'' activities and dealing with them accordingly. Procedures for dealing with suspicious activities may include guidance for when it is appropriate in the context of the business and the activity to (1) contact local or Federal law enforcement authorities, (2) file a suspicious activity report with FinCEN (FinCEN recommends using the Money Services Business SAR Form TD F 90–22.56, available at *http://www.fincen.gov/reg_bsaforms.html*), (3) check the ''suspicious activity'' box on a Form 8300 filed on a particular transaction, or (4) report suspected terrorist activities to FinCEN using its Financial Institutions Hotline (1–866–556–3974). Any dealer, or any of its officers, directors, employees or agents, that makes a voluntary SAR filing shall not be liable to any person under Federal, state or local law, or under an arbitration contract, for such a filing or for failing to provide notice of the filing to the subject of the filing.[23] We also caution, however, that a dealer, or any of its officers, directors, employees, or agents, that makes a voluntary SAR filing *may not* notify any person involved in the reported transaction that a SAR has been filed.[24]

7. Do I still need to report cash receipts of in excess of $10,000 on Form 8300?

Yes. Nothing in this interim final rule affects the existing obligation of a business to report cash receipts in excess of $10,000 in one transaction, or two or more related transactions, on Form 8300. 31 CFR 103.30. In particular, businesses excluded from this interim final rule are *not* relieved of their existing obligation to file Form 8300. To the contrary, FinCEN regards the filing of Form 8300 as an essential reporting component of the Bank Secrecy Act, especially for this industry that does not presently have a suspicious activity reporting obligation.

VI. Request for Comments

FinCEN is issuing this rule as an interim final rule in order to obtain further public comment on the specific issues addressed below. FinCEN encourages comments on any or all of these issues from all interested persons, and particularly persons engaged in commerce in finished goods containing jewels, precious metals or precious stones. Comments received on or before July 25, 2005, will be carefully considered in the development of the final rule that will supercede this interim final rule. The final rule will be identical to the interim final rule, except for any changes made in response to comments received on the following issues. Please refer to the instructions under **ADDRESSES** for information on how to submit comments.

A. Silver

Section 103.140(a)(4) of the interim final rule defines the term ''precious metal'' to include silver as proposed in the NPRM. FinCEN did not receive any comments on the inclusion of silver within this definition. Nonetheless, we are soliciting comments on whether the proposed provision should be included in a final rule. Although silver has historically been considered to be a precious metal, silver recently has been trading at approximately $7.00 per ounce. In contrast, platinum recently has been trading at approximately $860.00 per ounce, gold at approximately $420.00 per ounce, and palladium at approximately $185.00 per ounce. Comments are specifically requested on the following issues:

1. Should silver continue to be defined as a ''precious metal'' for purposes of the final rule?

2. The inclusion of silver in the interim final rule, taken together with the applicability of the interim final rule to dealers in finished goods that derive 50 percent or more of their value from silver (see below), requires dealers in silver to develop and implement anti-money laundering programs (assuming that the applicable purchase and sale thresholds are satisfied). Should finished goods containing silver be covered by the final rule? What types of finished goods containing silver are likely to be covered by the final rule in light of the definitional thresholds for precious metal and finished goods contained in the interim final rule? What types of finished goods (for example, brazing alloys and medical products) should not be covered by a final rule? What percentage of the sales price of various types of finished goods containing silver is attributable to the silver contained in the good? Commenters are specifically requested to consider the potential impact of the interim final rule on persons and businesses that manufacture ''inexpensive'' jewelry and other items containing silver intended for retail sale to the public, as well as the impact on wholesalers and distributors of such goods that purchase and sell them in the course of commerce, and on dealers in silver alloys used for medical purposes. Comments are also specifically requested on the extent to which wholesalers, distributors, and retailers of such goods will know, in the ordinary course of business, whether they are dealing in goods that derive 50 percent or more of their value from silver.

3. Should a final rule include an overall minimum price-per-ounce level at which silver (or any other metal) would be deemed a ''precious metal'' for purposes of the rule? Commenters answering in the affirmative are requested to recommend an appropriate minimum price-per-ounce level and a basis for that recommendation.

B. Jewels and Precious Stones

The definition of ''precious metal'' contains a finite list of metals and incorporates an objective purity threshold of 500 parts per 1000. In contrast, the definitions of ''jewel'' (section 103.140(a)(2)) and ''precious stone'' (section 103.140(a)(4)), while listing commonly recognized jewels and precious stones, also extend to any substance that is of ''gem quality market-recognized beauty, rarity, and value.'' Would it be appropriate to add to these definitions an overall minimum

[23] 31 U.S.C. 5318(g)(3).

[24] 31 U.S.C. 5318(g)(2)(A).

price-per-carat or other objective threshold indicating at which point the jewel or stone would be deemed a ''jewel'' or ''precious stone'' for purposes of a final rule? If so, what would be an appropriate threshold and why?

C. Finished Goods

Section 103.140(a)(1)(iv) of the interim final rule includes within the definition of ''covered goods,'' finished goods including, but not limited to, jewelry, numismatic items, and antiques, that derive 50 percent or more of their value from the jewels, precious metals, or precious stones contained or attached to such finished goods. The 50 percent value threshold for finished goods in these provisions is, in principle, consistent with the 500 parts per 1000 purity threshold for precious metals in section 103.140(a)(4).

1. Is the 50 percent value threshold described above an appropriate threshold for finished goods containing jewels, precious metals, or precious stones, or to which jewels, precious metals, or precious stones are attached? If not, what would be an appropriate threshold and why? Should jewelry be subject to a threshold different from that of other finished goods? If so, why, and what would constitute an appropriate definition of ''jewelry''?

2. Comments are also specifically requested on whether, in the ordinary course of business, wholesalers, distributors, and retailers of finished goods (including persons such as antique dealers) will know, and if so how (*e.g.,* pursuant to Federal Trade Commission requirements [25]), whether the goods they are dealing in derive 50 percent or more of their value from jewels, precious metals, or precious stones, and thereby cause them to be a ''dealer'' required to have an anti-money laundering program under the terms of the interim final rule.

D. Effects on Small Businesses

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FinCEN certified that the preceding notice of proposed rulemaking would not have a significant economic impact on a substantial number of small businesses or other small entitites. Although FinCEN specifically requested public comments on the impact of the rule on small dealers, no such comments were received, and this interim rule repeats that certification.

[25] *See* ''Guides for the Jewelry, Precious Metals, and Pewter Industries'' *http://www.ftc.gov/bcp/guides/jewel-gd.htm,* effective April 10, 2001.

In view of the issues raised above, FinCEN again solicits comments on the potential impacts of the rule on small businesses (including manufacturers, dealers, wholesalers, distributors, and retailers) that may be ''dealers'' subject to the provisions of the rule.

VII. Regulatory Flexibility Act

FinCEN certifies pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this interim final rule will not have a significant economic impact on a substantial number of small entities. Because the requirements of the rule closely parallel the requirements for anti-money laundering programs for all financial institutions mandated by section 352 of the USA Patriot Act, the costs associated with the establishment and implementation of anti-money laundering programs are attributable to the statute and not the rule. Moreover, FinCEN believes that the definition of ''dealer'' in section 103.140(a)(2), which excludes dealers who have less than $50,000 in gross proceeds derived from covered goods in a year, will exclude most small dealers from the requirements of the rule.

Furthermore, the rule provides for substantial flexibility in how each dealer may meet its requirements. This flexibility is designed to account for differences among dealers, including size. In this regard, the costs associated with developing and implementing an anti-money laundering program will be commensurate with the size of a dealer. If a dealer is small, the burden to comply with section 352 and the rule should be similarly small.

In the NPRM, FinCEN requested comments on the impact of the proposed rule on small dealers. No comments on this issue were received.

VIII. Paperwork Reduction Act

The collection of information contained in the interim final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and assigned OMB Control Number 1506–0030. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information is the recordkeeping requirement in section 103.140(b). The information will be used by Federal agencies to verify compliance by dealers with the provisions of sections 103.140. The collection of information is mandatory.

Estimated Number of Recordkeepers: 20,000.

Estimated Average Annual Burden Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in section 103.140(b) rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 20,000 hours.

Comments concerning the accuracy of this burden estimate should be directed to the Financial Crimes Enforcement Network, Department of the Treasury, Post Office Box 39, Vienna, VA 22183, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

IX. Executive Order 12866

It has been determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart I of part 103 is amended by adding new § 103.140 to read as follows:

§ 103.140 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

(a) *Definitions.* For purposes of this section:

(1) *Covered goods* means:

(i) Jewels (as defined in paragraph (a)(3) of this section);

(ii) Precious metals (as defined in paragraph (a)(4) of this section);

(iii) Precious stones (as defined in paragraph (a)(5) of this section); and

(iv) Finished goods (including, but not limited to, jewelry, numismatic

items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(2) *Dealer.* (i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, the term ''dealer'' means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(A) Purchased more than $50,000 in covered goods; and

(B) Received more than $50,000 in gross proceeds from the sale of covered goods.

(ii) For purposes of this section, the term ''dealer'' does not include:

(A) A retailer (as defined in paragraph (a)(7) of this section), unless the retailer, during the prior calendar or tax year, purchased more than $50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(B) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(iii) For purposes of paragraph (a)(2) of this section, the terms ''purchase'' and ''sale'' do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(iv) For purposes of paragraphs (a)(2) and (b) of this section, the terms ''purchase'' and ''sale'' do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(v) For purposes of applying the $50,000 thresholds in paragraphs (a)(2)(i) and (a)(2)(ii)(A) of this section to finished goods defined in paragraph (a)(1)(iv) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(3) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(4) *Precious metal* means:

(i) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(ii) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (a)(3)(i) of this section.

(5) *Precious stone* means a substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(6) *Person* shall have the same meaning as provided in § 103.11(z).

(7) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

(b) *Anti-money laundering program requirement.* (1) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the $50,000 threshold contained in paragraph (a)(2)(ii)(A), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(c) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this part.

(i) For purposes of making the risk assessment required by paragraph (c)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this part, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (c)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

(d) *Effective date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

Dated: June 3, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 05–11431 Filed 6–8–05; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–060]

RIN 1625–AA08

Special Local Regulations for Marine Events; Assateague Channel, Chincoteague, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.519 for the 2005 Annual Chincoteague Pony Swim, a marine event to be held July 27 and July 29, 2005, on the waters of Assateague Channel at Chincoteague, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and to provide for the safety of life on navigable waters during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

ENFORCEMENT DATES: 33 CFR 100.519 is effective from 5 a.m. July 27 to 4:30 p.m. on July 29, 2005.

FOR FURTHER INFORMATION CONTACT: Marine Events Coordinator, Commander, Coast Guard Group Eastern Shore, 3823 Main Street, Chincoteague, VA 23336–1809, and (757) 336–2891.

SUPPLEMENTARY INFORMATION: The Chincoteague Volunteer Fire Company, Inc., will sponsor the Annual Pony Swim on the waters of the Assateague Channel, near Chincoteague, Virginia from 5 a.m. to 4:30 p.m on 27 and 29 July, 2005. Approximately 75 ponies will cross Assateague Channel from Assateague Island to Chincoteague, VA. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.519 will be enforced for the duration of the event. Under provisions of 33 CFR 100.519, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: June 1, 2005.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–11443 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–05–058]

RIN 1625–AA08

Special Local Regulations for Marine Events; Harborfest 2005, Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.501 during the ''Harborfest 2005'' to be held on June 10, 11 and 12, 2005, on the waters of the Elizabeth River between Norfolk and Portsmouth, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the marine event. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and other vessels transiting the event area.

ENFORCEMENT DATES: 33 CFR 100.501 will be effective from 2 p.m. on June 10, 2005 to 4 p.m. on June 12, 2005.

FOR FURTHER INFORMATION CONTACT: Senior Chief Michael Bowling, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, and (757) 483–8567.

SUPPLEMENTARY INFORMATION: The Norfolk Festevents ltd., will sponsor ''Harborfest 2005'' on the waters of the Elizabeth River in Norfolk Harbor between Portsmouth and Norfolk, Virginia. This annual celebration of the waterfront consists of a variety of on the water activities. Harborfest activities include an Opening Ceremony—Parade of Sail, Crawford Bay Crew Classic, Chesapeake Bay Workboat Parade of Sail, Chesapeake Bay Workboat Docking Competition, Chesapeake Bay Workboat Race, Watersports Ski Demonstration, and Quick and Dirty Boat Race. A large fleet of spectator vessels is anticipated to view the Harborfest activities. Therefore, to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.501 will be enforced for the duration of the event. Under provisions of 33 CFR 100.501, from 2 p.m. June 10, 2005 to 4 p.m. on June 12, 2005, any vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area between on the water events, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

Dated: June 1, 2005.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 05–11448 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–036]

Drawbridge Operation Regulations; Port Allen Canal, Morley, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad Bridge across the Port Allen Canal, mile 8.7 (Gulf Intracoastal Canal, Morgan City to Port Allen (Alternate Route), mile 56.0), near Morley, West Baton Rouge Parish, Louisiana. This deviation allows the bridge to remain closed to navigation for eight hours on three consecutive days. The deviation is necessary to repair and replace the rail joints of the bridge.

DATES: This deviation is effective from 8 a.m. on Tuesday, June 21, 2005, until 4 p.m. on Thursday, June 23, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company has requested a temporary deviation in order to repair and replace the rail joints of the Union Pacific Railroad Vertical Lift Span Bridge across the Port Allen Canal, mile 8.7 (Gulf Intracoastal Canal, Morgan City to Port Allen (Alternate Route), mile 56.0), near Morley, West Baton Rouge Parish, Louisiana. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 8 a.m. to 4 p.m. from Tuesday, June 21, 2005, until Thursday, June 23, 2005. The bridge has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and 73 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists mainly of tugs with tows. Alternate routes are not readily available. The bridge owner can open the bridge in case of an emergency. The repairs are necessary for continued safe operation of the draw span.

Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 2, 2005.

Marcus Redford,

Bridge Administrator.

[FR Doc. 05–11429 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040628196–5130–02; I.D. 061704A]

RIN 0648–AQ92

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program; Correction

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

ACTION: Final rule; corrections.

SUMMARY: This document contains corrections to a final rule that was published on May 24, 2005.

DATES: Effective August 1, 2005.

FOR FURTHER INFORMATION CONTACT: Alvin Z. Katekaru, Pacific Islands Area Office, NMFS, 808–973–2937.

SUPPLEMENTARY INFORMATION: The final rule for Amendment 11 was published in the **Federal Register** on May 24, 2005, (70 FR 29646). In § 660.36, paragraph designate (f)(4) was incorrect. This document corrects this oversight.

Correction

In the rule FR Doc. 05–10351, in the issue of Tuesday, May 24, 2005 (70 FR 29646), make the following corrections:

§ 660.36 [Corrected]

1. On page 29655, in the third column, in paragraph (f)(3), line 25, indent ''(4)'' to correctly designate paragraph (f)(4).

2. On page 29655, in the third column, the final paragraph (f)(4) is correctly designated as paragraph (f)(5).

Dated: June 1, 2005.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 05–11292 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 110
Thursday, June 9, 2005

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Policy Statement No. ANM–115–05–14]

Acceptable Methods of Compliance With Section 25.562(c)(5) for Front Row Passenger Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments; reopening of comment period.

SUMMARY: The Federal Aviation Administration (FAA) announces the reopening of the comment period on a proposed policy on Acceptable Methods of Compliance with Title 14 Code of Federal Regulations (CFR) 25.562(c)(5) for Front Row Passenger Seats. This reopening is necessary to afford all interested parties an opportunity to further present their views on the proposed policy.

DATES: Send your comments on or before July 11, 2005.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT:**

FOR FURTHER INFORMATION CONTACT: John Piccola, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1509; fax (425) 227–1320; e-mail: *John.Piccola@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments, data, views, or arguments by letter, fax, or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, ''Comments to Policy Statement No. ANM–115–05–14.''

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.
- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

On April 26, 2005, the FAA published a Notice of proposed policy; request for comments, on the subject of available methods of compliance with § 25.9562(c)(5) for front row passenger seats (70 FR 21343). The purpose of the proposed policy memorandum is to clarify FAA certification policy of the acceptable substantiation methods used to provide protection under § 25.562(a) when meeting the performance standards in § 25.562(c) for ''front row'' seats. Front row seats are those seats which are located directly all of a partition, monument, or other commodity, including all passenger seats not considered ''row-to-row.'' The policy is not directed toward other seats. The FAA has determined that the proposed policy provides an acceptable means of protection for front row occupants. The comment period closed on May 26, 2005.

Since publication of that notice, the FAA received a request from a manufacturing association for additional time to comment. That association indicated that additional time is needed to provide an opportunity for the industry members of the FAA/Industry 16G Seat Certification Streamlining group to disposition specific issues and work together to develop a single consensus set of industry comments and recommendations for consideration by the FAA. The FAA agreed with their request to reopen the comment period, and is doing so not only for that manufacturing association, but also for any interested party. The reopened comment period will be for 30 days after the date of publication in the **Federal Register**.

Issued in Renton, Washington, on May 25, 2005.

Aki Bahrami,

Manager, Transport Airplane Directorate; Aircraft Certification Service.

[FR Doc. 05–11410 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21173; Directorate Identifier 2005–CE–22–AD]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, and 441 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Cessna Aircraft Company (Cessna) Models 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, and 441 airplanes equipped with certain avionics bus circuit breaker switches. This proposed AD would require you to inspect the avionics bus circuit breaker switch to determine the date code and replace any without a date code. This proposed AD would also impose a 1,000-hour safe life limit on avionics bus circuit breaker switches with a date code earlier than 0434. This proposed AD results from reports of smoke and a burning smell in the cockpit. We are issuing this proposed AD to prevent failure of the avionics bus circuit breaker switch, which could result in smoke and a burning smell in the cockpit. This failure could lead to reduced ability to control the airplane.

DATES: We must receive any comments on this proposed AD by August 9, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

• DOT Docket Web Site: *Go to http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• *Fax:* 1–202–493–2251.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact The Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. The docket number is FAA–2005–21173; Directorate Identifier 2005–CE–22–AD.

FOR FURTHER INFORMATION CONTACT: Gerald Pilj, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4151; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2005–21173; Directorate Identifier 2005–CE–22–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–21173; Directorate Identifier 2005–CE–22–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? We have received failure reports of certain Tyco Electronics circuit breaker switches installed on the master avionics bus of Cessna Models 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, and 441 airplanes. Failure of these circuit breaker switches cause smoke and a burning smell in the cockpit.

Analysis of the circuit breaker switch revealed the copper braid inside the switch had frayed. Continued use causes an internal short. The internal short could result in the internal switch components or external wiring melting because it is no longer protected by the circuit breaker.

The affected circuit breaker switches have a date code earlier than 0434 or do not have a date code on them.

The date code consists of four digits. The first two represent the year and the last two represent the week of the year the part was made.

What is the potential impact if FAA took no action? If not prevented, failure of the avionics bus circuit breaker switch could cause smoke and a burning smell in the cockpit. This failure could lead to reduced ability to control the airplane.

Is there service information that applies to this subject? Cessna has issued the following service bulletins:

—Multi-engine Service Bulletin MEB05–1, dated February 21, 2005, which applies to Models 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, and 421C airplanes; and

—Conquest Service Bulletin CQB05–2, dated February 21, 2005, which applies to Models 425 and 441 airplanes.

What are the provisions of this service information? These service bulletins include procedures for:

—Inspecting the avionics bus circuit breaker switch to determine the date code;

—Replacing all avionics bus circuit breaker switches without date code; and

—Imposing a 1,000-hour safe life limit for all avionics bus circuit breaker switches with a date code earlier than 0434.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 7,125 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do the proposed inspection and replacement:

For Models 401, 401A, 401B, 402, 402A, 402B, 402C, 404, 411, 411A, 414, 414A, 421, 421A, 421B, 421C airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work hours × $65 an hour = $260	$119 each	$498 (if 2 switches are required).	$498 × 6,527 = $3,250,446

For Models 425 and 441 airplanes:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 work hours × $65 an hour = $520	$119 each	$758 (if 2 switches are required).	$758 × 598 = $453,284

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2005–21173; Directorate Identifier 2005–CE–22–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Cessna Aircraft Company: Docket No. FAA–2005–21173; Directorate Identifier 2005–CE–22–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by August 9, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are:

(i) Equipped with an avionics bus circuit breaker switch, part number (P/N) CM3589–50, 593–250–101, 593–250–102, W31–X2M5A–50, or W31–X1000–50; and

(ii) Certificated in any category:

Model	Serial Nos.
401	655 and 401–0001 through 401–0322.
401A	655 and 401A0001 through 401A0132.
401B	401B0001 through 401B0221.
402	402–0001 through 402–0322.
402A	402A0001 through 402A0129.
402B	402B0001 through 402B0122, 402B0201 through 402B0249, 402B0301 through 402B0455, 402B0501 through 402B0640, 402B0801 through 402B0935, 402B1001 through 402B1100, 402B1201 through 402B1250, and 402B1301 through 402B1384.
402C	689, 402C0001 through 402C0125, 402C0201 through 402C0355, 402C0401 through 402C0528, 402C0601 through 402C0653, 402C0801 through 402C0807, and 402C0808 through 402C1020.
404	682, 404–0001 through 404–0136, 404–0201 through 404–0246, 404–0401 through 404–0460, 404–0601 through 404–0695, and 404–0801 through 404–0859.
411	642 and 411–0001 through 411–0250.
411A	411–0251 through 411–0300.
414	667, 414–0001 through 414–0099, 414–0151 through 414–0175, 414–0251 through 414–0280, 414–0351 through 414–0437, 414–0451 through 414–0550, 414–0601 through 414–0655, 414–0801 through 414–0855, and 414–0901 through 414–0965.
414A	414A0001 through 414A0121, 414A0201 through 414A0340, 414A0401 through 414A0535, 414A0601 through 414A0680, 414A0801 through 414A0858, and 414A1001 through 414A1212.

Model	Serial Nos.
421	693 and 421–0001 through 421–0200.
421A	421A0001 through 421A0158.
421B	421B0001 through 421B0056, 421B0101 through 421B0147, 421B0201 through 421B0275, 421B0301 through 421B0486, 421B0501 through 421B0665, and 421B0801 through 421B0970.
421C	421C0001 through 421C0171, 421C0201 through 421C0350, 421C0401 through 421C0525, 421C0601 through 421C0715, 421C0801 through 421C0910, 421C1001 through 421C1115, 421C1201 through 421C1257, 421C1401 through 421C1413, and 421C1801 through 421C1807.
425	425–0001 through 425–0236.
441	698 and 441–0001 through 441–0362.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result from reports of smoke and a burning smell in the cockpit. The actions specified in this AD are intended to prevent failure of the avionics bus circuit breaker switch, which could result in smoke and a burning smell in the cockpit. This failure could lead to reduced ability to control the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) Inspect the avionics bus circuit breaker swtich to determine the part number (P/N) and date code. (i) If the P/N) is CM3589–50, 593–250–101, 593–250–102, W31–X2M5A–50, or W31–X1000–50; and (ii) The date code is 0434 or later; then (iii) No further action is required.	Within the next 200 hours time-in-service (TIS), the next 12 months, or at the next scheduled inspection, after the effective date of this AD, whichever occurs first.	*For Models 425 and 441 airplanes,* follow the procedures in Cessna Conquest Service Bulletin CQB05–2, dated February 21, 2005, and the applicable maintenance manual. *For all other affected airplane models,* follow the procedures in Cessna Multi-engine Service Bulletin MEB05–1, dated February 21, 2005, and the applicable maintenance manual.
(2) If the P/N is CM3589–50, 593–250–101, 593–250–102, W31–X2M5A–50, or W31–X1000–50 and there is no date code, replace the avionics bus circuit breaker switch with a P/N CM3589–50 that has a date code of 0434 or later.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	*For Models 425 and 441 airplanes,* follow the procedures in Cessna Conquest Service Bulletin CQB05–2, dated February 21, 2005, and the applicable maintenance manual. *For all other affected airplane models,* follow the procedures in Cessna Multi-engine Service Bulletin MEB05–1, dated February 21, 2005 and the applicable maintenance manual.
(3) If the P/N is CM3589–50, 593–250–101, 593–250–101, W31–X2M5A–50, or W31–X1000–50 and the date code is earlier than 0434, the part has a safe life limit of 1,000 hours TIS and must be replaced within the 1,000-hour time limit with a P/N CM3589–50 that has a date code of 0434 or later.	Within the 1,000-hour TIS safe life limit	*For Models 425 and 441 airplanes,* follow the procedures in Cessna Conquest Service Bulletin CQB05–2, dated February 21, 2005, and the applicable maintenance manual. *For all other affected airplane models,* follow the procedures in Cessna Multi-engine Service Bulletin MEB05–1, dated February 21, 2005, and the applicable maintenance manual.
(4) Do not install a P/N CM3589–50, 593–250–101, 593–250–102, W31–X2M5A–50, or W31–X1000–50 that does not have a date code or has a date code earlier than 0434.	As of the effective date of this AD	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Gerald Pilj, Aerospace Engineer, FAA Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4151; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact The Cessna Aircraft Company, Citation Marketing Division, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2005–21173; Directorate Identifier 2005–CE–22–AD.

Issued in Kansas City, Missouri, on June 3, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11454 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19694; Directorate Identifier 2004–CE–41–AD]

RIN 2120–AA64

Airworthiness Directives; Cirrus Design Corporation Model SR20 and SR22 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

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

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) for certain Cirrus Design Corporation (CDC) Model SR20 and SR22 airplanes. The earlier NPRM would have required you to measure and adjust the crew seat break-over bolts and to replace the crew seat recline locks on both crew seats. The earlier NPRM resulted from CDC discovering that the crew seats, under emergency landing dynamic loads, may fold forward at less than the 26 G required by the regulations. Since issuing the earlier NPRM, FAA received and evaluated new service information that increases the serial number effectivity of the earlier NPRM. The new proposed AD includes the additional serial numbers in the applicability section. Since the change imposes an additional burden over that proposed in the earlier NPRM, we are reopening the comment period to allow the public additional time to comment on the proposed AD.

DATES: We must receive any comments on this proposed AD by July 14, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737. Service information may also be accessed at *http://www.cirrusdesign.com.*

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA–2004–19694.

FOR FURTHER INFORMATION CONTACT:

—Wess Rouse, Small Airplane Project Manager, ACE–117C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: 847–294–8113; facsimile: (847) 294–7834; e-mail: *Wess.Rouse@faa.gov;* or

—Angie Kostopoulos, Composite Technical Specialist, ACE–116C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7426; facsimile: (847) 294–7834; e-mail: *Evangelia.Kostopoulos@Faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19694; Directorate Identifier 2004–CE–41–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19694. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What is the background of the subject matter? CDC performed dynamic seat testing on Models SR20 and SR22 airplanes. CDC found that, under emergency landing dynamic loads, the crew seats may fold forward at less than the 26 Gs required by 14 CFR Section 23.562(b)(2).

What is the potential impact if FAA took no action? If not prevented, the crew seats folding forward during emergency landing with dynamic loads could result in occupant injury.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain CDC Model SR20 and SR22 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 13, 2005 (70 FR 2370). The NPRM proposed to measure and adjust the crew seat break-over bolts and to replace the crew seat recline locks on both crew seats.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

What events have caused FAA to issue a supplemental NPRM? Since issuing the earlier NPRM, FAA received and evaluated new service information that increases the serial number effectivity of the earlier NPRM.

FAA's Determination and Requirements of this Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other CDC Model SR20 and SR22 airplanes of the same type design that are on the U.S. registry;

—We should change the NPRM to include the additional serial numbers listed in the new service information; and

—We should take AD action to correct this unsafe condition.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing additional serial numbers listed in the applicability section goes beyond the scope of what was originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

What are the provisions of the supplemental NPRM? The proposed AD would require you to measure and adjust the crew seat break-over bolts and to replace the crew seat recline locks on both crew seats.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 1,494 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? CDC will provide warranty credit for service bulletins SB A2X–25–08, dated June 22, 2004, and SB 2X–25–06 R4, dated May 5, 2005. This proposed AD will not have a labor or parts cost for the owner or operator.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2004–19694; Directorate Identifier 2004-CE–41–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cirrus Design Corporation: Docket No. FAA–2004–19694; Directorate Identifier 2004–CE–41–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by July 14, 2005.

What Other ADs Are Affected By This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
(1) SR20	1005 through 1455.
(2) SR22	0002 through 1044

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of discovering that the crew seats, under emergency landing dynamic loads, may fold forward at less than the 26 G required by the regulations, 14 Code of Federal Regulations (CFR) Section 23.562 (b) (2). The actions specified in this AD are intended to prevent the crew seats from folding forward during emergency landing with dynamic loads with consequent occupant injury.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For models SR20, serial numbers 1005 through 1423, and SR22, serial numbers 0002 through 0972, do the following actions:	Within 50 hours time-in-service (TIS) or within 180 days, whichever occurs first, after the effective date of this AD.	Follow Cirrus Design Corporation Service Bulletin SB A2X–25–08, dated June 22, 2004.

Actions	Compliance	Procedures
(i) Move the lower portion of the crew seat upholstery upward to expose the seat frame and locking mechanism. Measure the clearance between the break-over bolt and the seat frame for a clearance that meets the requirements in the service bulletin (ii) If the clearnace does not meet the specified in the service bulletin, perform the crew seat break-over bolt adjustment and re-cover the crew seat frame and locking mechanism with the upholstery (iii) If the clearance does meet that specified in the service bulletin, re-cover the crew seat frame and locking mechanism (iv) Repeat the above actions for the opposite crew seat		
(2) For models SR20, serial numbers 1005 through 1455, and SR22, serial numbers 0002 through 1044, do the following actions: (i) Identify whether the recline lock is secured with two bolts or three bolts (ii) If the recline locks are secured with two bolts, remove the existing recline locks and replace with the new recline locks kit, kit number 70084–001 (iii) If the recline locks are secured with three bolts, remove existing recline locks and replace with the new recline locks kit, kit number 70084–002 (iv) Check break-over pin alignment and adjust as necessary0 (v) Check that the locks engage with the break-over bolts with the seat in the full recline position. If full seat recline is not possible or difficult to engage, grinding of the lower aft seat frame is necessary (iv) Repeat the above actions for the opposite crew seat	Within 50 hours TIS or within 180 days, whichever occurs first, after the effective date of this AD.	Follow Cirrus Design Corporation Service Bulletin SB 2X–25–06 R4, dated May 5, 2005.

May I Request An Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Chicago Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, please contact one of the following:

—Wess Rouse, Small Airplane Project Manager, ACE–117C; Chicago Aircraft Certification Office, 2300 East Devon Avenue, Roon 107, Des Plaines, Illinois 60018; telephone: (847) 294–8113; facsimile: (847) 294–7834; e-mail: *Wess.Rouse@Faa.gov;* or

—Angie Kostopoulos, Aerospace Engineer, ACE–116C, Chicago Aircraft Certification Office, 2300 East Devon Avenue, Room 107, Des Plaines, Illinois 60018; telephone: (847) 294–7426; facsimile: (847) 294–7834; e-mail: *Evangelia.Kostopoulos@Faa.gov.*

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact Cirrus Design Corporation, 4515 Taylor Circle, Duluth, Minnesota 55811; telephone: (218) 727–2737 or on the Internet at *http://www.cirrusdesign.com.* To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–19694.

Issued in Kansas City, Missouri, on June 3, 2005.

Kim Smith,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11456 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

RIN AD12

Safety and Health—Alternate 1 to Major Breach of Safety or Security Clause

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the NASA FAR Supplement (NFS) to add an Alternate to the ''Major Breach of Safety or Security Clause.'' This Alternate deletes references to termination for default and makes other changes to be consistent with the FAR termination clauses prescribed for use with educational or nonprofit institutions performing research and development work on a nonprofit or no-fee basis, and in contracts for commercial items.

DATES: Comments should be submitted on or before August 8, 2005.

ADDRESSES: Interested parties may submit comments, identified by RIN number AD12, via the Federal eRulemaking Portal: *http//www.regulations.gov.* Follow the instructions for submitting comments. Comments may also be submitted to Carl Weber, NASA Headquarters, Office of Procurement, Contract Management Division (Mail Code 1940–D2), Washington, DC 20546. Comments may also be submitted by e-mail to *carl.c.weber@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Carl Weber, (202) 358–1784, e-mail: *carl.c.weber@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Since July 13, 2000, the NASA FAR Supplement has required the Major Breach of Safety or Security clause (1852.223–75) in new solicitations and contracts with an estimated value over $500,000. The clause declares the Government's right to terminate for default in the event of a major breach of safety or security. However, contracts for commercial items procured under FAR Part 12, and certain contracts for educational or nonprofit institutions do not provide the Government the right to ''termination for default''. Rather, these contracts include a termination for cause or termination for convenience clause only.

NASA Procurement Information Circular (PIC 02–11) issued June 24, 2002, suggested an alternate to the clause which deleted references to termination for default, and provided a class deviation to use the alternate under certain circumstances.

This proposed rule would add Alternate I to the Major Breach of Safety or Security clause at 1852.223–75, eliminating the need for PIC 02–01 and the class deviation. Use of the clause with its Alternate in contracts for commercial items procured under FAR Part 12, and contracts for research and development work with educational or nonprofit institutions on a nonprofit or no-fee basis would then be consistent with FAR termination clauses prescribed for use in such contracts.

This proposed rule is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, since it clarifies agency regulations so they are employed consistently with FAR termination provisions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose any new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Parts 1823 and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1823 and 1852 are proposed to be amended as follows:

PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

1. The authority citation for 48 CFR parts 1823 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. Amend section 1823.7001 by revising paragraph (d) to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

* * * * *

(d)(1) The contracting officer shall insert the clause at 1852.223–75, Major Breach of Safety or Security, in all solicitations and contracts with estimated values of $500,000 or more, unless waived at a level above the contracting officer with the concurrence of the project manager and the installation official(s) responsible for matters of securi ty, export control, safety, and occupational health.

(2) Insert the clause with its Alternate I if—

(i) The solicitation or contract is with an educational or other nonprofit institution and contains the termination clause at FAR 52.249; or

(ii) The solicitation or contract is for commercial items and contains the termination provisions found in FAR 52.212–4

(3) For contracts with estimated values below $500,000, use of the clause is optional.

* * * * *

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 1852.223–75 by adding Alternate I to read as follows:

1852.223–75 Major Breach of Safety or Security.

* * * * *

ALTERNATE I

(XX/XX)

As prescribed in 1823.7001(d)(ii), substitute the following paragraphs (a) and (b) for paragraphs (a) and (b) of the basic clause:

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. Safety is essential to NASA and is a material part of this contract. NASA's safety priority is to protect:

(1) The public; (2) astronauts and pilots; (3) the NASA workforce (including contractor employees working on NASA contracts); and (4) high-value equipment and property. A major breach of safety may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of safety must b e related directly to the work on the contract. A major breach of safety is an act or omission of the Contractor that consists of an accident, incident, or exposure resulting in a fatality or mission failure; or in damage to equipment or property equal to or greater than $1 million; or in any ''willful'' or ''repeat'' violation cited by the Occupation al Safety and Health Administration (OSHA) or by a state agency operating under an OSHA approved plan.

(b) Security is the condition of safeguarding against espionage, sabotage, crime (including computer crime), or attack. A major breach of security may constitute a breach of contract that entitles the Government to exercise any of its rights and remedies applicable to material parts of this contract, including termination. A major breach of security may occur on or off Government installations, but must be related directly to the work on the contract. A major breach of security is an act or omission by the Contractor that results in compromise of classified information, illegal technology transfer, workplace violence resulting in criminal conviction, sabotage, compromise or denial of information technology services, equipment or property damage from vandalism greater than $250,000, or theft greater than $250,000.

[FR Doc. 05–11419 Filed 6–8–05; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 060105B]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Amendment 10 Atlantic Mackerel Limited Access Program and Control Date

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

ACTION: Proposed rule; advance notice of proposed rulemaking (ANPR); reaffirmation of a control date; notice of intent to develop a limited access program; request for comments.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the Atlantic mackerel fishery if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to limit the number of participants in this fishery in Amendment 10 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan (FMP). This announcement alerts interested parties of potential eligibility criteria for future access so as to discourage speculative entry into the fishery while the Mid-Atlantic Fishery Management Council (Council) considers how access to the Atlantic mackerel fishery should be controlled. NMFS also reaffirms, on behalf of the Council, the most recent control date of July 5, 2002, for this fishery, which may be used for establishing eligibility criteria for determining levels of future access to the Atlantic mackerel fishery; informs the public that the Council is developing such a program in Amendment 10 to the FMP as expeditiously as possible; and notifies the public of several measures that are under consideration by the Council for inclusion in Amendment 10.

DATES: Written comments must be received on or before 5 p.m., local time, July 11, 2005.

ADDRESSES: Comments may be submitted as follows:

• Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Atlantic Mackerel Reaffirmation of Control Date.''

• Comments may be sent via facsimile (fax) to: (978) 281–9135.

• Comments may be submitted by e-mail. The mailbox address for providing e-ail comments is *MackContDate.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments-Atlantic Mackerel Amendment 10.''• Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, 978–281–9259; fax 978–281–9135. email: *eric.dolin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Atlantic mackerel (*Scomber scombrus*) is a migratory species that supports important recreational and commercial fisheries along the Atlantic coast of the United States and Canada. The Council has considered the possibility of limiting entry to the Atlantic mackerel fishery for more than a decade. An initial notification establishing a control date of August 13, 1992, for all of the fisheries included in the FMP (i.e., Atlantic mackerel, *Loligo* and *Illex* squids, and Atlantic butterfish) was published on August 13, 1992 (57 FR 36384). That document announced that, as of that date, no vessel would be guaranteed entry into a limited access fishery under the FMP, if the Council chose to implement such a program. The 1992 control date was rescinded for the Atlantic mackerel fishery on September 27, 1994 (59 FR 49235), because the Council and NMFS concluded that information regarding biomass levels, fishing levels, fishing effort, and catch indicated that the Atlantic mackerel fishery would not require limited access management in the foreseeable future. Rescission of the 1992 control date also was intended to remove a disincentive to fish for what was then considered an underutilized resource (Atlantic mackerel).

In Amendment 5 to the FMP, the Council proposed a provision to require the Secretary of Commerce (Secretary) to publish a control date for the Atlantic mackerel fishery when commercial landings reached 50 percent of its allowable biological catch. NMFS did not include that provision in the proposed rule for Amendment 5 (60 FR 65618, December 20, 1995), because the proposed measure was not appropriate to implement by regulation, but rather was an expression of the Council's intent.

In May 1997, the Council requested that NMFS publish an ANPR reestablishing a control date for the Atlantic mackerel fishery. The Council intended the control date to discourage speculative entry of new vessels into the Atlantic mackerel fishery while the Council considered development of a management program to control the rate of capitalization. As a result, NMFS published an ANPR (62 FR 48047, September 12, 1997) that established a control date of September 12, 1997. Although the Council intended to develop a controlled access program for the Atlantic mackerel fishery through an amendment to the FMP soon after establishing the 1997 control date, subsequent FMP amendments focused on other issues, such as implementation of Sustainable Fisheries Act requirements.

In 2002, the Council became aware that domestic processing capacity for Atlantic mackerel could increase rapidly in the near future based on testimony from members of the harvesting and processing sectors of the industry indicating that there was significant interest in expansion of domestic shore-side processing for Atlantic mackerel. Because the Council was concerned about rapid expansion of harvesting capacity in the fishery, possible overcapitalization, and the fact that nearly 5 years had passed since the 1997 control date was established, the Council requested, in April 2002, that a new control date for the Atlantic mackerel fishery be established. As a result, NMFS published an ANPR on July 5, 2002 (67 FR 44792), which established that date as the new control date for the Atlantic mackerel fishery. The ANPR was again intended to discourage speculative entry into the fishery while potential management regimes to control access into the fishery were discussed and possibly developed by the Council, and to help the Council distinguish established participants from speculative entrants to the fishery, should such a program be developed. The ANPR noted that the control date did not commit the Council to develop any particular management regime or to use any specific criteria for determining entry to the fishery. However, it did inform the public that the Council might undertake rulemaking in the future to implement a limited access program and that interested participants in the Atlantic mackerel fishery should locate and preserve records that could be used to substantiate and verify their participation in the Atlantic mackerel fishery.

On March 4, 2005 (70 FR 10605), the Council published a notice of intent to prepare a Supplemental Environmental

Impact Statement to consider impacts of alternatives for limiting access to the Atlantic mackerel fishery. The Council subsequently conducted scoping meetings on development of a limited access program for Atlantic mackerel which the Council planned to include in Amendment 9 to the FMP. However, because the Council has decided to complete and submit for review by the Secretary of Commerce several other measures in Amendment 9 that are farther along in their development than the mackerel limited access program, the Council voted on May 4, 2005, to complete Amendment 9 without a limited access program for the Atlantic mackerel fishery, and to pursue the Atlantic mackerel limited access program through Amendment 10 to the FMP, which it will develop as expeditiously as possible, and concurrently with its completion of Amendment 9.

Because of concerns that the Atlantic mackerel fishery is at, or very near, the harvesting capacity that can be sustained by the long-term potential yield of the Atlantic mackerel resource, and because the development of a limited access program is typically complex and takes substantial time to complete, the Council also voted on May 4, 2005, to request that NMFS publish an ANPR to reaffirm the most recent control date for this fishery, i.e., July 5, 2002, and to notify the public of its development of a limited access program in Amendment 10. Further, the Council requested that the public be notified that it is considering the following measures in Amendment 10: Qualification dates for the Atlantic mackerel fishery between 1983 and 2005; tiered levels of entry to the fishery; and, limitations on the size and/or allowable levels of participation of U.S. at-sea domestic processing in the fishery. Other measures may be considered; announcement of these measures is for informational purposes only and does not commit the Council to these or any other specific measures. In order to be approved and implemented, any measures proposed by the Council in Amendment 10 must be found consistent with the requirements of the Magnuson-Stevens Act and other applicable law. The public will have the opportunity to comment on the measures and alternatives being considered by the Council through public meetings and public comment periods required by the National Environmental Policy Act and the Magnuson-Stevens Act, and as provided by the Administrative Procedure Act.

This reaffirmation of the July 5, 2002, control date is intended to strongly discourage speculative entry into the fishery while limited access measures are developed and considered by the Council. The control date may be used by the Council to distinguish established participants from speculative entrants to the fishery. Although vessels that have entered, or that will enter the fishery after the control date are not ensured future access to the Atlantic mackerel fishery on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. Consideration of a control date does not commit the Council or NMFS to develop any particular management system or criteria for participation in this fishery. The Council may choose a different control date, or may choose a management program that does not make use of such a date. This notification also reminds the public that interested participants should locate and preserve records that substantiate and verify their participation in the Atlantic mackerel fishery in Federal waters.

Dated: June 3, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–11462 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 70, No. 110
Thursday, June 9, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2005 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on June 28, 2005, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Daniel G. Ritter, Acting District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, Acting Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: June 2, 2005.

David T. Bull,

Forest Supervisor.

[FR Doc. 05–11452 Filed 6–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuolumne County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tuolumne County Resource Advisory Committee will meet on June 20, 2005 at the City of Sonora Fire Department, in Sonora, California. The purpose of the meeting is to review 10 project submittals based on presentations made by project proponents.

DATES: The meeting will be held June 20, 2005, from 12 p.m. to 3 p.m.

ADDRESSES: The meeting will be held at the City of Sonora Fire Department located at 201 South Shepherd Street, in Sonora, California (CA 95370).

FOR FURTHER INFORMATION CONTACT: Pat Kaunert, Committee Coordinator, USDA, Stanislaus National Forest, 19777 Greenley Road, Sonora, CA 95370 (209) 532–3671, e-mail *pkaunert@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Presentation of primarily non-Forest Service project submittals by project proponents, with follow-up question and answer sessions. Time allocation for each presentation and question/answer session is 12 minutes; (2) short presentation on Stewardship projects; (3) Public comment on meeting proceedings. This meeting is open to the public.

Dated: June 3, 2005.

Tom Quinn,

Forest Supervisor.

[FR Doc. 05–11453 Filed 6–8–05; 8:45 am]

BILLING CODE 3410–ED–M

DEPARTMENT OF AGRICULTURE

Forest Service

Fremont and Winema Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Fremont and Winema Resource Advisory Committee will meet in Lakeview, Oregon, for the purpose of evaluating and recommending resource management projects for funding in 2006, under the provisions of Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meeting will be held on June 22 and 23, 2005.

ADDRESSES: The meeting will be held at the Elk's Club located at 323 North F Street, Lakeview, Oregon 97630. Send written comments to Fremont and Winema Resource Advisory Committee, c/o USDA Forest Service, P.O. Box 67, Paisley, OR 97636, or electronically to *agowan@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Amy Gowan, Designated Federal Official, c/o Klamath National Forest, 1312 Fairlane Road, Yreka, CA 96097, telephone (530) 841–4421.

SUPPLEMENTARY INFORMATION: The agenda will include a review of 2002–2005 projects recommended by the RAC, consideration of Title II project proposals for 2006 submitted by the Forest Service, the public, and other agencies, presentations by project proponents, and final recommendations for funding of fiscal year 2006 projects. All Fremont and Winema Resource Advisory Committee Meetings are open to the public. There will be a time for public input and comment. Interested citizens are encouraged to attend.

Dated: June 2, 2005.

Amy A. Gowan,

Designated Federal Official.

[FR Doc. 05–11464 Filed 6–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wrangell-Petersburg Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wrangell-Petersburg Resource Advisory Committee (RAC) will meet from 1 p.m. until 5 p.m. on Friday, July 22, and from 8 a.m. until 12 noon, Saturday, July 23, 2005, in Petersburg, Alaska. The purpose of this meeting is to train new RAC appointees and update continuing members on information pursuant to Title II, Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the ''Payments to States'' Act. This meeting is open to the public.

DATES: The meeting will be held commencing at 1 p.m. on Friday, July 22, through 12 noon, Saturday, July 23, 2005.

ADDRESSES: The meeting will be held at the Petersburg Lutheran Church Holy Cross House, 407 Fram Street, Petersburg, Alaska.

FOR FURTHER INFORMATION CONTACT: Bill Messmer, Acting Wrangell District Ranger, P.O. Box 51, Wrangell, AK 99929, phone (907) 874–2323, e-mail *bmessmer@fs.fed.us,* or Patty Grantham, Petersburg District Ranger, P.O. Box 1328, Petersburg, AK 99833, phone (907) 772–3871, e-mail *pagrantham@fs.fed.us.* For further information on RAC history, operations, and the application process, a Web site is available at *http://www.fs.fed.us/r10/ro/payments.* Once in the Web site, follow the links to the Wrangell-Petersburg Resource Advisory Committee.

SUPPLEMENTARY INFORMATION: This meeting will focus on training newly appointed RAC members and updating continuing members on relevant legislative, regulatory and policy direction in implementing their responsibilities pursuant to Payments to States legislation (Pub. L. 106–393), particularly on direction contained in Title II of the Act. The history of the Wrangell-Petersburg RAC will also be presented, emphasizing proposed, recommended and approved projects from the past several years. Miscellaneous administrative actions (*e.g.,* election of committee chairperson) are will also be taken at this meeting.

Dated: May 2, 2005.

Forrest Cole,

Forest Supervisor.

[FR Doc. 05–11465 Filed 6–8–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Haynes Creek—Brushy Fork Creek Watershed Structure No. 3: Gwinnett County, GA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the, Haynes Creek—Brushy Fork Creek Watershed Structure No. 3: Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Jimmy Bramblett, Water Resources Programs Leader, Natural Resources Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, telephone (706) 546–2073, e-mail *jimmy.bramblett@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James E. Tillman Sr., State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

James E. Tillman, Sr.,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires inter-government consultation with State and local officials.)

Finding of No Significant Impact for Haynes Creek—Brushy Fork Creek Watershed Structure No. 3, Gwinnett County, Georgia, June 2005.

Introduction

The Haynes Creek—Brushy Fork Creek Watershed is a federally assisted action authorized for planning under Public Law 106–472, the Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Haynes Creek—Brushy Fork Creek Watershed Structure No. 3, to meet current dam safety criteria in Georgia. The plan calls for construction of a roller compacted concrete spillway over the embankment of the existing earthen dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construct a 220-foot wide roller compacted concrete (RCC) chute spillway to protect underlying soil materials from erosion during overtopping. The RCC will be constructed with an ogee at elevation 951.7 ft. MSL. This constructed auxiliary spillway is designed to bring the existing dam into compliance with current dam safety criteria in Georgia. The current auxiliary spillway will be removed from service.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Installing a roller compacted concrete spillway will bring Haynes Creek—Brushy Fork Creek Watershed Structure No. 3 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 17 homes and 8 roads downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 13 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Six alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Gwinnett County Government, Gwinnett County Soil and Water Conservation District, and the Upper Ocmulgee River Resource Conservation and Development Council. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Haynes Creek—Brushy Fork Creek Watershed. Gwinnett County agreed to serve as ''lead sponsor'' being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process. Meetings with the project sponsors were held throughout the planning process, and project sponsors provided representation at planning team, technical advisory, and two public meetings.

An Interdisciplinary Planning Team provided for the ''technical'' administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS-National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were evaluated at Planning Team meetings. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

A Technical Advisory Group was developed to aid the Planning Team with the planning process. The following agencies were involved in developing this plan and provided representation on the Technical Advisory Group:

- Gwinnett County Government.
- Gwinnett County Soil and Water Conservation Districts.
- Georgia Department of Natural Resources, Environmental Protection Division (EPD), Safe Dams Program.
- Georgia Department of Natural Resources, Wildlife Resources Division (WRD), Game and Fisheries Section.
- United States Environmental Protection Agency (EPA), Region IV.
- USDA, Natural Resources Conservation Service (NRCS).
- USDI, Fish and Wildlife Service (F&WS).
- US Army Corps of Engineers (COE).

A meeting and field tour with the Technical Advisory Group was held on May 10, 2004 to assess proposed measures and their potential impact on resources of concern. A review of National Environmental Policy Act (NEPA) concerns was initiated at this meeting. Effects of proposed measures on NEPA concerns reviewed were documented. Additional field tours were held with the COE to determine the most efficient 404 permitting process.

Suzanne Kenyon, Cultural Resources Specialist with the NRCS-National Water Management Center, visited the project site in the fall of 2001. She provided a methodology for considering culturally significant resources, which was followed in this planning process. An inventory of the watershed, and associated downstream impacted area was completed with no culturally important or archaeological sites noted. The area of potential effect was provided to the Georgia State Historic Preservation Office with passive concurrence provided.

Public Participation: A public meeting was held on March 18, 2004, to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the Haynes Creek—Brushy Fork Creek No. 3 project area. Potential alternative solutions to bring No. 3 into compliance with current dam safety criteria were also presented. Through a voting process, meeting participants provided input on issues and concerns to be considered in the planning process, and identified the most socially acceptable alternative solution.

A second public meeting was held on May 6, 2004, to summarize planning accomplishments, convey results of the reservoir sedimentation survey, and present various structural alternatives. The roller compacted concrete chute spillway was identified as a complete, acceptable, efficient, and effective plan for the watershed and is the alternative preferred by the homeowners as indicated in the public meetings.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Haynes Creek—Brushy Fork Creek Watershed Structure No. 3 is not required.

Dated: June 1, 2005.

James E. Tillman, Sr.,

State Conservationist.

[FR Doc. 05–11432 Filed 6–8–05; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act; Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, June 17, 2005, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of May 13, 2005 Meeting

III. Announcements

IV. Staff Director's Report

V. State Advisory Committee Issues

- State Advisory Committee Reports
- State Advisory Committee Rechartering

VI. Program Planning

- Federal Funding of Civil Rights

VII. Discussion of Future Briefings, Including:

- Stagnation of the Black Middle Class

VIII. Web site Management

IX. Future Agenda Items

FOR FURTHER INFORMATION CONTACT: Kenneth L. Marcus, Press and Communications (202) 376–7700.

Jenny Park,

Acting Deputy General Counsel.

[FR Doc. 05–11594 Filed 6–7–05; 8:45 am]

BILLING CODE 6335–O–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–504

Notice of Rescission of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Shanghai R&R Import Export Company Limited (''Shanghai R&R''), an exporter of subject merchandise, the Department of Commerce (the ''Department'') initiated an administrative review of the antidumping duty order on petroleum wax candles (''candles'') from the People's Republic of China (''PRC''). No other interested party requested a review of Shanghai R&R. The period of review (''POR'') is August 1, 2003, through July 31, 2004. For the reasons discussed below, the Department is rescinding this administrative review.

EFFECTIVE DATE: June 9, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION: On August 3, 2004, the Department published an opportunity to request a review of the antidumping duty order on candles from the PRC. *See Notice of Opportunity to Request an Administrative Review*, 69 FR 46496 (August 3, 2004). Shanghai R&R and Shangyu City Garden Candle Factory (''Garden Candle'') made timely requests for an administrative review. On September 22, 2004, the Department initiated the 6th review of candles from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part* (''*Initiation*''), 69 FR 56745 (September 22, 2004).

On February 1, 2005, Garden Candle withdrew from the instant administrative review of candles from the PRC. On March 30, 2004, the Department rescinded the administrative review of Garden Candle. *See Petroleum Wax Candles from the People's Republic of China: Rescission, in Part, of Antidumping Duty Administrative Review*, 70 FR 16217 (March 30, 2005).

On May 16, 2005, Shanghai R&R submitted its request for withdrawal from the administrative review.

Rescission of Review

If a party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1) of the Department's regulations. However, the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. The Department finds that it is reasonable to extend the time limit by which a party may withdraw its request for review in the instant proceeding. The Department has not yet devoted considerable time and resources to this review, and the Department concludes that the withdrawal does not constitute an abuse of our procedures by the involved party. Therefore, given that the only respondent has withdrawn from, and thereby is no longer participating in the instant review, the Department is rescinding this administrative review of the antidumping duty order on candles from the PRC.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3) of the Department's regulations. Timely written notification of the 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.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: May 31, 2005.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–2983 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904; NAFTA Panel Reviews; Completion of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Completion of Panel Review of the final remand determination made by the U.S. International Trade Commission, in the matter of Carbon and Certain Alloy Steel Wire Rod from Canada, Secretariat File No. USA–CDA–2002–1904–09.

SUMMARY: Pursuant to the Order of the Binational Panel dated April 22, 2005, affirming the final remand determination described above the panel review was completed on April 21, 2005.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: On April 21, 2005, the Binational Panel issued an order which affirmed the final remand determination of the United States International Trade Commission (ITC) concerning Carbon and Certain Alloy Steel Wire Rod from Canada. The Secretariat was instructed to issue a Notice of Completion of Panel Review on the 31st day following the issuance of the Notice of Final Panel Action, if no request for an Extraordinary Challenge was filed. No such request was filed. Therefore, on the basis of the Panel Order and Rule 80 of the *Article 1904 Panel Rules,* the Panel Review was completed and the panelists discharged from their duties effective April 21, 2005.

Dated: June 2, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–2954 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing an Implementation Workshop on FIPS 201, Personal Identity Verification (PIV) of Federal Employees and Contractors

AGENCY: National Institute of Standards and Technology (NIST).

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST) will host a public workshop to provide additional guidance on Federal Information Processing Standards (FIPS) 201 implementation. The workshop is designed to provide clarifications and respond to the questions raised by the industry and Federal agencies. NIST has received many questions as to industry's plans to deliver products that are PIV–II compliant (*i.e.*, meet the requirements of FIPS 201, PIV–II and NIST SP 800–73, end-point specifications). Commercial vendors have made significant progress in developing solutions to meet PIV–II requirements. The workshop will provide an opportunity for the industry to provide brief details to the participants, particularly agency officials, as to their product availability and planned timetables so that agencies can plan accordingly for PIV–II compliant implementations and procurement. NIST will discuss, in greater detail, the mandates and requirements of the FIPS 201 and related Special Publications through a series of educational presentations including the NIST reference implementation. The workshop agenda topics will be available at *http://csrc.nist.gov/piv-project* by May 31, 2005.

DATES: The FIPS 201 Implementation Workshop will be held on June 27 and 28, 2005, from 8 a.m. to 5 p.m.

ADDRESSES: The FIPS 201 Implementation Workshop will take place at a hotel facility in the Gaithersburg, Maryland area. Information about the meeting location and hotel accommodations will be available at *http://csrc.nist.gov/piv-project* by May 31, 2005.

Registration prior to 5 p.m. June 16, 2005, is *required.* All registration must be done online at *https://rproxy.nist.gov/CRS/.* Please go to this Conference Registration link and complete the registration form for FIPS 201 Implementation Workshop. The workshop address and registration information will be posted on the Personal Identity Verification program Web site, *http://csrc.nist.gov/piv-project.*

FOR FURTHER INFORMATION CONTACT: Mr. William (Curt) Barker, (301) 975–8443 or Ketan Mehta, (301) 975–8405.

SUPPLEMENTARY INFORMATION: On August 27, 2004, President Bush signed the Homeland Security Presidential Directive (HSPD) #12 (*see http://www.whitehouse.gov/news/releases/2004/08/20040827–8.html*) establishing a policy for a Common Identification Standard for Federal Employees and Contractors. In accordance with this Directive, the Secretary of Commerce promulgated a Federal standard for secure and reliable forms of identification of Federal Employees and Federal Contractor Employees on February 25, 2005. The standard details the requirements of government-wide identity credentials in two parts. Part 1, PIV–I, provides the control objectives and meets the security requirements of HSPD 12, while Part 2, PIV–II, provides the technical interoperability requirements of HSPD 12. PIV–II also specifies the implementation of identity credentials on integrated circuit cards for use in a Federal personal identity verification system. This standard defines the technical requirements for the identity credential that: (1) Is issued based on sound criteria for verifying an individual employee's identity; (2) is strongly resistant to identity fraud, tampering, counterfeiting, and terrorist exploitation; (3) can be rapidly authenticated electronically; (4) is issued only by providers whose reliability has been established by an official accreditation process. The standard also defines authentication mechanisms offering varying degrees of security. Federal departments and agencies will determine the level of security and authentication mechanisms appropriate for their applications. Implementation of PIV–I of the standard is to be accomplished by Federal agencies no later than October 27, 2005.

By bringing together the physical and logical security experts, this workshop will address issues and concerns in implementing FIPS 201. The sessions will include detailed discussion of FIPS 201 implementation issues. Issues associated with Special Publications 800–73, 800–78, and 800–79 (in development, Guidelines for PIV Accreditation of Card Issuing Organizations) will be addressed, as will the reference implementation of FIPS 201. The speakers will be able to answer vendor (including component developers and integrators) and Federal Government questions on implementing FIPS 201. It is anticipated that the vendor community will provide insights into their capabilities to deliver FIPS 201 compliant products, particularly for the critical PIV–II (*i.e.*, FIPS 201, PIV–II and NIST SP 800–73, end-point specifications).

Dated: May 31, 2005.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 05–11447 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 053105D]

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has issued an affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the Eastern Tropical Pacific (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: Effective June 9, 2005 through March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980-4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting

nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain or obtained from the IATTC and the Department of State and determined that Spain has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, the Assistant Administrator issued the Government of Spain's affirmative finding allowing the importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction. The affirmative finding will remain valid through March 31, 2010, provided that the NMFS's annual review of the finding determines that the harvesting nation is still in compliance with the required conditions for a finding. This annual review will occur for the years 2006 to 2009.

Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis NMFS will review the affirmative finding and determine whether Spain continues to meet the requirements. A nation may provide information regarding its compliance with the IDCP directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

Dated: June 6, 2005.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 05–11463 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Coral Ecosystem Research Plan Part I: National Priorities Draft

AGENCY: Coral Reef Conservation Program, NOAA, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to announce the availability of the Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities for public comment. The Draft NOAA Coral Ecosystem Research Plan is being developed by the NOAA Coral Reef Conservation Program to set priorities and guide NOAA-supported coral ecosystem research for fiscal year 2005 to 2010, including research conducted through extramural partners, grants, and contracts. The Draft NOAA Coral Ecosystem Research Plan covers all coral reef ecosystems under the jurisdiction of the United States and the Pacific Freely Associated States; and is written for a broad audience, including resource managers, scientists, policy makers, and the public.

DATES: Comments on this draft document must be submitted by July 11, 2005.

ADDRESSES: The Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities will be available at the following location *http://www.nurp.noaa.gov/Docs/NOAA_CoralResearchPlanPartI_FRN.pdf.*

The public is encouraged to submit comments on the Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities electronically to *coral.researchplan@noaa.gov.* For commenters who do not have access to a computer, comments on the document may be submitted in writing to: NOAA Research, c/o Kimberly Puglise, NOAA's Undersea Research Program, 1315 East-West Highway R/NURP, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Kimberly Puglise by mail at NOAA's Undersea Research Program, 1315 East-West Highway R/NURP, Silver Spring, Maryland 20910 or phone (301) 713–2427 ext. 199 or e-mail at *coral.researchplan@noaa.gov.*

SUPPLEMENTARY INFORMATION: NOAA is publishing this notice to announce the availability of the Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities for public comment. The draft plan will be posted for public comment on June 9, 2005. All interested parties are encouraged to provide comments. The Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated, where appropriate, in the final version.

The Draft NOAA Coral Ecosystem Research Plan is being developed by the NOAA Coral Reef Conservation Program to set priorities and guide NOAA-supported coral ecosystem research for fiscal years 2005 to 2010, including research conducted through extramural partners, grants, and contracts. The Draft NOAA Coral Ecosystem Research Plan covers all coral reef ecosystems under the jurisdiction of the United States and the Pacific Freely Associated States; and is written for a broad audience, including resource managers, scientists, policy makers, and the public.

The Draft NOAA Coral Ecosystem Research Plan consists of two sections: (1) Part I; National Priorities; and (2) Part II: Regional Priorities. At this time, we are requesting your comments solely on the Part I: National Priorities Draft. The Part II: Regional Priorities Draft will be published in the **Federal Register** for comment at a later date.

Part I of the Plan is national in scope and identifies: the role of research in management, including a review of the major stressors and threats facing coral reef ecosystems and an overview of stressor-associated research priorities; the role of mapping and monitoring in management-driven research programs; a discussion of the tools and technologies necessary to conduct research and to manage ecosystems; a discussion of the importance of transferring science and technology into operations; and the importance of using strategic outreach and education to translate research results to improve management decisions.

Part II of the Plan is regional in scope and reviews the major stressors for coral ecosystems in each region under the jurisdiction of the United States and the Pacific Freely Associated States; identifies key management objectives specific to each region; and the research priorities for fiscal years 2005 years 2005 to 2010 to help address the stated management objectives in each region. Part II is divided into the following regions: Florida with subsections for the Florida Keys, Southeast Florida, and the West Florida Shelf (also known as the Eastern Gulf of Mexico); Flower Garden Banks; Puerto Rico; the U.S. Virgin

Islands; Navassa Island; the Hawaiian Islands with subsections for the Main and Northwestern Hawaiian Islands; American Samoa; the Commonwealth of the Northern Marianas Islands; Guam; the U.S. Pacific Remote Insular Areas, which includes Midway Atoll, Rose Atoll, Wake Atoll, Johnston Atoll, Kingman Reef, Palymra Atoll, Jarvis Island, Howland Island, and Baker Island; and the Pacific Freely Associated States with subsections for the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

NOAA welcomes all comments on the content of the Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities. We also request comments on any inconsistencies perceived within the document, and possible omissions of important topics or issues. For any shortcoming noted within the draft documents, please propose specific remedies.

Please adhere to the instructions detailed below for preparing and submitting your comments on the Draft NOAA Coral Ecosystem Research Plan Part I: National Priorities. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please format your comments into the following three sections: (1) Background information about yourself (optional); (2) overview or general comments; and (3) specific comments. Section one may include background information about yourself including: your name(s), organization(s), area(s) of expertise, and contact information, such as mailing address, telephone and fax numbers, and e-mail address(s). Section two should consist of overview or general comments on the document and should be numbered. Section three should consist of comments that are specific to particular pages, paragraphs, or lines in the document and should identify the page and line numbers to which they apply. Please number and print identifying information at the top of all pages.

Public comments may be submitted from June 9, 2005, through July 11, 2005.

Dated: June 2, 2005.

David Kennedy,

Manager, Coral Reef Conservation Program.

[FR Doc. 05–11430 Filed 6–8–05; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 11, 2005.

Title, Form, and OMB Number: Request for Reference; DD Form 370; OMB Control Number 0704–0167.

Type of Reqeust: Extension.

Number of Respondents: 70,000.

Responses per Respondent: 1.

Annual Responses: 70,000.

Average Burden per Response: .167 hours (10 minutes).

Annual Burden Hours: 11,690.

Needs and Uses: Title 10 U.S.C. 504, 505, 508, and 12102, establishes minimum standards for enlistment into the Armed Forces. This information collection is for reference information on individuals applying for enlistment in the Armed Forces of the United States who require a waiver. The form associated with this information collection, DD 370, ''Request for Reference,'' is used by recruiters to obtain information on applicants who have admitted committing a civil or moral offense. The respondents may provide character information which would allow the applicant to be considered for a waiver and therefore continue the application process.

Affected Public: Individuals or households; business or other for-profit; Federal government; state, local or tribal government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.Written requests for copies of the information collection proposal should be sent to Ms. Toppings, WHS/ESD Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 25, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–11420 Filed 6–8–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB review; comment request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 11, 2005.

Title and OMB Number: Industry Partnership Survey; OMB Number 0702–TBD.

Type of Request: New.

Number of Respondents: 1,714.

Responses per Respondent: 1.

Annual Responses: 1,371.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 343.

Needs and Uses: SDDC will use the survey information to improve the efficiency, quality, and timeliness of its processes, as well as to strengthen its partnership with industry. Although the survey instruments are brief, with only basic information requested to measure satisfaction and to obtain feedback on areas that may require improvement, SDDC expects the data, comments, and suggestions offered by the respondents to help improve the performance of its systems and contain costs. Because the survey asks about the roles of SDDC employees, the responses will also help improve the SDDC exercise of project oversight responsibilities.

Affected Public: Business or other for-profit.

Frequency: On occasion (14 month cycle).

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Lewis Oleinick.

Written comments and recommendations on the proposed information collection should be sent to Mr. Oleinick at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should

be sent to Ms. Toppings, WHS/ESD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: May 20, 2005.

Patricia L. Toppings,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–11421 Filed 6–8–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–90–000]

American Electric Power Service Corporation; Notice of Application To Authorize Disposition of Jurisdictional Facilities

June 3, 2005.

Take notice that on May 31, 2005, American Electric Power Service Corporation (AEPSC), acting on behalf of its electric utility affiliate, AEP Texas Central Company, formerly known as Central Power and Light Company, submitted an application for approval of the sale and transfer of certain electric substation facilities to Flint Hills Resources, LP, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b (2004), and part 33 of the Regulations of the Federal Energy Regulatory Commission as revised pursuant to Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000).

AEPSC states that a copy of the filing has been served on the Public Utility Commission of Texas and on each wholesale customer served by TCC.

Any person desiring to intervene or to protest in the above proceeding must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail FERCOnlinSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on June 21, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2962 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–362–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 3, 2005.

Take notice that on May 31, 2005, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No 1, Thirty-Seventh Revised Sheet No. 11A, to become effective July 1, 2005.

CIG states that the tariff sheet is being filed to revise the Fuel Reimbursement Percentage applicable to Lost, Unaccounted-For and Other Fuel Gas.

CIG states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

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. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2971 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–001, CP05–130–002, CP05–132–001, and CP05–131–001]

Dominion Cove Point LNG, LP; Dominion Transmission, Inc.; Notice of Supplemental Filings

June 3, 2005.

Take notice that on May 27, 2005, Dominion Cove Point LNG, LP (Cove Point LNG) filed new information to supplement its application in Docket

No. CP05–130–000. That application, filed pursuant to section 3 of the Natural Gas Act (NGA), requests authority to expand its facilities at its liquefied natural gas (LNG) import terminal at Cove Point, Maryland. The new information is also relevant to Cove Point LNG's April 15, 2005, application in Docket No. CP05–132–000 and Dominion Transmission, Inc.'s April 15, 2005 application in Docket No. CP05–131–000.

The details of these filings are more fully set forth in the filings which are on file with the Commission and open to public inspection. These filings may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number including the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

The first item of new information filed in Docket Nos. CP05–130–001, CP05–132–001 and CP05–131–001 is a Notice of Terms of Settlement of Matters Related to the Cove Point Expansion Proceedings. This Notice describes the principal terms of a settlement among Cove Point LNG and certain parties to these proceedings. Among other things, the Notice briefly describes certain additional filings that Cove Point LNG will now make regarding its LNG import terminal. The second item of new information filed in Docket No. CP05–130–002 is one of these additional filings. This second item is revisions to Cove Point LNG's proposed Section 30 of its General Terms and Conditions of its FERC Gas Tariff. Proposed Section 30, as now revised, more fully describes the relationship of certain aspects of Cove Point's proposed expansion service to other provisions of its FERC tariff.

Pursuant to the Commission's Notice of Application issued on April 29, 2005, May 27, 2005 was to have been the due date for filing of comments, protests and motions to intervene in these proceedings. We note that consolidated responses to any comments, protests and motions to intervene filed on May 27, 2005 remains due no later than June 13, 2005, pursuant to a Notice of Extension of Time issued by the Commission on May 27, 2005.

However, given the nature of the new information filed on May 27, 2005 by Cove Point LNG in the above referenced sub-dockets, the Commission hereby sets a further date for all parties and persons to revise or initially file their comments, protests and motions to intervene in these proceedings.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Further Comment Date: June 28, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2958 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER01–2262–000 and ER01–2262–001]

Frederickson Power L.P.; Notice of Issuance of Order

June 1, 2005.

Frederickson L.P. (Frederickson Power) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sales of capacity, energy, and ancillary services at market-based rates. Frederickson Power also requested waiver of various Commission regulations. In particular, Frederickson Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Frederickson Power.

On February 21, 2002, pursuant to delegated authority, the Director, Division of Tariffs and Rates—Central, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Frederickson Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is June 10, 2005.

Absent a request to be heard in opposition by the deadline above, Frederickson Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Frederickson Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Frederickson Power issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order 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 filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2964 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–073]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

June 3, 2005.

Take notice that on May 31, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Twenty-First Revised Sheet No. 15, to become effective June 1, 2005.

GTN states that this sheet is being filed to reflect the continuation of a negotiated rate agreement pursuant to evergreen provisions contained in the agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

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. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2972 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–503–000]

Natural Gas Pipeline Company of America; Notice Denying Emergency Request for Reconsideration

June 3, 2005.

On May 24, 2005, Natural Gas Pipeline Company of America (Natural) filed, in the above-docketed proceeding, an emergency request for reconsideration of the Commission's order setting for hearing the issue of appropriate hydrocarbon dew point (HDP) safe harbor level on Natural's system. On May 31, the Commission issued a notice shortening the period for filing answers to Natural's request to June 2, 2005. On May 27, and June 2, 2005, Alliance Pipeline L.P., Indicated Shippers, and Aux Sable Liquid Products, L.P. filed respective answers in opposition to Natural's request. By this notice, Natural's May 24, 2005, emergency request for reconsideration is hereby denied.

By direction of the Commission.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2968 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–12–000]

Nicor Gas; Notice of Petition for Rate Approval

June 3, 2005.

Take notice that on April 29, 2005, Nicor Gas, filed with the Federal Energy Regulatory Commission an application pursuant to sections 284.224 and 284.123 to (a) establish new rates to be effective May 1, 2005, for services provided pursuant to Nicor Gas' blanket certificate issued in Docket No. CP92–481–000; and (b) to make certain revisions to its operating Statement.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to

receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time June 20, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2965 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–286–001]

Northwest Pipeline Corporation; Notice Of Compliance Filing

June 3, 2005.

Take notice that on May 31, 2005, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective May 23, 2005:

Substitute Third Revised Sheet No. 271–A
Substitute Original Sheet No. 271–B

Northwest states that the purpose of this filing is to comply with the Commission's Order on Tariff Sheets dated May 20, 2005, in Docket No. RP05–286–000 concerning Northwest's permanent capacity release tariff provisions.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2969 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–349–001]

Questar Pipeline Company; Notice of Tariff Filing

June 3, 2005.

Take notice that on May 31, 2005, Questar Pipeline Company (Questar), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 67, to be effective June 21, 2005.

On May 20, 2005, Questar filed a tariff filing that reflected various redundant language and grammar cleanup, miscellaneous corrections and clarifications and the addition of minor tariff provisions. However, one of the tariff sheets in that filing contained a pagination error reflecting pagination from tariff sheets that had previously been withdrawn in two separate proceedings under Docket Nos. RP05–272–000 and RP03–250–000. Questar states that the pagination error is being corrected by this amended filing.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing 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. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2970 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–356–000]

Tennessee Gas Pipeline Company; Notice of Abbreviated Application of Tennessee Gas Pipeline Company for Authorization to Remove a Receipt Point From a Certificated Transportation Service

June 3, 2005.

Take notice that on May 18, 2005, Tennessee Gas Pipeline Company (Tennessee) pursuant to section 7(c) of the Natural Gas Act, 15 U.S.C. 717f(c) and part 157 of the Commission's Regulations, tendered for filing an application for authorization to amend its certificate of public convenience and necessity granted in Docket No. CP81–474–000, issued by order dated November 4, 1981.[1]

Tennessee requests authority to remove a receipt point designated as meter No. 011699 from a firm natural gas transportation service provided for Dynegy Marketing and Trade under Tennessee Rate Schedule T–124, FERC Gas Tariff, Original Volume No. 2.

[1] *Tennessee Gas Pipeline Company,* 17 FERC ¶ 62,196 (1981).

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. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email 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.

Intervention and Protest Date: 5 p.m. Eastern Time June 10, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2960 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–363–000]

Texas Eastern Transmission, LP; Notice of Abbreviated Application of Texas Eastern Transmission, LP For Partial Abandonment of Certificate of Public Convenience and Necessity and Related Authorizations

June 3, 2005.

Take notice that on May 27, 2005, Texas Eastern Transmission, LP (Texas Eastern), tendered for filing in the captioned docket an abbreviated application pursuant to section 7(b) of the Natural Gas Act, as amended, and part 157 of the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving partial abandonment of natural gas storage service in order to accommodate changes requested by Texas Eastern's customer, Transcontinental Gas Pipe Line Corporation, in the injection quantities, withdrawal quantities, and storage inventory of its storage service.

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. Such notices, motions, or protests must be filed in on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Intervention and Protest Date: 5 p.m. eastern time June 24, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2961 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–123–000]

New York Power Authority, Complainant v. Consolidated Edison Company of New York, Inc., Respondent; Notice of Complaint

June 3, 2005.

Take notice that on June 2, 2005, the New York Power Authority (NYPA) filed a Complaint against Consolidated Edison Company of New York, Inc. (Con Edison). The Complaint asserts that Con Edison is unlawfully interfering with the enrollment of NYPA generating plants in the Station Power Program of the New York Independent System Operator, and that Con Edison should be required to refund to NYPA, with interest, station power delivery charges that NYPA has paid to Con Edison.

NYPA states that copies of the Complaint have been served by e-mail, messenger, or overnight delivery on Con Edison, as well as the New York Public Service Commission.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. 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 FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filing in the above proceeding is accessible in the Commission's eLibrary system. It is also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. on July 5, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2963 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–89–000, et al.]

Coral Power, LLC, et al.; Electric Rate and Corporate Filings

June 1, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Coral Power, L.L.C.; Coral Energy Management, LLC; Baconton Power LLC; Colorado Green Holdings, LLC; Cabazon Wind Partners, LLC; Rock River I, LLC; Whitewater Hill Wind Partners, LLC; Llano Estacado Wind, LP; Northern Iowa Windpower, LLC; Shell Energy Services Company, L.L.C.

[Docket No. EC05–89–000]

Take notice that on May 27, 2005, Coral Power, L.L.C. (Coral Power), Coral Energy Management, LLC (Coral EM), Baconton Power LLC (Baconton), Colorado Green Holdings, LLC (Colorado Green), Cabazon Wind Partners, LLC (Cabazon), Rock River I, LLC (Rock River), Whitewater Hill Wind Partners, LLC (Whitewater), Llano Estacado Wind, LP (Llano Estacado), Northern Iowa Windpower LLC (NIW), and Shell Energy Services Company, L.L.C. (SES) (collectively, Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities related to the corporate reorganization of Royal Dutch Petroleum Company (N.V. Koninklijke Nederlandsche Petroleum Maatschappij), a Netherlands company, and The ''Shell'' Transport & Trading Company, p.l.c., a United Kingdom company (together, Shell Parents), which hold indirect upstream ownership interests in Applicants.

As a result of the proposed reorganization, the Shell Parents will become wholly-owned direct subsidiaries of a new parent company, which, in turn, will be owned by the existing shareholders of the Shell Parents. Coral Power, Coral EM, and SES are power marketers that do not own any electric generation, transmission, or distribution facilities. Baconton, Colorado Green, Cabazon, Rock River, Whitewater, Llano Estacado, and NIW are exempt wholesale generators that own generating facilities located in Georgia, Colorado, California, Wyoming, California, Texas, and Iowa, respectively.

Comment Date: 5 p.m. Eastern Time on June 17, 2005

2. Shane's Wind Machine LLC

[Docket No. EG05–69–000]

Take notice that on May 27, 2005, Shane's Wind Machine LLC, tendered for filing an Application for Determination of Exempt Wholesale Generator Status.

Comment Date: June 17, 2005.

Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to 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 email 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 TYY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2955 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–70–000, et al.]

Calumet Energy Team, LLC, et al.; Electric Rate and Corporate Filings

June 2, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calumet Energy Team, LLC

[Docket No. EG05–70–000]

On May 31, 2005, Calumet Energy Team, LLC (CET) filed with the Commission an application for

redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations. CET states that copies of the application were sent to the Securities and Exchange Commission and the Illinois Commerce Commission.

Comment Date: 5 pm Eastern Time on June 21, 2005.

2. Eastern Landfill Gas, LLC

[Docket No. EG05–71–000]

Take notice that on May 31, 2005, Eastern Landfill Gas, LLC tendered for filing an application for Determination of Exempt Wholesale Generator Status.

Comment Date: 5 p.m. Eastern Time on June 21, 2005.

3. Strategic Energy, LLC

[Docket No. ER96–3107–015]

Take notice that on May 26, 2005, Strategic Energy, LLC, submitted a supplement to its December 20, 2004 filing in Docket No. ER96–3107–014 of a notice of change in status.

Comment Date: 5 p.m. on June 16, 2005.

4. AES Redondo Beach, L.L.C.

[Docket No. ER98–2186–012]

Take notice that on May 25, 2005, AES Redondo Beach, L.L.C., submitted an errata to its May 18, 2005 filing in Docket No. ER98–2186–010.

Comment Date: 5 p.m. on June 15, 2005.

5. AmerGen Energy Company, LLC, Commonwealth Edison Company, Exelon Energy Company, Exelon Edgar LLC, Exelon Framingham LLC, Exelon New Boston LLC, Exelon West Medway LLC, Exelon Generation Company, L.L.C., Exelon New England Power Marketing, L.P., PECO Energy Company and Unicom Power Marketing, Inc.

[Docket Nos. ER99–754–009, ER99–754–010, ER98–1734–007, ER98–1734–008, ER01–1919–004, ER01–1919–005, ER01–513–006, ER01–513–009, ER00–3251–007, ER00–3251–008, ER99–2404–005, ER99–2404–006, ER99–1872–008, ER99–1872–009, ER97–3954–017 and ER97–3954–018]

Take notice that on May 23, 2005, Exelon Generation Company, LLC and its affiliates listed in the caption above (jointly, Exelon) submitted a response to the Commission's deficiency letter issued March 25, 2005 in the above-referenced proceedings.

Comment Date: 5 p.m. Eastern Time on June 13, 2005.

6. Constellation Energy Group, Inc. and Oleander Power Project, Limited Partnership

[Docket Nos. ER99–2948–005 and ER00–3240–003]

Take notice that on May 23, 2005, Constellation Energy Group, Inc. (Constellation) submitted a supplement to its May 2, 2005 Notice of Change in Status filing with the addition of Baltimore Gas and Electric Company's revised market-based rate tariff to incorporate the language required by Order No. 652 and the addition of Oleander Power Project, Limited Partnership, Docket No. ER00–3240, which was inadvertently omitted from the caption of the May 2, 200 filing.

Comment Date: 5 p.m. on June 13, 2005.

7. AES Red Oak, L.L.C.

[Docket No. ER01–2401–007]

Take notice that on May 25, 2005, AES Red Oak, L.L.C. (Red Oak) submitted an errata to its compliance filing of May 18, 2005 in Docket No. ER01–2401–007.

Comment Date: 5 p.m. on June 15, 2005.

8. AES Red Oak, L.L.C.

[Docket No. ER01–2401–008]

Take notice that on May 25, 2005, AES Red Oak, L.L.C. (Red Oak) submitted an errata to its May 18, 2005 filing in Docket No. ER01–2401–006.

Comment Date: 5 p.m. on June 15, 2005.

9. Ontario Energy Trading International Corp.

[Docket No. ER02–1021–004]

Take notice that on May 26, 2005, Ontario Energy Trading International Corp. (Ontario Energy) submitted a supplemental compliance filing pursuant to the Commission's new interim generation market power screens issued on April 14, 2004 in *AEP Power Marketing Inc., et al.*, 107 FERC ¶ 61,018 (2004), *order on reh'g.,* 108 FERC ¶ 61,026 (2004).

Ontario Energy states that copies of the filing were served on parties on the official service list in Docket No. ER02–1021–000.

Comment date: 5 pm Eastern Time on June 16, 2005.

10. Midwest Independent Transmission, System Operator, Inc., Midwest Independent Transmission System Operator, Inc. and Ameren Services Co., et al.

[Docket Nos. ER05–6–022, EL04–135–024, EL02–111–042 and EL03–212–038]

Take notice that on May 26, 2005, Duke Energy North America, LLC (Duke) submitted a hubbing adjustment for the Duke Energy Vermillion, LLC and Duke Energy Washington, LLC control areas.

Duke states that it copies of the public version of the filing were served upon the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. on June 7, 2005.

11. Midwest Independent Transmission System Operator, Inc. and Ameren Services, Co., et al.

[Docket Nos. ER05–6–026, EL04–135–028, EL02–111–046 and EL03–212–042]

Take notice that on May 26, 2005, Duquesne Light Company (Duquesne) is submitting for filing amendments to its April 20, 2005 Affidavit and Exhibits of Robert G. Thomson filed as part of the April 20, 2005 compliance filing submitted by American Electric Power Service Corporation, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., and Dayton Power and Light Company (collectively, New PJM Companies) in Docket Nos. ER05–6–18, EL04–135–20, EL02–111–38, and EL03–212–34.

Comment Date: 5 p.m. on June 7, 2005.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER05–826–000]

Take notice that on May 27, 2005, as supplemented on May 31, 2005, Consolidated Edison Company of New York, Inc. filed a notice of withdrawal of its April 20, 2005 tariff filing in the above-referenced proceeding.

Comment Date: 5 p.m. Easter Time on June 21, 2005.

Standard Paragraph

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211 and 385.214) on or before 5 pm Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to long on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protests to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available to 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 TYY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2973 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000, CP04–400–000, CP04–401–000, and CP04–402–000]

Golden Pass LNG Terminal L.P., Golden Pass Pipeline L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Golden Pass LNG Terminal and Pipeline Project

June 3, 2005.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a Final Environmental Impact Statement (FEIS) on the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities in Jefferson, Orange, and Newton Counties, Texas, and Calcasieu Parish, Louisiana, proposed by Golden Pass LNG Terminal L.P. and Golden Pass Pipeline L.P. (collectively referred to as Golden Pass) in the above-referenced dockets.

The FEIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The FEIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

Golden Pass's proposed facilities would transport an average of 2.0 billion cubic feet per day (Bcfd) of imported natural gas to the U.S. market. In order to provide LNG import, storage, and pipeline transportation services, Golden Pass requests Commission authorization to construct, install, and operate an LNG terminal and natural gas pipeline facilities.

The FEIS addresses the potential environmental effects of the construction and operation of the following LNG terminal and natural gas pipeline facilities:

- A new protected marine terminal basin connected to the Port Arthur Channel that would include a ship maneuvering area, two protected berths, and unloading facilities capable of accommodating up to 200 LNG ships per year;
- A total of five all-metal, double-walled, full containment LNG storage tanks, each with a nominal working volume of approximately 155,000 cubic meters (975,000 barrels) and each with secondary containment dikes to contain 110 percent of the gross tank volume;
- A total of ten shell-and-tube vaporizers, using a closed loop circulating solution and selective catalytic reduction to reduce regulated pollutants;
- Associated LNG storage and vaporization facilities, including administrative, storage, and maintenance buildings, access roads, and a waterline;
- A pipeline system comprised of 77.8 miles of 36-inch-diameter mainline, 42.8 miles of 36-inch-diameter loop, and 1.8 miles of 24-inch-diameter lateral; and
- Associated ancillary pipeline facilities, including interconnections with up to 10 existing interstate and intrastate pipeline systems.

The FEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426. (202) 502–8371.

A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the FEIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the FEIS; libraries; newspapers; and parties to this proceeding.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the National Environmental Policy Act, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of an FEIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the FEIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet 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. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached toll free at 1–866–208–3676, for TTY at (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to

the documents. Go to the eSubscription link on the FERC Internet Web site.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2957 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–352–000 and CP05–355–000]

National Fuel Gas Supply Corporation; Tennessee Gas Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Northeast Connexion-NY/NJ Project and Request for Comments on Environmental Issues

June 3, 2005.

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 Northeast ConneXion-NY/NJ Project involving construction and operation of facilities by Tennessee Gas Pipeline Company (Tennessee) and National Fuel Gas Supply Corporation (National) in Bradford, Potter, and Susquehanna Counties, Pennsylvania, and Bergen County, New Jersey. Tennessee's and National's project purpose is to increase capacity on Tennessee's Line 300 by up to 50,000 dekatherms per day (Dth/d) and 51,500 Dth/d of incremental storage deliverability to Public Service Electric and Gas Company. In general, the project consists of about 6.0 miles of pipeline, adding additional compression at both the 313 and 317 Compressor Stations, upgrades to the Ramsey Meter Station, and enhancement of dehydration facilities at Compressor Station 313.

This notice announces the opening of the scoping period that will be used to gather environmental input from the public and interested agencies on the project. Please note that the scoping period will close on July 5, 2005.

This notice is being sent to potentially affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; local libraries and newspapers. 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 pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline 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 fail to produce an agreement, the pipeline company could initiate condemnation proceedings 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. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Tennessee [1] proposes to:

- Construct [2] two separate 30-inch-diameter pipeline loops [3] (2.0 miles in Bradford County and 4.0 miles in Susquehanna County, Pennsylvania);
- Construct a pig launcher, receiver, and mainline valve (MLV) on the Bradford County loop, and a pig launcher and MLV on the Susquehanna County loop;
- Add 2,370 horsepower (hp) of compression and enhanced dehydration facilities at Tennessee's existing Compressor Station 313 in Potter County, Pennsylvania;
- Uprate an existing compressor unit from 6,330 hp to 13,400 hp through modifications to computer software at Compressor Station 317 in Bradford County, Pennsylvania; and
- Upgrade the existing Ramsey Meter Station in Bergen County, New Jersey. The upgrade would consist of replacing 250 feet of 8-inch-diameter pipe with 16 inch-diameter pipe and replacement of a 4-inch ultrasonic meter with an 8-inch ultrasonic meter.

The general location of Tennessee's proposed facilities is shown on the map attached as Appendix 1.[4]

Land Requirements for Construction

Construction of Tennessee's proposed facilities would require about 113.7 acres of land for the construction right-of-way for the pipelines, additional temporary workspaces, staging areas, and access roads. Of this land, 18.63 would be permanently maintained by Tennessee. The construction right-of-way for the pipelines would typically be 100 feet wide with 25 feet overlapping Tennessee's permanently maintained existing right-of-way in uplands. In wetland areas it would be reduced to 75 feet. Following construction, a 50-foot-wide permanent right-of-way would be maintained.

At Compressor Stations 313 and 317 and the Ramsey Meter Station, the proposed work would take place within the existing fee-owned property or easement boundaries. These areas are included in the above acreage estimates.

Construction access to Tennessee's project would be via existing and new access roads. Tennessee has identified nine existing private access roads and four new access roads necessary for the construction of its project.

The EA Process

We [5] are preparing the EA to comply with the National Environmental Policy Act (NEPA) which 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 us 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 of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the

[1] National's interest in the project is in the modification of the dehydration tower at Compressor Station 313 in Potter County, Pennsylvania. This project, (Docket No. CP05–352–000), was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations. Any reference to Tennessee from this point forth will refer to the overall project which includes National's interests.

[2] Tennessee's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[3] A loop is a segment of pipeline installed adjacent to an existing pipeline and which connects to the existing pipeline at both ends of the loop. The loop allows more gas to be moved through the system.

[4] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link 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. Copies of the appendices were sent to all those receiving this notice in the mail.

[5] ''We'', ''us'', and ''our'', refer to the environmental staff of the Office of Energy Projects (OEP).

preparation of the EA. By this notice, we are also asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate possible alternatives to the proposed project or portions of the project.

We have already identified some issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Tennessee. This preliminary list of issues may be changed based on your comments and our analysis.

Project-related impact on:

- Pipeline crossings of four perennial waterbodies, three of which are cold water fisheries in Susquehanna County, Pennsylvania;
- Eleven wetland crossings;
- Noise and air quality;
- Nearby residences; and
- Groundwater and wells due to blasting in areas of shallow bedrock.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket Nos. CP05–355–000, *et al.*
- Mail your comments so that they will be received in Washington, DC on or before July 6, 2005.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create an account which can be created on-line.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor, you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, see Appendix 2).[6] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet 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. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or toll free at 1–866–208–3676, 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 now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–2959 Filed 6–8–05; 8:45 am]

BILLING CODE 6717–01–P

[6] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

ENVIRONMENTAL PROTECTION AGENCY

[OW–2005–0006, FRL–7922–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Willingness To Pay Survey for Section 316(b) Phase III Cooling Water Intake Structures: Instrument, Pre-Test, and Implementation, EPA ICR Number 2155.02

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 8, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OW–

2005–0006, to EPA online using EDOCKET (our preferred method), by email to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, EPA West, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Erik Helm, Office of Science and Technology, 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1066; fax number: 202–566–1054; e-mail address: *helm.erik@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OW–2005–0006, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are individuals/households.

Title: Willingness to Pay Survey for section 316(b) Phase III Cooling Water Intake Structures: Instrument, Pre-test, and Implementation.

Abstract: The U.S. Environmental Protection Agency (EPA) is in the process of developing new regulations to provide national performance standards for controlling impacts from cooling water intake structures (CWIS) for Phase III facilities under section 316(b) of the Clean Water Act (CWA). The facilities considered Phase III facilities under section 316(b) regulations are facilities that withdraw water for cooling purposes from rivers, streams, lakes, reservoirs, estuaries, oceans, or other waters of the United States, and that are either existing electrical generators with cooling water intake structures that are designed to withdraw 50 million gallons of water per day (MGD) or less, or existing manufacturing and industrial facilities. The regulation also establishes section 316(b) requirements for new offshore oil and gas extraction facilities. EPA has previously published final section 316(b) regulations that address new facilities (Phase I) on December 18, 2001 (66 FR 65256) and existing large power producers (Phase II) on July 9, 2004 (69 FR 41576). See 40 CFR Part 125, Subparts I and J, respectively.

As required under Executive Order 12866, EPA is conducting economic impact and cost-benefit analyses for the section 316(b) regulation for Phase III facilities. Comprehensive, appropriate estimates of total resource value include both use and non-use values, such that the resulting total social benefit estimates may be compared to total social cost. Developing comprehensive quantified benefit estimates for the section 316(b) regulation requires consideration of non-use values because nearly all (96 percent) of impingement and entrainment losses at CWIS consist of either forage species, or non-landed recreational and commercial species that do not have direct uses or, as a result, direct use values. Although individuals do not use these resources directly, they may nevertheless be affected by changes in resource status or quality, such that they would be willing to pay to maintain these resources. It is generally accepted that non-use values may be substantial in some cases, and that failure to recognize such values may lead to improper inferences regarding policy benefits and costs. Many public comments on the proposed section 316(b) regulation for Phase II facilities and the Phase II Notice of Data Availability suggested that a properly designed and conducted stated preference, or contingent valuation (CV), survey would be the most appropriate and acceptable method to estimate the non-use benefits of the rule.[1] Stated preference survey methodology is the generally accepted means to estimate non-use values. Stated preference surveys use carefully designed questions to elicit respondents' willingness to pay (WTP) for particular ecological improvements, based on their responses to either discrete choice or open-ended questions regarding hypothetical resource improvements or programs. Such improvements may include increased protection of aquatic habitats or species with particular attributes.

To assess public policy significance or importance of the ecological gains from the section 316(b) regulation for Phase III facilities, EPA proposes to conduct a stated preference study to measure non-use benefits of reduced fish losses at CWIS due to the regulation. The study would focus on a broad range of aquatic species, including forage fish and a variety of fish species harvested by commercial and recreational fishermen. Additionally, the survey will include a revealed preference/contingent behavior component to measure how changes in fish populations affect recreational activities such as angling. The results of the survey would be used to estimate the non-use benefits and recreational benefits of the proposed 316(b) regulation.

The stated preference component of the survey will ask respondents to choose how they would vote, if presented with two different hypothetical regulatory options characterized by [a] changes in annual impingement and entrainment losses of fish and other organisms, [b] effects on long-term fish populations, [c] effects on recreational and commercial catch, and [d] an unavoidable cost of living increase for the respondent's household. Respondents will be allowed to ''vote'' for one of the presented regulatory options, or to choose not to vote for either option. The stated preference component of the survey will also ask respondents to answer questions about their reasons for voting, their level of concern about various policy issues, and

[1] For detail see ''Phase II—Large Existing Electric Generating Plants Response to Public Comment,'' U.S. EPA, 2004. Available at: *http://www.epa.gov/waterscience/316b/commentph2.htm.*

their affiliations and recreational activities.

The revealed preference/contingent behavior survey component will be administered only to respondents who indicate that they participate in water-based recreational activities that are potentially affected by changes in fish populations. This component will ask respondents about their recent recreational activities, and ask how many additional trips (if any) they would take to their most recently visited recreation site each year if fish populations and catch rates (for anglers) increased by a specified amount. It will also ask respondents whether they would choose to visit the site of their last recreational trip or a similar site with higher fish populations and catch rates that is further from their home.

Survey subjects will be randomly selected from a representative national panel of respondents maintained by Knowledge Networks, an online survey company. Subjects will be asked to complete a web-based questionnaire. Participation in the survey is voluntary. EPA intends to administer the survey to a total of 4,400 persons, including 500 persons that will take part in an initial survey pilot. EPA chose a web-based survey format because it is the most cost-effective method available to conduct a large statistically-based survey covering a wide geographic region in a relatively short time frame. To avoid potential sampling biases associated with the web-based survey methodology, the survey sample will be stratified by geographical region, and within each region, by demographic variables including age, education, Hispanic ethnicity, race, gender, and household income.

To assist in the development of this stated preference survey, EPA has requested approval from the Office of Management and Budget to conduct a series of twelve focus groups with a total of 96 respondents (see EPA ICR number 2155.01). These focus groups will be conducted following standard, accepted practices in the stated preference literature. The focus groups will allow EPA to better understand the public's perceptions and attitudes concerning fishery resources, to frame and define survey questions, to pretest draft survey questions, to test for and eliminate or reduce potential biases that may be associated with stated preference methodology, and to ensure that both researchers and respondents have similar interpretations of survey language and scenarios.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: EPA estimates that the total public reporting and record keeping burden for the 4,400 individuals/households who respond to the survey will be 3,227 hours, for an average of 44 minutes per respondent. The estimated total cost burden to respondents is $57,144. EPA estimates that there will be no capital and operating and maintenance cost burden. This survey is one-time activity.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: June 3, 2005.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. 05–11466 Filed 6–8–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

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

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 5, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. E. Bert Register III, Trustee and individual, both of Reidsville, Georgia; to acquire additional shares of Tattnall Bancshares, Inc., and thereby acquire Tattnall Bank, both of Reidsville, Georgia.

Board of Governors of the Federal Reserve System, June 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11433 Filed 6–8–05; 8:45 am]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. New York Community Bancorp, Inc., Westbury, New York; to acquire 100 percent of the voting shares of New York Commercial Bank, Flushing, New York.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105–1579:

1. Washington Bancorp, Inc., Lynnwood, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Washington, Edmonds, Washington.

2. WSB Financial Group, Inc., Bremerton, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Westsound Bank, Bremerton, Washington.

Board of Governors of the Federal Reserve System, June 3, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–11434 Filed 6–8–05; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–New]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection, regular.

Title of Information Collection: National Heart, Lung, and Blood Institute (NHLBI) ''The Heart Truth'' Professional Education Campaign Provider Pretest/Posttest.

Form/OMB No.: OS–0990–New.

Use: This survey will evaluate the success of educating health care providers on ''The Heart Truth'' Professional Education Campaign materials.

Frequency: Reporting, on occasion.

Affected Public: Individuals or households.

Annual Number of Respondents: 3,950.

Total Annual Responses: 106,650.

Average Burden Per Response: 1-hour.

Total Annual Hours: 1,343.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *naomi.cook@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the Desk Officer at the address below: OMB Desk Officer: John Kraemer, OMB Human Resources and Housing Branch, Attention: (OMB #0990–NEW), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 27, 2005.

Robert E. Polson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 05–11425 Filed 6–8–05; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–05–05CK]

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 404–371–5983 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Collection of Assessment Information about the Centers for Disease Control and Prevention Publications—NEW—National Center for Health Marketing (NCHM), Centers for Disease Control and Prevention (CDC).

Background and Brief Description: As part of CDC's Future's Initiative, the National Center for Health Marketing was created to ensure that health information, interventions, and programs at CDC are based on sound science.

Numerous CDC-operated communication platforms targeting scientific, professional, and technical audiences have been developed in the past twenty years. The reach of many of these platforms has increased significantly in the past five years. In order to ensure future growth, it is

critical to obtain feedback from subscribers of these platforms to understand who uses them, how they use them, how satisfied they are with the platforms, and solicit suggestions on ways to improve each platform to bolster satisfaction. The data collected from this effort will allow us to answer critical operating questions, including:

- Which audiences (*e.g.*, doctors, local health officials, researchers, *etc.*) receive their information from which CDC platforms?
- How often and with what purpose do they access CDC platforms?
- How satisfied are subscribers of the platforms with the content and delivery of information?
- Are there ways to enhance the platforms for the subscriber through improvements to current offerings or through new products/services?
- Who are our most critical target audiences, *i.e.*, what are our publication and dissemination priorities in service to our health impact goals?

The purpose of this project is to evaluate the content, processes, and channels through which CDC communicates scientific information to partners and customers to ensure that health impact is maximized through the delivery of timely, effective, and credible information, which will result in optimal benefit for public health. The evaluation will help to ensure that these platforms meet subscriber and partner priorities, build CDC's brand, and contribute to health impact goals. Feedback from the subscriber base is necessary to fully evaluate the performance of CDC's platforms.

At this time, the scope of this project is limited to five communication platforms owned and managed by CDC which transmits information primarily intended for scientific and professional audiences. However, future plans include adding additional publications as needed. The initial five communications platforms are: Emerging Infections Journal, MMWR, Epi-X, Preventing Chronic Diseases Journal, and Health Alert Network. We want to ensure that the timeliness, effectiveness, and credibility of this communication maximizes the health impact of that information, resulting in optimum benefit for public health. These channels include both print and electronic versions of the five platforms. There is no cost to respondents other than their time.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Form	Respondents	Responses per respondent	Hrs/response (in hrs)	Total burden hours
MMWR	30,000	1	20/60	10,000
EID	12,750	1	20/60	4,250
PCD	10,500	1	20/60	3,500
Epi-X	1,650	1	20/60	550
HAN	2,000	1	20/60	670
Total	.....	.....	.....	18,970

Dated: June 2, 2005.

Joan F. Karr,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 05–11455 Filed 6–8–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD07–05–049]

Implementation of Sector Charleston and Marine Safety Unit Savannah

AGENCY: Coast Guard, DHS.

ACTION: Notice of organizational change.

SUMMARY: The Coast Guard announces the stand-up of Sector Charleston and Marine Safety Unit (MSU) Savannah. The Sector Charleston Commanding Officer will have the authority, responsibility and missions of a Group Commander, COTP and Commanding Officer, Marine Safety Office (MSO). The Coast Guard has established a continuity of operations whereby all previous practices and procedures will remain in effect until superseded by an authorized Coast Guard official and/or document.

DATES: The effective date of sector stand-up is May 13, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD07–05–049 and are available for inspection or copying at District 7 Resources, 9th Floor, 909 SE., 1st Avenue, Miami, FL 33131 between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Carlos A. Cuesta, District 7 Resources Program at 305–415–6706.

SUPPLEMENTARY INFORMATION:

Discussion of Notice

This notice announces the stand-up of Sector Charleston and MSU Savannah. Upon creation of Sector Charleston, Group Charleston, Base Charleston and MSO Charleston's OPFAC will be cancelled. MSO Savannah will be renamed MSU Savannah and will report directly to the Sector Charleston Commander. Sector Charleston will be composed of a Response Department, Prevention Department, and Logistics Department. All existing missions and functions performed by Group Charleston, Base Charleston, MSO Charleston and MSO Savannah are realigned under this new organizational structure as of May 13, 2005.

Sector Charleston is responsible for all Coast Guard missions in the Charleston Marine Inspection Zone, COTP zone, and Area of Responsibility (AOR). The Commanding Officer of MSU Savannah shall only be responsible for all COTP and OCMI functions within the Savannah COTP sub-zone and marine inspection sub-zone. The overall Sector Charleston AOR includes the Charleston marine inspection zone and COTP zone and the Savannah marine inspection sub-zone and Savannah COTP sub-zone. A continuity of operations order has been issued to address existing COTP regulations, orders, directives and policies.

The boundary of the Charleston marine inspection zone and COTP zone starts at the sea at the intersection of the North and South Carolina boundary; thence proceeds westerly along the North and South Carolina boundary to the intersection of the North Carolina, South Carolina and Georgia boundaries; thence southerly along the South

Carolina and Georgia boundary to the federal dam at the southern end of the Hartwell Reservoir; thence southerly along the eastern bank of the Savannah River to the northern tip of Tybee Island, Georgia. The offshore boundary starts at a line bearing 122° true from the intersection of the South Carolina and North Carolina boundary; thence seaward to the outermost extent of the exclusive economic zone; thence southerly along the outermost extent of the exclusive economic zone to 30°50′ N; thence westerly along 30°50′ N latitude to 30°50′ N, 78°35′ W; thence northwesterly along a line bearing 302° true to the northern tip of Tybee Island, Georgia.

The boundary of the Savannah COTP sub-zone and inspection sub-zone starts at the sea at the northern tip of Tybee Island, Georgia; thence northwesterly along the eastern bank of the Savannah River to the intersection of the South Carolina and Georgia boundary and the Federal dam at the southern end of the Hartwell Reservoir; thence northerly along the South Carolina and Georgia boundary to the intersection of the North Carolina, South Carolina and Georgia boundaries; thence westerly along the Georgia and North Carolina boundary and continuing westerly along the Georgia and Tennessee boundary to the intersection of the Georgia, Tennessee and Alabama boundaries; thence southerly along the Georgia and Alabama boundary to 32°53′ N; thence southeasterly to the eastern bank of the Flint river at 32°20′ N; thence southerly along the eastern bank of the Flint river and continuing southerly along the southeastern shore of the Jim Woodruff reservoir to 84°45′ W; thence southerly to the intersection of the Florida and Georgia boundary; thence easterly along the Florida and Georgia boundary to 82°15′ W; thence north to 30°50′ N, 82°15′ W; thence east to the sea. The offshore boundary starts at a line bearing 122° true from the northern tip of Tybee Island, Georgia to the intersection of 30°50′ N; thence westerly along 30°50′ N latitude to the coast. The COTP Savannah boundary includes all waters of the Savannah River including adjacent waterfront facilities located in South Carolina. All coordinates referenced utilize datum NAD 1983.

The Sector Charleston Commander is vested with all the rights, responsibilities, duties, and authority of a Group Commander and Commanding Officer, Marine Safety Office, as provided for in Coast Guard regulations, and is the successor in command to the Commanding Officer, Group Charleston and Commanding Officer, MSO Charleston. The Sector Charleston Commander is designated: (a) Captain of the Port (COTP) for the Charleston COTP zone; (b) Federal Maritime Security Coordinator (FMSC), Charleston; (c) Federal On Scene Coordinator (FOSC) for the Charleston COTP zone, consistent with the National Contingency Plan; (d) Officer In Charge of Marine Inspection (OCMI) for the Charleston Marine Inspection Zone and, (e) Search and Rescue Mission Coordinator (SMC). The Deputy Sector Commander is designated alternate COTP, FMSC, FOSC, SMC and Acting COTP.

The Commanding Officer, MSU Savannah is designated: (a) Captain of the Port (COTP) for the Savannah COTP sub-zone; (b) Federal Maritime Security Coordinator (FMSC) for the Savannah COTP sub-zone; (c) Federal On Scene Coordinator (FOSC) for the Savannah COTP sub-zone, consistent with the National Contingency Plan and, (d) Officer In Charge of Marine Inspection (OCMI) for the Savannah Marine Inspection sub-zone. A chart depicting sector Charleston and the Savannah sub-zone is available in the docket for this notice, where indicated under **ADDRESSES**.

The following information is a list of updated command titles, addresses and points of contact to facilitate requests from the public and assist with entry into security or safety zones.

Name: Sector Charleston.

Address: Commander, U.S. Coast Guard Sector Charleston, 196 Tradd Street, Charleston, SC 29401.

Contact:

Sector Commander: CDR John E. Cameron, (843) 720–3297.

Deputy Sector Commander: CDR June Ryan, (843) 724–7625.

Chief, Response Dept: LCDR Thomas Allan, (843) 724–7626.

Chief, Prevention Dept: LCDR David Murk, (843) 720–3298.

Chief, Logistics Dept: LT Kevin Floyd, (843) 720–3271.

Name: MSU Savannah.

Address: Commander, U.S. Coast Guard MSU Savannah, 100 W. Oglethorpe Avenue, Ste. 1017, Savannah, GA 31401.

Contact: MSU Commanding Officer: CDR Michael Drieu, (912) 652–4353.

Dated: May 4, 2005.

W.E. Justice,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 05–11450 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–31]

Notice of Submission of Proposed Information Collection to OMB; Personal Financial Statement

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is used by HUD to analyze the financial position of borrowers potentially in default for the purpose of evaluating compromises, partial settlement offers, and payment arrangements. It is required of a small percentage of debtors to establish repayment.

DATES: *Comments Due Date:* July 11, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0098) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Personal Financial Statement.

OMB Approval Number: 2502–0098.

Form Numbers: HUD–56142.

Description of the Need for the Information and Its Proposed Use: HUD uses the information to analyze the financial position of borrowers potentially uses the information In default for the purpose of evaluating compromises, partial settlement offers, and payment arrangements. It is required of a small percentage of debtors to establish repayment.

Frequency of Submission: On occasion.

	Number of Respondents	Annual Responses	×	Hours per Response	=	Burden hours
Reporting Burden	800	1		1		800

Total Estimated Burden Hours: 800.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–11415 Filed 6–8–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4971–N–30]

Notice of Submission of Proposed Information Collection to OMB; Requirements for Single Family Mortgage Instruments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information will be used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage insurance.

DATES: *Comments Due Date:* July 11, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0404) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Requirements For Single Family Mortgage Instruments.

OMB Approval Number: 2502–0404.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: This information will be used to verify that a mortgage has been properly recorded and is eligible for FHA mortgage insurance.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per Response	=	Burden hours
Reporting Burden	9,000	1		0.5		4,500

Total Estimated Burden Hours: 4,500.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 2, 2005.

Wayne Eddins,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. 05–11416 Filed 6–8–05; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–030 –05–1610—PH–241A]

Notice of Resource Advisory Committee Meeting

AGENCY: Grand Staircase-Escalante National Monument (GSENM), Bureau of Land Management (BLM), Department of the Interior.

ACTION: Notice of Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) meeting.

SUMMARY: Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) will meet as indicated below.

DATES: Two days of meetings are scheduled for June 28–29, 2005, at the Escalante Interagency Visitor Center, Conference Room, 755 W. Main Street, Escalante, UT.

FOR FURTHER INFORMATION CONTACT: Contact Larry Crutchfield, Public Affairs Officer, GSENM Headquarters Office, 190 East Center, Kanab, Utah 84741; phone (435) 644–4310, or e-mail *larry_crutchfield@blm.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the GSENMAC will meet on June 28 and 29, 2005, in Escalante, Utah. The meetings will be held at the Escalante Interagency Visitor Center, 755 W. Main Street, Escalante, Utah. The meeting on June 28 will begin at 9:30 a.m. and conclude at 6:30 p.m.; the meeting on June 29 will begin at 8 a.m. and conclude at 4 p.m.

The Grand Staircase-Escalante National Monument Advisory Committee (GSENMAC) was appointed by the Secretary of Interior on September 26, 2003, pursuant to the Monument Management Plan, the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA). As specified in the Monument Management Plan, the GSENMAC will have several primary tasks (1) Review evaluation reports produced by the Management Science Team and make recommendations on protocols and projects to meet overall objectives. (2) Review appropriate research proposals and make recommendations on project necessity and validity. (3) Make recommendations regarding allocation of research funds through review of research and project proposals as well as needs identified through the evaluation process above. (4) Could be consulted on issues such as protocols for specific projects.

Topics to be presented and discussed by the GSENMAC include: GSENMAC consultation requirements under the Monument Management Plan; Sub-committee reports (Rangeland Health, Science, and Marketing/Partnerships/Revenue); and 2006 Science Symposium.

Members of the public are welcome to address the council from 5:30 p.m. to 6:30 p.m., local time on June 28, 2005, in Escalante, Utah at the Escalante Interagency Visitor Center. Depending on the number of persons wishing to speak, a time limit could be established. Interested persons may make oral statements to the GSENMAC during this time or written statements may be submitted for the GSENMAC's consideration. Written statements can be sent to: Grand Staircase-Escalante National Monument, Attn.: Larry Crutchfield, 190 E. Center Street, Kanab, UT 84741. Information to be distributed to the GSENMAC is requested 10 days prior to the start of the GSENMAC meeting.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: June 3, 2005.

Dave Hunsaker,

Grand Staircase-Escalante National Monument Manager.

[FR Doc. 05–11451 Filed 6–8–05; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Potential for Oil Shale Development; Call for Nominations—Oil Shale Research, Development and Demonstration (R, D & D) Program

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice.

SUMMARY: The BLM solicits the nomination of parcels to be leased for research, development and demonstration of oil shale recovery technologies in Colorado, Utah, and Wyoming.

DATES: Nominations for oil shale research, development and demonstration (R, D& D) leases can be made June 9, 2005 through September 7, 2005.

ADDRESSES: Please send nominations to the BLM state director for the state in which the parcel you are nominating is located: Ron Wenker, State Director, BLM, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado, 80215–7076; Sally Wisely, State Director, BLM, Utah State Office, 324 South State Street, Suite 301, P.O. Box 45155, Salt Lake City, Utah, 84145–0155; Bob Bennett, State Director, BLM, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003.

FOR FURTHER INFORMATION CONTACT: Jim Edwards, BLM, Colorado State Office, 303–239–3773; Jim Kohler, BLM, Utah State Office, 801–539–4037; Phil Perlewitz, BLM, Wyoming State Office, 307–775–6144.

SUPPLEMENTARY INFORMATION: BLM is initiating a demonstration project under which small tracts may be leased for oil shale research, development and demonstration, pursuant to BLM's authority to lease Federal lands for oil shale development under section 21 of the Mineral Leasing Act, 30 U.S.C. 241.

The United States holds significant oil shale resources, primarily within the Green River Formation in Colorado, Utah and Wyoming. These oil shale resources underlie a total area of 16,000 square miles, which represents the largest known concentration of oil shale in the world. Federal lands comprise roughly 72% of the total surface oil shale acreage and 82% of the oil shale resources in the Green River Formation.

For a considerable time, some have believed that oil shale has the potential to be a major source of domestic energy production. BLM has considered the merits of working to promote the

development of oil shale resources on public lands.

In 2003, BLM established its own Oil Shale Task Force. The Oil Shale Task Force was established to address: (1) Access to unconventional energy resources (such as oil shale) on public lands; (2) impediments to oil shale development on public lands; and (3) industry interest in research and development and commercial opportunities on public lands; and (4) Secretarial options to capitalize on the opportunities.

By **Federal Register** notice, 69 FR 67935–67938 (November 22, 2004), the Bureau of Land Management requested comments on a proposed draft oil shale research and development lease form. The comment period was initially to end December 22, 2004, but was extended to January 31, 2005. Comments were received from 32 entities, and BLM has reviewed the comments it received. The comments were incorporated, as appropriate, into the final oil shale research and development lease form which is attached as Appendix A. The comments and BLM's responses are summarized in Appendix B.

The BLM is soliciting for nomination parcels to be leased for research, development and demonstration of oil shale recovery technologies. The BLM has concluded that initiating steps to help facilitate oil shale research and development efforts is worthwhile.

The BLM intends to initiate a phased or staged approach to oil shale development. The first step, which BLM is taking today, is to develop a research, development and demonstration leasing program. BLM believes this effort will significantly enhance the collective knowledge regarding the viability of innovative technologies for oil shale development on a commercial scale. The second step BLM intends to initiate is to develop a regulatory framework for a commercial oil shale leasing program to ensure that any commercial development of oil shale on BLM lands is both environmentally and fiscally responsible.

The BLM intends to ensure that a commercial oil shale development program demands rigorous technological and environmental oversight, requires the best available practices to minimize impacts, and ensures that states and local communities have the opportunity to be involved in the development of a commercial program.

By initiating a research, development and demonstration leasing process, the BLM can provide itself, state and local governments, and the public, with important information that can be utilized as BLM works with communities, states and other Federal agencies to develop strategies for managing any environmental effects and enhancing community infrastructure needed to support the orderly development of this vast resource. This will be valuable information for a rulemaking addressing commercial oil shale leasing.

The BLM opted for a staged program to ensure that lessons learned during the 1973/74 Oil Shale Prototype program are diligently applied to achieve desirable results. The Oil Shale Prototype program initiated a full commercial operation before the economic viability of the technologies of the time could be determined. The approach created expectations of an economic boom which never materialized. The Prototype Program impacted the communities in which the projects were located and left the Department with the responsibility for reclamation.

This initiative is designed to build on the experience of the 1973/74 Oil Shale Prototype. This program will be carefully staged, or phased, to ensure that the current oil shale extractive technologies are perfected to operate at economic and environmentally acceptable levels before expansion to commercial operations can be authorized on public lands. The BLM oil shale program design allows tracts of land up to 160 acres to be used to demonstrate the economic feasibility of today's technologies over a period of ten years. Given the capital intensive nature of the technologies involved, the timeline of development is very sensitive to variations in the price outlook for conventional oil. Furthermore, BLM believes that the time required is uncertain enough that it should entertain requests for an extension of time for up to five years where obvious significant progress has been made towards perfecting the technology during the primary period of ten years.

BLM believes that if the research and development efforts are sub-economic, the small research, development and demonstration projects will be more easily dismantled. Lands may be reclaimed with minimal adverse environmental impact. For states and local communities, a staged process can minimize social impact, because the projects would be small in size and scope.

By this notice, BLM is soliciting the nomination of parcels, not to exceed 160 acres, for the conduct of oil shale research, development and demonstration. Applicants may also identify up to an additional contiguous 4960 acres which the applicant requests BLM to reserve for a preference right lease to be awarded following: (1) The demonstration that the applicant's technology tested in the original lease of up to 160 acres has the ability to produce shale oil in commercial quantities; (2) evaluation pursuant to the National Environmental Policy Act that concludes that commercial scale operations of the applicant's technology at that site does not pose environmental or social risks unacceptable to BLM; (3) provision of adequate bond to cover all costs associated with reclamation and abandonment of the expanded lease area; and (4) consultation with state and local governments on a strategy to mitigate socio-economic impacts, including but not limited to, the infrastructure to accommodate the required workforce.

Nominations will be reviewed by an interdisciplinary team. BLM will request the participation of a representative of each of the states of Colorado, Utah and Wyoming, as appropriate, as well as the Departments of Defense and Energy. The review will consider the potential of proposals to advance knowledge of effective technology, economic viability and the means of managing the environmental effects of oil shale development. BLM also would conduct NEPA analysis of the environmental effects of a proposal prior to the award of a research, development and demonstration lease. Depending on the quality of applications, and the potential environmental, social and economic conditions on the site or in the region associated with the proposal, BLM may award one or more leases in each of the states.

Lease nominations must at a minimum contain the following information:

(1) Name, address, and telephone number of the applicant, and the representative of the applicant who will be responsible for conducting the operational activities.

(2) Statement of qualifications to hold a mineral lease under the Mineral Leasing Act (MLA) of 1920. Qualification requirements can be found in 43 CFR Subpart 3502.

(3) Description of the lands, not to exceed 160 acres, in accordance with the instructions in 43 CFR 3110.5–2, together with any rights-of-way required to support the development of the oil shale research, development and demonstration lease.

(4) If requesting additional lands be reserved for a preference right lease,

such lands must be described, and must not (together with the lands described in paragraph 3 above) exceed 5120 acres.

(5) A narrative description of the proposed methodology for recovering oil from oil shale, including a description of all equipment and facilities needed to support the proposed technology.

(6) A narrative description of the results of laboratory and/or field tests of the proposed technology.

(7) A schedule of operations for the life of the project and proposed plan for processing, marketing and the delivery of the shale oil to the market.

(8) A map of existing land use authorizations on the nominated acreage.

(9) Estimated oil and/or oil shale resources within the nominated acreage boundary.

(10) The method of oil storage and/or spent oil shale disposal.

(11) A description of any interim environmental mitigation and reclamation.

(12) The method of final reclamation and abandonment and associated projected costs .

(13) Proof of investment capacity, and a description of the commitments of partners, if any.

(14) A statement from a surety qualified to furnish bonds to the United States government of the bond amount for which the applicant qualifies under the surety's underwriting criteria.

(15) A non-refundable application fee of $2000.00

Applicants should prominently note any information submitted with their application that contains proprietary trade secrets the disclosure of which to the public would cause commercial or financial injury to its competitive position. BLM will protect the confidentiality of the information to the extent permitted by the Freedom of Information Act (FOIA). Any FOIA requests for such information will be handled in accordance with the regulations at 43 CFR 2.23.

The time required for NEPA analysis may differ depending on whether the application is for a tract that has previously been the subject of NEPA analysis, the method of oil shale or shale extraction and whether the application involves mining or in-place shale oil recovery. Accordingly some research, development and demonstration leases may be awarded prior to others.

Dated: May 19, 2005.

Thomas P. Lonnie,

Assistant Director, Minerals, Realty and Resource Protection.

Appendix A—United States Department of the Interior, Bureau of Land Management, Oil Shale Research, Development and Demonstration (R, D & D) Lease

This lease is entered into on _____,____ to be effective on ____,__ (the ''Effective Date''), by the United States of America (the ''Lessor''), acting through the Bureau of Land Management (hereinafter called the ''Bureau''), of the Department of the Interior (the ''Department''), and _____ (the ''Lessee''), pursuant and subject to the provisions of the Mineral Leasing Act of February 25, 1920 as amended (30 U.S.C. 181–287), hereinafter called the ''Act'', more specifically section 21 of the Act (30 U.S.C. 241), and to the terms, conditions, and requirements (1) of all regulations promulgated by the Secretary of the Interior (the ''Secretary'') in 43 CFR Part 3160, including Onshore Oil and Gas Orders, and 43 CFR Part 3590, including revisions thereof hereafter promulgated by the Secretary (and not inconsistent with any specific provisions of this lease), all of which shall be, upon their effective date, incorporated in and, by reference, made a part of this lease. To the extent the provisions of this lease are inconsistent with the requirements of any regulation or order, the lease terms govern.

Section 1. Definitions

As used in this lease:

(a) ''Authorized Officer'' means any employee of the Bureau of Land Management delegated the authority to perform the duty described in the section in which the term is used.

(b) ''Commercial Quantities'' means quantities sufficient to provide a positive return after all costs of production have been met, including the amortized costs of capital investment.

(c) ''Leased Lands'' means the lands described as follows: _____

(d) ''Oil shale'' means a fine-grained sedimentary rock containing: (1) organic matter which was derived chiefly from aquatic organisms or waxy spores or pollen grains, which is only slightly soluble in ordinary petroleum solvents, and of which a large proportion is distillable into synthetic petroleum, and (2) inorganic matter, which may contain other minerals. This term is applicable to any argillaceous, carbonate, or siliceous sedimentary rock which, through destructive distillation, will yield synthetic petroleum.

(e) ''Preference lease area'' means the area reserved for leasing during the term of this lease to which Lessee may earn a preference lease right. The preference lease area for this lease is described as follows: _____

(f) ''Shale oil'' means synthetic petroleum derived from the destructive distillation of oil shale.

Section 2. Grant to Lessee

The Lessee is hereby granted, subject to the terms of this lease, the exclusive right and privilege to prospect for, drill, mine, extract, remove, beneficiate, concentrate, process and dispose of the oil shale and the products of oil shale contained within the Leased Lands. In accordance with plans of operation approved pursuant to section 8, the Lessee may utilize or dispose of all oil shale and oil shale products, together with the right to construct on the Leased Lands all such works, buildings, plants, structures, roads, power lines, and additional facilities as may be necessary or reasonably convenient for the mining, extraction, processing, and preparation of oil shale and oil shale products for market. The Lessee has the right to use so much of the surface of the Leased Lands as may reasonably be required in the exercise of the rights and privileges herein granted.

Section 3. Lessor's Reserved Interests in the Leased Lands

The Lessor reserves:

(a) The right to continue existing uses of the leased lands and the right to lease, sell, or otherwise dispose of the surface or other mineral deposits in the lands for uses that do not unreasonably interfere with operations of the Lessee under this lease.

(b) The right to permit for joint or several use, such easements or rights-of-way, including easements in tunnels or shafts upon, through, or in the Leased Lands, as may be necessary or appropriate to the working of the Leased Lands or other lands containing mineral deposits subject to the Act, and the treatment and shipment of the products thereof by or under authority of the Lessor, its lessees, or permittees, and for other public purposes. Lessor shall condition such uses to prevent unnecessary or unreasonable interference with rights of the Lessee.

Section 4. Lease Term

The lease is issued for a term of ten years with the option for an extension not to exceed five years upon demonstration to the satisfaction of the authorized officer that a process leading to production in commercial quantities is being diligently pursued, consistent with the schedule specified in the approved plan of operations. The lease is subject to conversion to a twenty-year lease under the conditions specified in section 23.

Section 5. Rentals: Non-commercial Production

The Lessee shall pay the Lessor the statutorily established annual rental in advance for each acre or fraction thereof during the continuance of the lease of $.50. Rental is payable annually on or before the anniversary date of the lease. Rentals for any lease year shall be credited by the Lessor against any royalty payments for that lease year.

The failure to pay rental by the anniversary date shall be grounds for termination of the lease. Should the Lessee fail to pay the full amount by the anniversary date, BLM will notify the Lessee of this failure and provide you with a grace period of 15 days from the day you receive notice to make payment in full. Should no payments be received during the grace period, the lease shall terminate

without the need for further administrative proceedings.

Section 6. Royalties

(a) As long as the Lessee is not producing commercial quantities from the leasehold, as determined by the Lessor, the Lessor waives the requirement for royalty on any production.

(b) Lessee shall file with the proper office of Lessor, no later than 30 days after the effective date thereof, any contract or evidence of other arrangement for sale or disposal of production. At such times and in such form as Lessor may prescribe, Lessee shall furnish detailed statements showing the amounts and quality of all products removed and sold from the lease, the proceeds therefrom, and the amount used for production purposes or unavoidably lost.

(c) Payments under this lease shall be subject to the regulations in 30 CFR Part 218, Subpart E.

Section 7. Bonds

(a) Prior to conducting operations on this lease, the Lessee shall provide a bond payable to the Secretary in the amount determined by the authorized officer, conditioned upon compliance with all terms and conditions of the lease and the plan of operations. This bond shall be of a type authorized by 43 CFR 3104.1 and must be sufficient to cover all costs associated with reclamation and abandonment activities. The authorized officer may require additional bond upon determining that it is necessary to assure full compliance for the operations conducted under this lease. The Lessee shall have the right to submit information to demonstrate that a lesser amount would be sufficient to remedy noncompliance and appeal the determination to the State Director.

(b) Upon request of the Lessee, the bond may be released as to all or any portion of the Leased Lands affected by exploration or mining operations, when the Lessor has determined that the Lessee has successfully met the reclamation requirements of the approved development plan and that operations have been carried out and completed with respect to these lands in accordance with the approved plan.

Section 8. Plan of Operations

(a) Prior to conducting operations on the Leased Lands, including exploration, the Lessee shall submit a plan of operations for review and approval by the authorized officer. This plan shall be submitted in accordance with the requirements of 43 CFR Part 3160 or 43 CFR Part 3590, depending on the nature of the proposed activity. It shall include a description of best management practices for interim environmental mitigation and reclamation.

(b) The authorized officer shall make the final determinations as to which regulations govern the proposed activity and notify the Lessee of any additional requirements. The authorized officer may condition the approval on reasonable modifications of the plan to assure protection of the environment.

(c) After plan approval, the Lessee must obtain the written approval of the authorized officer for any change in the plan approved under subsection (a).

(d) The Lessee shall file annual reports describing progress toward the achievement of the goals of the demonstration project.

Section 9. Operations on the Leased Lands

(a) The Lessee shall conduct all operations under this lease in compliance with all applicable Federal, State and local statutes, regulations, and standards, including those pertaining to water quality, air quality, noise control, threatened and endangered species, historic preservation, and land reclamation, and orders of the authorized officer (written, or if oral, reduced to writing within ten days). The Lessee shall employ best management practices to minimize impacts to other resource values.

(b) The Lessee shall avoid, or, where avoidance is impracticable, minimize, and where practicable correct, hazards to the public health and safety related to its operations on the Leased Lands.

(c) Lessee shall carry on all operations in accordance with approved methods and practices as provided in the operating regulations designated as applicable under section 8 above and approved operations plan. Activities will be conducted in a manner that minimizes adverse impacts to the land, air, water, cultural, biological, visual, and other resources, including mineral deposits not leased herein, and other land uses and users.

(d) The Lessee shall comply with all applicable state and Federal laws.

Section 10. Water Rights

All water rights developed on the lease by the Lessee through operations on the Leased Lands shall immediately become the property of the Lessor. As long as the lease continues, the Lessee shall have the right to use those water rights free of charge for activities under the lease.

Section 11. Development by In Situ Methods

Where in situ methods are used for the production of shale oil, the Lessee shall not place any entry, well, or opening for such operations within 500 feet of the boundary line of the Leased Lands without the permission of, or unless directed by the authorized officer.

Section 12. Inspection

The Lessee shall permit any authorized officer or representative of the Lessor at any reasonable time:

(a) To inspect the Leased Lands and all surface and underground improvements, works, machinery, and equipment, and all books and records pertaining to operations and surveys or investigations under this lease; and

(b) To copy and make extracts from any books and records pertaining to operations under this lease.

Section 13. Monitoring, Reports, Maps, etc.

(a) The Lessee shall submit to the Lessor in such form as the latter may prescribe, not more than 60 days after the end of each quarter of the lease year, a report covering that quarter which shall show the amount produced from the Lease by each method of production used during the quarter, the character and quality thereof, the amount of products and by-products disposed of and price received therefor, and the amount in storage or held for sale, and such information concerning the generation of waste products or impacts to the environment specified in the Addendum to this lease. This report shall be certified by an agent(s) having personal knowledge of the facts who has been designated by the Lessee for that purpose.

(b) The Lessee shall prepare and furnish at such times and in such form as the Lessor may prescribe, maps, photographs, reports, statements and other documents required by 43 CFR Part 3160 or 3590, as appropriate.

(c) The Lessee shall conduct surveys and monitor environmental effects as specified in the Addendum to this lease.

Section 14. Assignment

The Lessee may assign any interest in this lease with the approval of the authorized officer, subject to the Assignor retaining liability for all obligations that accrued prior to the assignment and the provision of bond by the Assignee for all liabilities arising after the assignment. The Assignor shall maintain bond for liabilities arising in the period prior to the assignment, unless the assignee provides bond for the entire period of the lease.

Section 15. Heirs and Successors in Interest

Each obligation of this lease shall extend to and be binding upon, and every benefit shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Section 16. Relinquishment of lease

The Lessee may relinquish in writing at any time all rights under this lease. Upon Lessor's acceptance of the relinquishment, Lessee shall be relieved of all future obligations under the lease. The Lessee shall promptly pay all royalties due and reclaim the relinquished acreage in accordance with the plan of operations.

Section 17. Remedies in Case of Default

If the Lessee fails to comply with applicable laws, regulations, or the terms, conditions, and stipulations of this lease and the noncompliance continues for a period of 30 days after service of notice thereof, this lease shall be subject to cancellation. The Lessor may (1) suspend operations until the required action is taken to correct noncompliance, or (2) institute appropriate proceedings in a court of competent jurisdiction for the forfeiture and cancellation of this lease as provided in Section 31 of the Act (30 U.S.C. 188) and for forfeiture of any applicable bond. If the Lessee fails to take prompt and necessary steps to (a) prevent loss or damage to the mine, property, or premises, (b) prevent danger to the employees, or (c) avoid, minimize or, repair damage to the environment, the Lessor may enter the premises and take such measures as he may deem necessary to prevent, or correct the damaging, dangerous, or unsafe condition of the mine or any other facilities upon the Leased Lands. Those measures shall be at the expense of the Lessee.

Section 18. Delivery of Premises in Case of Forfeiture

(a) At such time as all or portions of this lease are returned to Lessor, the Lessee shall deliver to the Lessor the land leased, wells, underground support structures, and such other supports and structures necessary for the preservation of the mine workings on the leased premises or deposits and place all workings and wells in condition for suspension or abandonment. Within 180 days thereof, Lessee shall remove from the premises all other structures, machinery, equipment, tools, and materials as required by the authorized officer. Any such structures remaining on the Leased Lands beyond the 180 days, or approved extension thereof, shall become the property of the Lessor. Lessee shall either remove all such property or shall continue to be liable for the cost of removal and disposal in the amount actually incurred by the Lessor.

(b) Lessee shall reclaim all lands which have been disturbed and dispose of all debris or solid wastes in an approved manner in accordance with the schedule established in the plan of operations and maintain bond coverage until such reclamation is complete.

Section 19. Protection of Proprietary Information

(a) This lease, and any activities thereunder, shall not be construed to grant a license, permit or other right of use or ownership to the Lessor, or any other person, of the patented processes, trade secrets, or other confidential or privileged technical information (hereafter in this section called ''technical processes'') of the Lessee or any other party whose technical processes are embodied in improvements on the Leased Lands or used in connection with the lease.

(b) Notwithstanding any other provision of this lease, the Lessor agrees that any technical processes obtained from the Lessee which are designated by the Lessee as confidential shall: (1) Not be disclosed to persons other than employees of the Federal Government having a need for such disclosures and (2) not be copied or reproduced in any manner. The Lessor further agrees this material may not be used in any manner that will violate their proprietary nature.

(c) Prior to any disclosure pursuant to a Freedom of Information Act (FOIA) request, the Bureau will notify the submitter of the specific information which it has initially determined to release and give it thirty (30) days to provide a justification for the nondisclosure of the information under exemption 4 or other relevant exemptions of FOIA. The submitter's justification should address in detail, pursuant to the procedures in 43 CFR 2.23, whether the information:

(1) Was submitted voluntarily and falls in a category of information that the submitter does not customarily release to the public; or

(2) If the information was required to be submitted, how substantial competitive or other business harm would likely result from release.

If after reviewing the submitted information, BLM decides to release the information over the submitter's objections, it will notify the submitter that it intends to release the information 10 workdays after the submitter's receipt of the notice.

Section 20. Lessee's Liability to the Lessor

(a) The Lessee shall be liable to the United States for any damage suffered by the United States in any way arising from or connected with Lessee's activities and operations conducted pursuant to this lease, except where damage is caused by employees or contractors of the United States acting within the scope of their authority or contract.

(b) The Lessee shall indemnify and hold harmless the United States from any and all claims arising from or connected with Lessee's activities and operations under this lease.

(c) In any case where liability without fault is imposed on the Lessee pursuant to this section, and the damages involved were caused by the action of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage occurred.

Section 21. State Director Review and Appeals

The Lessee shall have the right to request State Director Review and to appeal orders or decisions of the BLM under 43 CFR Subpart 3165.

Section 22. Special Stipulations

The special stipulations that are attached to and made a part of this lease are imposed upon the Lessee, and the Lessee's employees and agents. The failure or refusal to comply with these stipulations shall be deemed a failure of the Lessee to comply with the terms of the lease. The special stipulations may be revised or amended, in writing, by mutual consent of the Lessee and Lesser following appropriate notice to the public.

Section 23. Conversion Rights.

(a) Upon documenting to the satisfaction of the authorized officer that it has produced commercial quantities of shale oil from the lease, the Lessee has the exclusive right to convert the research and development lease acreage to a commercial lease and acquire any or all portions of the remaining preference lease area up to a total of 5,120 contiguous acres upon:

(1) Payment of a bonus based on the Fair Market Value of the lease, to be determined by the Lessor utilizing criteria to be developed through the rulemaking described in subsection (b) or other process for obtaining public input;

(2) Documentation of the Lessee's consultation with State and local officials to develop a plan for mitigating the socio-economic impacts of commercial development on communities and infrastructure;

(3) Provision of adequate bond to cover all costs associated with reclamation and abandonment of the expanded lease area; and

(4) BLM's determination, following analysis pursuant to the National Environmental Policy Act (NEPA), that commercial scale operations can be conducted, subject to mitigation measures to be specified in stipulations or regulations, without unacceptable environmental consequences.

(b) Such commercial lease shall contain terms consistent with regulations to be developed by the Secretary pursuant to section 21 of the Act and stipulations developed through appropriate NEPA analysis.

(c) Such commercial lease may be issued for a term of 20 years and so long thereafter as shale oil is produced from the Leased Lands in commercial quantities. Such commercial lease shall be subject to payment of rents and royalties to the Lessor at the established rates at the time of lease conversion, or at such reduced rate that the Lessee demonstrates is necessary to permit the economic development of the oil shale resource. The royalty shall be subject to the readjustment of lease terms at the end of the 20th lease year and each 20 year period thereafter.

Section 24. Reimbursable Costs

In applying for required approvals, the lessee under the oil shale research, development and demonstration, lease shall reimburse BLM for those costs itemized in Addendum B to this lease.

Appendix B—Summary and Analysis of Comments on Oil Shale R&D Lease

The BLM sought and received comments on the following issues related to a proposed lease form for oil shale R&D.

(1) What terms (duration, royalty, rental, acreage, diligence, option for additional acreage) should BLM include in the R&D lease to provide short-term incentives, and also encourage long-term commercial development;

(2) The adequacy of a 40-acre lease for a successful demonstration of oil shale technology;

(3) The methodology for conversion of an R&D lease to a commercial lease;

(4) The criteria to qualify a company or individual to acquire an R&D lease and what documentation should be required;

(5) The level of National Environmental Policy Act (NEPA) documentation that would be appropriate for R&D leasing; and

(6) The appropriate methodology for determining fair market value for conversion to a commercial lease.

A discussion of the comments and resultant changes in this republished final R&D form is as follows:

One of the major changes is that the acreage has been increased from 40 acres to 160 acres, as many of those submitting comments indicated that the 40 acres were not sufficient for successful R&D. The following section-by-section discussion follows the original format, which was published in the **Federal Register** on November 22, 2004. In addition, the R&D lease form contains clarifications and other minor changes mentioned in the comments.

Lease Terms

Comments were received on the various lease terms as follows:

Duration

Comments were received recommending an initial lease term ranging from 30 months to 20 years. Several comments recommended

that a term of 10 years would be appropriate. In light of the sensitivity of the necessary investment to fluctuations in projections of conventional oil prices, the BLM has determined that R&D leases will be issued for an initial term of 10 years with an option to extend for up to 5 additional years upon demonstration that a process leading to commercial production is being diligently pursued.

Rental

Comments received ranged from no rental to $5.00 per acre for an R&D lease. Comments were also received regarding rental rates for commercial leases ranging from 50 cents to $1000 per acre. However, the statute, 30 U.S.C. 241, specifically requires that rental be paid at the rate of 50 cents per acre per annum.

Royalty

Several comments stated that requiring royalty during the R&D phase would be counter-productive to the development of viable recovery technologies. Some comments suggested that royalty assessment during the R&D phase is a disincentive to research and development. Other comments suggested royalties be paid based on tons of rock mined or equivalent barrels of oil produced. After considering the potential capital and labor intensive nature of developing oil shale technology, it was concluded that royalty during the R, D & D phase could be a disincentive to the R, D and D efforts. As a result, it was decided that the R, D & D lease form waive the requirement for payment of royalty on any production until such time as the lessee is producing in commercial quantities.

Diligence

One comment suggested that the R&D lease should contain certain diligence requirements agreed to in the plan of operations but did not specify what these diligence requirements might be. Another comment stated that the diligence requirement should be very clear, requiring development in 10 years, similar to coal leases. Other comments suggested that R&D leases should not be held for speculation and one comment suggested that a lessee be required to submit a plan of operations to the BLM within 2 years of lease issuance and to commence onsite operations within 5 years of lease issuance.

BLM agrees that a plan of operations is needed. In addressing this issue, the revised lease form requires the applicant/lessee to submit a plan of operation. A plan of operation should clearly state what the lessee plans to do on the lease, a scheduling (timing) of activities, and describe the methodology for such activities. The submitted plan will be approved by the authorized officer, who will review the plan on an annual basis to ensure that the lessee is diligently executing the approved plan.

Adequacy of the 40 Acre Lease

Numerous comments stated that the 40 acre lease tract was too small, especially considering the provision requiring a 500 foot buffer from the lease line. Recommended lease acreage ranged from 40 acres to 1280 acres. In response to these comments, BLM has determined that the R&D lease acreage should be increased to 160 acres because this acreage is large enough to accommodate any R&D activity that can be envisioned, including the construction of ancillary surface facilities. The BLM also received comments concerning the need for defining specific acreage to be held available for award upon a successful demonstration. BLM has concluded that a successful R, D &D lease may be converted to a commercial lease of up to 5,120 acres, subject to the outcome of further NEPA review. To allow for efficient conversion to commercial operation, the BLM has determined that an R, D & D lease will include a reservation of additional acreage not to exceed 5,120 acres (preference rights area) to which the lease could be expanded if the R, D & D lease is successful and the environmental effects are acceptable.

Methodology for Converting to a Commercial Lease

A few comments suggested that R&D leases should not be converted to commercial leases, rather commercial leasing should be a new program based on competitive leasing. Some comments suggested that conversion should be based on nominations (by potential lessees), who should have the exclusive right to convert to a 5,120 acre commercial lease with bonus payments at the time of the lease conversion. Some comments asked that BLM specifically identify the ''perimeter outline for a potential commercial lease'' at the front end of the lease application process. One comment went on to say that failure to delineate a potential commercial lease ''will unavoidably subject the R&D lease to unacceptable risk.'' A few comments suggested that lease conversion be done based on preferential rights without competitive bidding or assessments for fair market value.

After careful analyses of the comments, it was concluded that conversion should be based on the ability of the lessee to produce commercial quantities of shale oil from the lease, documentation of consultation with state and local governments on the mitigation of socio-economic impacts and BLM's determination, following NEPA analysis, that the environmental consequences of developing the preference right area are acceptable. Then, the lessee would have the exclusive right to convert the R, D & D lease acreage to a commercial lease and acquire any or all portions of the remaining preference lease area up to a total of 5,120 acres, as allowed under the Mineral Leasing Act (30 U.S.C. 241), upon payment of a bonus to be determined by the BLM using criteria developed through rulemaking or other means of securing public input. The definition of the term ''preference lease area'' has been added to the final lease form.

Criteria To Qualify a Company or an Individual To Acquire an R&D Lease

Some comments asked that the R&D leasing program not be used as a license for (land) speculation. One comment urged that the intent of the R&D program be made very clear by moving the last sentence on page A–2 of the **Federal Register** Notice to the top of the page. The sentence reads as follows: ''The intent of the leases is to further the development of technologies for the economic production of oil shale.'' Several comments suggested that a potential lessee should demonstrate or possess technological experience, research capability, financial strength, and the ability to satisfy bonding requirements. Some suggested that among the above requirements, that BLM should not issue leases to companies or individuals that cannot clean up their mess or that have a history of regulatory non-compliance. A few comments suggested that only applicants with environmentally friendly projects be considered.

BLM maintains that the essence of the oil shale R, D& D lease is to further the development of technologies for the economic production of oil shale, while minimizing negative impacts on the environment. Therefore, to address the issues raised in comments, the criteria for lessee qualification will be based on possession of technology and the experience to advance such technology, while protecting the environment (land, air, water, cultural, biological, visual, and other resources) and utilizing best management practices to minimize impacts during the life of the project.

Supporting documentation for applicant qualification should include but is not limited to the description of the technology to be used including the results of laboratory and/or field tests, a plan of operations, proof of investment capacity, and partnership(s).

The Appropriate Level of the National Environmental Policy Act (NEPA) Analysis for R, D & D Leases

A majority of the comments suggested that a regional programmatic environmental impact statement be completed before initiating a leasing action. Some comments expressed concerns that oil shale development may pose much greater impact to plants and wildlife than conventional oil and gas drilling. One comment suggested that the proposed R&D could negatively impact National Park lands in Colorado, Utah and Wyoming. Another comment suggested that ''unlimited water use for leasing activities'' could result in water depletion, which could affect four endangered Colorado River fish. A few comments suggested that the existing Resource Management Plans (RMPs) should be sufficient for R&D leasing.

BLM has determined that, given the small scale of the leases to be awarded, site-specific NEPA analyses would be more appropriate than a regional programmatic environmental impact statement (EIS) document. One of the principal reasons to offer small research and development leases before issuing commercial leases for oil shale is to obtain a better understanding of the environmental effects of the new technologies and the effectiveness of various mitigation measures. The complexity of the analysis required for the R&D lease will depend on the location, the type of project proposed and the type of technology to be used. The impacts to ground water and fisheries would certainly be among the issues to be analyzed. More intensive NEPA analysis will be performed before the

award of a preference right lease, using information generated during the R&D phase. Approval of conversion to a commercial lease will depend upon the Secretary's determination that a commercial operation on the acreage selected could be conducted in an environmentally acceptable manner. BLM is prepared to ensure adequate compliance with NEPA and the Endangered Species Act (ESA).

Methodology for Determining Fair Market Value

There were three comments relating to fair market value. One comment suggested that the BLM should determine fair market value by using the valuation system used by the Utah State Tax Commission. The second comment suggested that it could be counter productive to require payment of market value in transitioning from R&D to commercial lease. This comment went on to state that a fixed conversion fee should be set at the greater of $1,000/acre or $1.00 per barrel of oil equivalent produced and removed from the R&D site. The last comment suggested that the BLM ''examine the carrying costs of comparable private oil shale lands and strive for parity with private land holders.''

The issue of determining the Fair Market Value to be paid at conversion is a complex one. Accordingly, BLM has decided it should be addressed later in a rulemaking or other public process.

Other Comments

Section 10—Water Rights

Several comments suggested that the section (Section 10) on water rights should be rewritten for clarity. Some expressed concern that the language on water rights could be construed to mean that water rights development off the Leased Lands will automatically become the property of the lessor upon termination of the lease. One comment suggested that the lessor should reimburse the lessee, at a fair market value, for costs associated with the development of the water rights.

The language on water rights has been rewritten to clarify that only water rights developed on the lease will be relinquished by the lessee upon termination of the lease.

Research Parks

A few comments suggested the idea of research parks, which ''would be best operated on the Ua/Ub in Utah or the Anvil Points in Colorado.'' A comment suggested that rather than conventional leasing, a better approach may be to utilize ''government land as a technology proof test center.'' One of the comments suggested that BLM make Ua/Ub and Anvil Points sites available as ''research parks,'' because some level of infrastructure exist on these sites. However, these comments did not elaborate on the idea or give a framework under which the idea could be feasible in advancing the course of oil shale extraction, associated technology and subsequent commercial operation. One of the comments cites the relationship between the Canadian oil sands industry and the provincial and federal governments as a possible model. Again, the comment did not explain how the relationship informs the BLM project.

Some comments were in opposition to the idea of Research Parks. They believe that it is an idea that offers no protection to proprietary trade data, and lacks equitable accountability for environmental responsibilities.

Anvil Point is currently undergoing reclamation at great expense. The Utah facility is currently under a closure order while issues relating to the buildup of methane are resolved. Accordingly, at this time, BLM is unwilling to assume the liability for any additional reclamation costs or environmental risks which would be associated with its operation of these sites as public facilities. Any further use should be dependent on the willingness of bonded private entities to accept the responsibility for any additional liabilities.

Bonding

A majority of the comments suggested that the criteria for awarding leases should include a requirement for a potential lessee to demonstrate, in advance, the ability to obtain a sufficient reclamation bond. One comment suggested that the bond amount be set at $20,000,000. A comment suggested that oil shale bonding should be structured like the oil and gas bonds. Another suggested that any bond posted for ''reclamation performance'' should be made payable to the state regulatory authority where the project is located in addition to the lessor, BLM.

After a thorough review of the bonding comments, BLM determined that the existing language in the draft form (under Section 7—Bonds) is an appropriate mechanism to ensure adequate bonding for the R, D & D leases. The draft language states that the ''bond shall be of a type authorized by 43 CFR 3104.1 and must be sufficient to cover all costs associated with reclamation and abandonment activities.'' It was concluded that the sufficiency of a bond will be best determined by an authorized officer.

Section 11—Development by In Situ Methods

Fracture Length

One comment questioned ''how to either prove or enforce the limits of fracturing.'' In response to this issue, the phrase ''nor shall induced fracture extend to within 100 feet from the boundary line'' has been deleted.

500 Feet Perimeter Limit

Some comments suggested that the requirement that ''the lessee shall not place any entry, well, or opening for such operations within 500 feet of the boundary line of the Leased Lands' be modified. One comment stated that the limitation should be eliminated, because it reduces the effective R & D area to approximately 2.35 acres. This requirement has been addressed by increasing the size of the R, D & D lease to 160 acres, while retaining the 500 foot perimeter to protect against removal of resources associated with other properties.

[FR Doc. 05–11394 Filed 6–8–05; 8:45 am]

BILLING CODE 4310–AG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–518]

In the Matter of Certain Ear Protection Devices; Notice of Commission Issuance of a Limited Exclusion Order and a Cease and Desist Order Against a Respondent Found in Default; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order against a respondent found in default in the above-captioned investigation, and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. Copies of non-confidential documents filed in connection with this investigation are or 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 instituted this investigation on August 6, 2004, based on an amended complaint filed by 180s, Inc. and 180s, LLC of Baltimore, Maryland. 69 FR 47955–56. The amended complaint alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain ear protection devices by reason of infringement of claims 1, 3, 13, 17–19, and 21–22 of U.S. Patent No. 5,835,609. The complaint named nine respondents: Ningbo Electric and Consumer Goods, Import & Export Corp. (Ningbo) of China; Vollmacht Enterprise Co., Ltd. (Vollmacht) of Taiwan; March Trading of New York, NY; Alicia International,

Inc., d/b/a Lincolnwood Merchandising, of Niles, IL; Hebron Imports of Chicago, IL; Ross Sales of Commack, NY; Value Drugs Rock, Inc. of New York, NY; Song's Wholesale of Washington, DC; and Wang Da, Inc. Retail and Wholesales (Wang Da) of New York, NY. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

The ALJ issued an ID on November 2, 2004, finding that respondents Ningbo, Vollmacht, and Wang Da did not respond to the complaint, notice of investigation, or an order to show cause. Consequently, the ALJ found the three respondents in default, and pursuant to Commission Rule 210.16(b)(3), to have waived their right to appear, be served with documents, or contest the allegations in the complaint. No petitions for review of the ID were filed. The Commission did not review the ID, and it thereby became the determination of the Commission.

On March 23, 2005, the complainants filed six motions for termination of the investigation with respect to the six remaining respondents. The Commission Investigative Attorney (''IA'') filed a response in support of the motions on March 25, 2005. On April 1, 2005, the ALJ granted the motions for termination. No party petitioned for review of this ID. On April 19, 2005, the Commission published a notice indicating that it would not review the ID, thereby allowing the ALJ's ID to become the Commission's final determination. The Commission requested that the parties brief the issues of remedy, the public interest, and bonding with respect to the three defaulting respondents.

On April 29, 2005, complainants and the IA submitted their main briefs, and on May 5, 2005, complainants filed a reply brief. Complainants and the IA both maintained that the appropriate remedy is a limited exclusion order and a cease and desist order.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to the defaulting respondents. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c) 19 CFR 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true.

The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of certain ear protection devices that are covered by one or more of claims 1, 3, 13, 17–19, and 21–22 of U.S. Patent No. 5,835,609. The order covers certain ear protection devices that are manufactured abroad by or on behalf of, or imported by or on behalf of the three defaulting respondents or any of their affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission also determined to issue a cease and desist order prohibiting domestic respondent Wang Da from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for ear protection devices covered by the above-mentioned claims of the '609 patent. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order and cease and desist order. Finally, the Commission determined that the bond under the limited exclusion order during the Presidential review period shall be in the amount of 100 percent of the entered value of the imported articles. The Commission's orders were delivered to the President on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)).

By order of the Commission.

Issued: June 3, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–11417 Filed 6–8–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Newdunn Associates, LLP., Orion Associates, and Northwest Contractors*, E.D. Va., Civil Action No. 2:01cv508, was lodged with the United States District Court for the Eastern District of Virginia on May 20, 2005.

This proposed Consent Decree concerns a complaint filed by the United States against Newdunn Associates, LLP., Orion Associates, and Northwest Contractors, pursuant to section 301(a) of the Clean Water Act, 33 U.S.C. 1311(a), to obtain injunctive relief from, and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to restore the impacted areas, perform mitigation, and pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kent E. Hanson, United States Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 2002–3986, and refer to Newdunn Associates.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Virginia, 600 Granby Street, Norfolk, Virginia 23510. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html*.

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 05–11423 Filed 6–8–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: firearms transaction record, part 1, over-the-counter.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** volume 70, number 61, page 16525 on March 31, 2005, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public

comment until July 11, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Firearms Transaction Record, Part 1, Over-the-Counter.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection: Form Number:* ATF F 4473 (5300.9) Part 1. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. The form is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee and to establish the identity of the buyer. It is also used in law enforcement investigations/inspections to trace firearms. The form has been revised to reflect recommended format and substantive changes requested by a variety of stake holders including licensees and Federal and state law enforcement agencies.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 10,225,000 respondents will complete a 25 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 4,260,417 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 3, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–11439 Filed 6–8–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: licensed firearms manufacturers records of production, disposition, and supporting data.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 8, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Barbara Terrell, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Licensed Firearms Manufacturers Records of Production, Disposition, and Supporting Data.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None. Firearms manufacturers records are permanent records of all firearms manufactured and records of their disposition. These records are vital to supports ATF's mission to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,694 respondents will take 3 minutes to maintain the records.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: There are an estimated 76,611 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 6, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–11441 Filed 6–8–05; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: application for cancellation of removal (42A) for certain permanent residents; (42B) and adjustment of status for certain nonpermanent residents.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 8, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact MaryBeth Keller, General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2600, 5107 Leesburg Pike, Falls Church, Virginia 22041.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal (42A) for Certain Permanent Residents; (42B) and Adjustment of Status for Certain Nonpermanent Residents.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* EOIR–42A, EOIR–42B. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individual aliens determined to be removable from the United States. *Other:* None. *Abstract:* This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 11,000 respondents will complete the form annually with an average of 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 63,250 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 6, 2005.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 05–11440 Filed 6–8–05; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Notice of Intent To Fund the International Labor Organization (ILO)

AGENCY: Bureau of International Labor Affairs, U.S. Department of Labor.

ACTION: Notice of Intent to award up to $2 million to the International Labor Organization (ILO) under the new cooperative agreement #E–9–K–5–0019.

SUMMARY: The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), intends to fund up to U.S. $2 million to cooperative agreement #E–9–K–5–0019 with the International Labor Organization (ILO) for the International HIV/AIDS Workplace Education Program. The Conference Report of the FY 2005 Labor-HHS-Education appropriation states that ''In implementing this agreement, the Departments and agencies should be guided by the language and instructions set forth in House Report 108–636 accompanying the bill H.R. 5006 and Senate Report 108–345 accompanying bill, S. 2810.''

The Conference Report likewise states that: ''The Conference agreement includes $2,000,000 for the purpose of assisting the International Labor Organization in implementing a program to confront HIV/AIDS in the workplace.''

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov.* All inquiries should make reference to the USDOL FY 2005 International HIV/AIDS Workplace Education Program.

SUPPLEMENTARY INFORMATION: The project funded will be a new grant that has the following three objectives:

• Education: To increase awareness and knowledge of HIV/AIDS by focusing on a comprehensive workplace education program(s) addressing behavior change, gender issues and linkages with care and support services.

• Policy: To improve workplace environment by assisting business and labor to develop appropriate workplace policy statements to address issues stemming from the stigma and

discrimination associated with HIV/AIDS.

• Capacity: To develop the legislative framework, tripartite collaboration, and sustainability of the program by increasing the political will and capacity of social partners (government, business and labor) to respond to the epidemic.

Signed June 2, 2005.

Lisa Harvey,

Grants Officer, Office of Procurement Services.

[FR Doc. 05–11437 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

2006 National Summit on Retirement Savings; Request for Information

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of Request for Information.

SUMMARY: This document requests comments from the public for the purpose of developing a comprehensive agenda for the third National Summit on Retirement Savings (2006 National Summit), tentatively planned to be convened in early March, 2006. The 2006 National Summit is called for by the Savings Are Vital To Everyone's Retirement (SAVER) Act of 1997 (Pub. L. 105–92). The first National Summit was held on June 4–5, 1998, and the second Summit was held on February 28–March 1, 2002, both in Washington, DC.

DATES: Written comments on suggestions for the agenda for the 2006 National Summit on Retirement Savings must be received by July 5, 2005.

ADDRESSES: Written comments (preferably three copies) should be sent to the Office of Participant Assistance, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5623 200 Constitution Avenue, NW., Washington, DC 20210. Attention: ''2006 National Summit on Retirement Savings.'' All submissions will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Teresa Thomas, (202) 693–8655, Room N5623, 200 Constitution Avenue, NW., Washington, DC 20210 email address: *saversummit@dol.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Savings Are Vital to Everyone's Retirement (SAVER) Act of 1997 (Pub. L. 105–92) amended the Employee Retirement Income Security Act of 1974 (ERISA) by adding a new section 517, [1] which calls for the convening of National Summits on Retirement Savings (National Summits). Section 517 of ERISA provides standards for the purposes, scope, participation, and administration of each National Summit.

As outlined in the Act, the purposes of the National Summits are (1) To increase the public awareness of the value of personal savings for retirement, (2) to advance the public's knowledge and understanding of retirement savings and its critical importance to the future well-being of American workers and their families, (3) to facilitate the development of a broad-based, public education program to encourage individual commitment to a personal retirement savings strategy, (4) to identify the problems workers have in setting aside adequate savings for retirement, (5) to identify the barriers that employers, especially small employers, face in assisting their workers in saving for retirement, (6) to examine the impact and effectiveness of individual employers in promoting personal savings for retirement among their workers and workers' participation in company savings options, (7) to examine the impact and effectiveness of government programs at the Federal, State, and local levels in educating the public about and encouraging retirement savings, (8) to develop comprehensive recommendations for government and private sector actions to promote pensions and individual retirement savings, and (9) to develop recommendations for the coordination of retirement savings initiatives among the Federal, State, and local governments.

The Act called for the convening of three National Summits. The first was held on June 4–5, 1998, in Washington, DC. The second Summit was held on February 28–March 1, 2002. The third Summit is tentatively planned for early March 2006. The SAVER Act requires the Secretary of Labor (Secretary) to prepare a report describing each Summit's activities and to submit it to the President and Congressional leaders following the Summit's adjournment.

The SAVER Act provides that the National Summits are to be planned and conducted under the direction of the Secretary of Labor, in consultation with heads of other Federal agencies as designated by the President. The Act further provides that, in planning a National Summit, the Secretary shall consult with bipartisan Congressional leaders and with at least one organization composed or private sector representatives that partners with Governmental entities to promote retirement savings.

[1] 29 U.S.C. 1147.

B. First National Summit

The first two National Summits were convened by the President and co-hosted by members of the Congressional leadership on June 4–5, 1998 and February 28–March 1, 2002. Following both Summits, final reports were prepared and submitted in accordance with the SAVER Act. These reports are publicly available through the Department of Labor's Web site at *http://www.saversummit.dol.gov.* The reports describe the information exchange at the Summit and any recommendations made by the Summits' participants to achieve the goal of a financially secure retirement for all Americans.

C. Information Requested

The Department is now in the process of developing an agenda for the 2006 National Summit. The Department wishes to develop an agenda that builds on the primary recommendations for national retirement savings education programs presented at the earlier National Summits and that reflects, to the greatest extent possible, the purposes of the National Summit as set forth in ERISA section 517. To ensure that the Summit comprehensively serves its statutory purposes, the Department hereby solicits comments from organizations, both private and public, that have a mission to educate American workers about the importance of savings for retirement and ways to achieve retirement security. All information received will be used to develop the 2006 National Summit agenda and to help shape the information presented at the Summit. The Department intends to publish a proposed agenda in the **Federal Register** prior to the 2006 National Summit in accordance with the SAVER Act.

The Department requests comments on the issues related to retirement savings education described above. The Department is particularly interested in comments concerning the following:

1. Suggested topics for discussing the current state of retirement savings education in America and its effect on the national retirement savings rate;

2. Ideas about programs and activities that would effectively reach the general

public and, more specifically, low-income workers, women, small business owners, minorities, youth, and older workers;

3. Success stories and model programs that have used effective communication techniques to educate low-income workers, women, minority groups, youth, and older workers about the need to save and steps that should be taken to save for retirement;

4. Measurement techniques used to assess the effectiveness of public outreach and media efforts regarding retirement savings; and

5. Ideas for creating new partnerships among public and private sector organizations to enhance existing programs for encouraging retirement savings.

Submitted comments may address any or all of the aforementioned categories of information and need not be limited to those categories. In submitting comments, please refer to the pertinent topic addressed by the comment by number. Comments must be received by July 5, 2005 to be considered in conjunction with developing the agenda for the 2006 National Summit.

Authority: 29 U.S.C. 1143; Secretary of Labor's Order No. 1–87, 52 FR 13139.

Signed at Washington, DC, this 3rd day of June, 2005.

Bradford P. Campbell,

Deputy Assistant Secretary, Employee Benefits Secretary Administration.

[FR Doc. 05–11438 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,053]

Armstrong Wood Products, Flooring Division, Nashville, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 26, 2005 in response to a petition filed by the AFL–CIO on behalf of workers at Armstrong Wood Products, Flooring Division, Nashville, Tennessee.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of May 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2951 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,299, TA–W–56,299A, TA–W–56,299B, TA–W–56,299C]

Atlas Textile Company, Inc., Commerce, CA, Including Employees of Atlas Textile Company, Inc. Commerce, CA, Located in: Sunlakes, AZ; Irving TX; Westwood, NJ; Amended Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 8, 2005, applicable to workers of Atlas Textile Company, Inc., Commerce, California. The notice was published in the **Federal Register** on March 9, 2005 (70 FR 11704).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations have occurred involving employees of the Commerce, California facility of Atlas Textile Company, Inc. located in Sunlakes, Arizona, Irving, Texas and Westwood, New Jersey. These employees provided sales support services for the production of coordinated bed sheet sets, comforter sets, kitchen and bath towel sets and displays at the Commerce, California location of the subject firm.

Based on these findings, the Department is amending this certification to include employees of the Commerce, California facility of Atlas Textile Company, Inc. located in Sunlakes, Arizona, Irvin, Texas and Westwood, New Jersey.

The intent of the Department's certification is to include all workers of Atlas Textile Company, Inc., Commerce, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–56,299 is hereby issued as follows:

''All workers of Atlas Textile Company, Inc., Commerce, California (TA–W–56,299), including employees of Atlas Textile Company, Inc., Commerce, California, located in Sunlakes, Arizona (TA–W–56,299A), Irving, Texas (TA–W–56,299B), and Westwood, New Jersey (TA–W–56,299C), who became totally or partially separated from employment on or after January 4, 2004, through February 8, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 24th day of May 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2945 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,061]

Copland Fabrics, Inc. Burlington, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2005 in response to a petition filed by a company official on behalf of workers at Copland Fabrics, Inc., Burlington, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2952 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,030]

Dorby Frocks, New York, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 22, 2005 in response to a petition filed by New York, New York, DOL Workforce Development and Training Division on behalf of workers at Dorby Frock, New York, New York.

The Department issued negative determinations (TA–W–56,599, 56,240

and 55,863) applicable to the petitioning group of workers on March 29, 2005, January 21, 2005 and November 18, 2004, respectively. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determinations. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of May 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2950 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,969]

ECSO Integrated Manufacturing, a Division of ESCO Corporation, Tempe, AZ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2005 in response to a petition filed by a company official on behalf of workers at ESCO Integrated Manufacturing, a division of ESCO Corporation, Tempe, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 25th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2948 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,479]

Hoffmaster, Subsidiary of Solo Cup Company, Green Bay, WI; Notice of Negative Determination Regarding Application for Reconsideration

By application of May 5, 2005, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on April 1, 2005 and published in the **Federal Register** on May 2, 2005 (70 FR 22710).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Hoffmaster, Subsidiary of Solo Company, Green Bay, Wisconsin engaged in production of napkins, placemats, and table covers was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974 was not met, nor was there a shift in production from that firm to a foreign country. The ''contributed importantly'' test is generally demonstrated through a survey of the workers' firm's declining customers. The survey of customers was irrelevant in this case as the investigation revealed that sales of napkins, placemats and tablecovers increased at the subject firm during the relevant time period. Nevertheless, the survey was conducted in the initial investigation. The survey revealed an insignificant amount of imports. The subject firm did not import napkins, placemats and tablecovers in the relevant period, nor did it shift production to a foreign country.

In the request for reconsideration, the petitioner alleges that the layoffs at the subject firm are attributable to a shift in production to a foreign country. Specifically, the petitioner mentions several locations where the subject firm has plants and which might be foreign locations, such as El Cajon, Glen Falls, Goshen and St. Albans.

A company official was contacted regarding the above allegations. The company official confirmed what was revealed during the initial investigation. In particular, the official stated that all the products which were produced at the subject facility are now produced at other domestic facilities. He further clarified that all locations mentioned by the petitioner are domestic facilities—El Cajon in California, Glen Falls in New York, Goshen in Indiana and St. Albans in Vermont.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 25th day of May, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2946 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,009]

New Age Intimates, Inc., Long Island City, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 19, 2005 in response to a petition filed by a company official on behalf of workers at New Age Intimates, Inc., Long Island City, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 24th day of May, 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2949 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,663]

Sohnen Enterprises, Inc., Santa Fe Springs, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Sohnen Enterprises, Inc., Santa Fe Springs, California. The application contained no new substantial information which would bear importantly on the Department's

determination. Therefore, dismissal of the application was issued.

TA–W–56,663; Sohnen Enterprises, Inc. Santa Fe Springs, California (May 26, 2005)

Signed at Washington, DC, this 26th day of May 2005.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–2947 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,212]

TRW Automotive El Paso, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2005 in response to a petition filed by a company official on behalf of workers at TRW Automotive, El Paso, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 25th day of May 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2953 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,952]

VF Intimates, LP Johnstown, PA; Notice of Determination of Alternative Trade Adjustment Assistance on Remand

The U.S. Court of International Trade (USCIT) granted the Department of Labor's motion for a voluntary remand for further investigation in *Former Employees of VF Intimates, Inc.* v. *Elaine Chao, U.S. Secretary of Labor*, No. 05–00052, on April 4, 2005.

Workers of VF Intimates, LP, Johnstown, Pennsylvania were certified as eligible to apply for Trade Adjustment Assistance (TAA) on June 15, 2004. The Notice of determination was published in the **Federal Register** on April 1, 2005 (70 FR 16847). An Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for workers of the subject company was issued on July 21, 2004 and published in the **Federal Register** on August 4, 2004 (69 FR 47184).

By letter dated September 29, 2004, a company official requested that the Department consider certification for Alternative Trade Adjustment Assistance (ATAA) for workers and former workers covered by petition TA–W–54,952. The request was dismissed because the application for ATAA was not filed with the TAA petition, as required by the Secretary's interpretation of section 246 of the Trade Act, Training and Employment Guidance Letter No. 2–03 (August 6, 2003). 69 FR 60904, October 13, 2004.

By letter dated January 17, 2005, the company official appealed to the USCIT, asserting that the Department failed to meet certain administrative obligations by not conducting an ATAA investigation solely because the request for ATAA was not marked. Specifically, the company official alleges that the Department processed an incomplete petition, erroneously assumed that ATAA was not requested when the question was unmarked, and failed to provide petitioners with assistance and adequate opportunity to request ATAA because the requirements for applying are ambiguous.

Upon further consideration, the Department has determined that it is appropriate to investigate the workers' eligibility for ATAA benefits, given the circumstances as presented, in order to effectuate the purposes of the Trade Act of 1974, as amended. The group eligibility certification criteria for the ATAA program under section 246 the Trade Act of 1974, as amended, established that the Department must determine whether a significant number of workers in the workers' firm are 50 years of age or older, whether the workers in the workers' firm possess skills that are not easily transferable, and whether the competitive conditions within the workers' industry are adverse.

The remand investigation revealed that at least five percent of the workforce at the subject firm was at least fifty years of age as of the date of the petition (May 18, 2004), the workers possess skills that are not easily transferable, and competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers at VF Intimates, LP, Johnstown, Pennsylvania, who became ''totally or partially separated from employment on or after March 6, 2004 through June 15, 2006, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 19th day of May 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–2944 Filed 6–8–05; 8:45 am]

BILLING CODE 4510–30–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 05–07]

Notice of the June 13, 2005 Millennium Challenge Corporation Board of Directors Meeting; Sunshine Act Meeting

AGENCY: Millennium Challenge Corporation.

TIME AND DATE: 11 a.m.—12:30 p.m., Monday, June 13, 2005.

PLACE: Department of State, 2201 C Street, NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Joyce B. Lanham via e-mail at *Board@mcc.gov* or by telephone at (202) 521–3600.

STATUS: Meeting will be closed to the public.

MATTERS TO BE CONSIDERED: The Board of Directors (the ''Board'') of the Millennium Challenge Corporation (''MCC'') will hold a meeting of the Board to discuss and consider one or more proposed Millennium Challenge Account (''MCA'') Compacts under the provisions of Section 605(a) of the Millennium Challenge Act, codified at 22 U.S.C. 7706(a). The meeting is expected to involve the consideration of classified information and will, subject to approval of the Board, be closed to the public.

Dated: June 6, 2005.

Jon A. Dyck,

Vice President and General Counsel, Millennium Challenge Corporation.

[FR Doc. 05–11492 Filed 6–6–05; 4:50 pm]

BILLING CODE 9210–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request reinstatement and clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

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 on respondents, including through the use of automated collection techniques of other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques of other forms of information technology.

DATES: Written comments should be received by August 8, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or be e-mail to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send e-mail to *splimpto@nsf.gov.* Individuals who use a telecommunications device 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:

Request for Clearance for Recurring Study of National Science Foundation-Sponsored Graduate Education Impacts or Legacy (GEIL)

Title of Collection: Recurring Study of National Science Foundation-sponsored Graduate Education Impacts of Legacy (GEIL). (Formerly called the Evaluation of the Initial Impacts of the Integrative Graduate Education Research and Traineeship (IGERT) Program).

OMB Control No.: 3145–0182.

Expiration Date of Approval: July 31, 2005.

Abstract: The National Science Foundation (NSF) requests extension of data collection (*e.g.,* interviews, surveys, focus groups, site visits) measuring NSF's contribution to the Nation's graduate education enterprise and overall science and engineering workforce. This continuation expands the data collection formerly called ''The Evaluation fo the Initial Impacts of the IGERT Program'' most recently approved through July 2005 (OMB 3145–0182).

IGERT began data collection in the late 1990s for use in program research, management and evaluation. Data collection was concurrent with NSF-funding in order to document IGERT's initial impact within individual departments or institutions (often called projects), and on student, faculty and other participants as compared to the educational and training experiences of individuals who were external to IGERT. This request expands data collection to the portfolio of NSF-funded graduate education programs and projects, typically on a program-by-program sub-study basis in order to address long-term impact.

For over fifty years NSF has funded directly and indirectly (*e.g.* via institutions), tens of thousands of individuals who pursue Post-undergraduate education or research training. NSF's graduate education portfolio includes:

The Integrative Graduate Education Research and Traineeship (IGERT) program. IGERT provides grants to institutions to recruit and support doctoral students in interdisciplinary Science, Technology, Engineering, and Mathematics programs (STEM).

The Graduate Teaching Fellows in K–12 Education (GK–12) program. GK–12 provides grants to institutions to support STEM graduate students' acquisition of skills that will prepare them for careers in the 21st century.

The Graduate Research Fellowship (GRF) program. GRF provides three years of funding to eligible individuals for graduate study leading to research-based masters or doctoral degrees at an IHE of their choice. A longer list of NSF's graduate education opportunities and eligibility information is on the NSF website under the link: ''Specialized information for Graduate Students'' at: *http://www.nsf.gov/funding/education.jsp?org=NSF&fund_type=2.*

Through longitudinal study NSF aims to learn about the long-term impact or legacy of its program strategies in graduate education. A primary goal is to identify and follow-up with individuals who participated in NSF-funded programs or projects, especially students who graduated with masters or doctoral degrees. The primary means of data collection will be surveys. Site visits, focus groups and interviews are used to improve survey instruments, clarify responses or address questions of institutional impact. Typical respondents are former NSF-funded fellows, trainees or other participants in NSF-funded projects or are professional scientists, engineers, IHE faculty, K–graduate educators, education administrators and K–IHE policymakers. NSF uses the analysis of responses to prepare and publish reports and to respond to requests from Committees of Visitors, Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART).

The study's broad questions include but are not limited to: What do individuals following post-participation in IGERT or other NSF-funded graduate education opportunities do? Do IGERT or other NSF-funded opportunities provide graduates with the professional and/or research skills needed to work in science and engineering? Are IGERT or other NSF-sponsored graduates satisfied that their NSF-funded graduate education advanced their careers in science or engineering? To what extent do IGERT or other former-NSF sponsored graduates engage in the science and engineering workforce conduct inter- or multi-disciplinary science? Is there evidence of a legacy from NSF-funding that changed a degree-granting department beyond number of students supported and degrees awarded? To what extent have projects achieved or contributed to individual project goals or the NSF program goals? To what extent have NSF-funded projects or programs broadened participation by diverse individuals, particularly individuals traditionally underemployed in science or engineering, including but not limited to women, minorities, and persons-with-disabilities?

Respondents: Individuals or households, not-for-profit institutions, business or other for profit, and Federal, State, local or tribal government.

Number of Respondents: 4000.

Burden on the Public: 2000 hours.

Dated: June 3, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–11435 Filed 6–8–05; 8:45 am]

BILLING CODE 7555–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Availability for Work.

(2) *Form(s) submitted:* UI–38, UI–38s, ID–8k.

(3) *OMB Number:* 3220–0164.

(4) *Expiration date of current OMB clearance:* 09/30/2005.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households, Non-profit institutions.

(7) *Estimated annual number of respondents:* 7,600.

(8) *Total annual responses:* 7,600.

(9) *Total annual reporting hours:* 1,085.

(10) *Collection description:* Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the RRB to determine whether a claimant is willing and ready to work.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov*.

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. 05–11426 Filed 6–8–05; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Development Center National Advisory Board; Public Meeting

The U.S. Small Business Administration, National Small Business Development Center Advisory Board will be hosting a public meeting on Thursday, June 23, 2005, starting at 4 p.m. The meeting will be held at the Illinois District Office, located at 500 West Madison Street, Suite 1250, Chicago, IL 60660. The meeting will review the Illinois SBDC Network, and discuss such matters that may be presented by members and the staff of the U.S. Small Business Administration or interested others.

Anyone wishing to make an oral presentation to the Board must contact Erika Fischer, Senior Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205–7045; fax (202) 481–0681; e-mail: *Erika.Fischer@sba.gov*.

Matthew K. Becker,

Committee Management Officer.

[FR Doc. 05–11459 Filed 6–8–05; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5095]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Robert Mapplethorpe and the Classical Tradition''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition, ''Robert Mapplethorpe and the Classical Tradition,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Guggenheim Museum, New York, New York, from on or about July 1, 2005, to on or about August 24, 2005, and at possible additional venues yet to be determined, is in the national interest. Public notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/453–8052, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: June 1, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 05–11461 Filed 6–8–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–03–115–31

Conducting Component Level Tests To Demonstrate Compliance; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy; correction.

SUMMARY: This document contains a correction to the Notice of final policy on conducting component level tests in order to demonstrate compliance with the requirements of § 25.785(b) and (d), that was published in the **Federal Register** on May 20, 2005 (70 FR 29374). In the ''Background'' section of that notice, the FAA inadvertently left out a portion of a sentence in the second paragraph. This action corrects that error.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Ave. SW., Renton, WA 98055–4056, telephone: 425–227–2127.

SUPPLEMENTARY INFORMATION:

Correction of publication

In notice document (FR Doc. 05–10134), make the following correction. On page 29375, column 1, ''Background'' section, second paragraph, add the following words to the start of the paragraph: ''The tests described therein provide a standardized approach by which each potentially''

Dated: Issued in Renton, Washington, on May 31, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–11411 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2005–20923; Notice 2]

Les Entreprises Michel Corbeil Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Les Entreprises Michel Corbeil Inc. (Corbeil) has determined that certain vehicles that it produced in 1998 through 2005 do not comply with S9.3(c) of 49 CFR 571.111, Federal Motor Vehicle Safety Standard (FMVSS) No. 111, ''Rearview mirrors.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Corbeil has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on April 18, 2005, in the **Federal Register** (70 FR 20204). NHTSA received no comments.

Affected are approximately 246 Corbeil school buses on Ford and GM chassis, manufactured from January 5, 1998 through February 15, 2005. S9.3(c) requires:

> Each school bus which has a mirror installed in compliance with S9.3(a) that has an average radius of curvature of less than 889 mm, as determined under S12, shall have a label visible to the seated driver. The label shall be printed in a type face and color that are clear and conspicuous. The label shall state the following: ''USE CROSS VIEW MIRRORS TO VIEW PEDESTRIANS WHILE BUS IS STOPPED. DO NOT USE THESE MIRRORS TO VIEW TRAFFIC WHILE BUS IS MOVING. IMAGES IN SUCH MIRRORS DO NOT ACCURATELY SHOW ANOTHER VEHICLE'S LOCATION.''

The noncompliant school buses were produced without the required label.

Corbeil believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Corbeil states that school bus drivers in general are instructed and aware of the use of these mirrors for pedestrian purposes only. Further, the petitioner asserts that a very small number of vehicles are affected, over a time period of eight years, and that a recall would cost approximately $10,000 Canadian due to the need to recall all 8471 school buses produced from 1998 to 2005 to determine which of the estimated noncompliant 2.9% lack the label required by S9.3(c). Corbeil has corrected the problem.

The agency agrees with Corbeil that the noncompliance is inconsequential to motor vehicle safety. As Corbeil states, all school bus drivers are trained to assure they are knowledgeable and skilled in the operation of buses including the use of these mirrors and the fact that these mirrors are used for pedestrian purposes only. The number of vehicles with noncompliant mirrors is relatively small, and Corbeil has made changes in its quality assurance process to prevent future occurrences of this problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Corbeil's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: June 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–11427 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–21383; Notice 1]

Equistar Chemicals, LP, Receipt of Petition for Decision of Inconsequential Noncompliance

Equistar Chemicals, LP (Equistar) has determined that certain brake fluid that was manufactured in 2004 and that Equistar distributed does not comply with S5.1.7 of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids.'' Equistar has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Equistar has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Equistar's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 170,000 gallons of DOT–3 brake fluid designated as Lot 630 and manufactured by Oxid, LP in September 2004. FMVSS No. 116, S5.1.7, ''Fluidity and appearance at low temperature,'' requires that when brake fluid is tested as specified in the standard at storage temperatures of minus 50 ±2° C,

> (a) The fluid shall show no sludging, sedimentation, crystallization, or stratification; [and]
>
> (b) Upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid shall not exceed 35 seconds. * * *

NHTSA's compliance tests found that at minus 50° C, the noncompliant brake fluid freezes solid, therefore showing crystallization and failing the requirements of S5.1.7(a). NHTSA's compliance tests also found that at minus 50° C, upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid exceeds 35 seconds, therefore failing the requirements of S5.1.7(b). The NHTSA test report can be found in the docket.

Equistar believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Equistar states the following:

> Equistar asked Oxid, LP [the brake fluid manufacturer] to supply a copy of its data reporting the results of the tests it had previously conducted for * * * [the brake] fluid pursuant to the test requirements of S6.7 * * *. The data show that [the brake fluid] unconditionally passed the tests required by the applicable standard, including the minus 50° C test.

Equistar states that it had the noncompliant brake fluid further tested by another testing center, Case Consulting Laboratories, Inc. (Case), and that:

> The samples tested by Case passed all of the required tests, including the minus 50° C

air bubble and appearance test, except that the tested sample * * * began to form crystals. It bears note that the bubble travel time on this sample was 2.7 seconds against the standard's requirement of 35 seconds maximum. Further, the appearance of the sample after testing at minus 50° C was the same as before the testing.

Given the formation of crystals * * *, Equistar asked Case to perform further analysis on the tested retained sample to determine the temperature at which the crystals began to form. The * * * Case report on the crystals * * * indicates that these crystals, which were determined to be small in both size and number, formed at minus 49.9° C, which is within the temperature allowed by the relevant standard—plus or minus 2 degrees relative to minus 50° C. Thus, the results of this Case test on the retained sample do not constitute a failure of the required test in Equistar's view.

Equistar's petition, including the test data it submitted as attachments to its petition, can be found in the NHTSA docket.

Equistar states that ''the crystals and globules'' in the brake fluid ''would not pose a threat to the operation of the brake fluid.'' Equistar also asserts that the results may be due to ''testing laboratories that calibrate their testing equipment in slightly different ways * * *'' Equistar refers to two prior NHTSA grants of inconsequential noncompliance petitions which Equistar states involve ''virtually identical circumstances involving brake fluid * * *'' These are Dow Corning Corporation (59 FR 52582, October 18, 1994) and First Brands Corporation (59 FR 62776, December 6, 1994).

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: July 8, 2005.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: June 3, 2005.

Ronald L. Medford,

Senior Associate Administrator for Vehicle Safety.

[FR Doc. 05–11428 Filed 6–8–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 11, 2005.

FOR FURTHER INFORMATION: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0094.'' Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4169 is used to collect certain applicants' service information, place of residence, proof of service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. VA uses the information collected to determine the applicant's eligibility for benefits based on Commonwealth Army or recognized guerrilla services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on January 25, 2005, at page 3582.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: May 26, 2005.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 05–11478 Filed 6–8–05; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 70, No. 110
Thursday, June 9, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2005–SC–0001, R04–OAR–2005–GA–0001–200516; FRL–7917–9]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina and Georgia; Attainment Demonstration for the Appalachian, Catawba, Pee Dee, Waccamaw, Santee Lynches, Berkeley-Charleston-Dorchester, Low Country, Lower Savannah, Central Midlands, and Upper Savannah Early Action Compact Areas

Correction

In proposed rule document 05–10475 beginning on page 30396 in the issue of Thursday, May 26, 2005, make the following correction:

On page 30404, the table is corrected in part to read as follows:

COUNTY LEVEL EMISSION REDUCTIONS IN SOUTH CAROLINA EAC NONATTAINMENT-DEFERRED AREAS—CONTINUED

Commitment	Implementation strategies	Emissions reduction actual or potential		
		NO_X	VOC	CO
* * * * * * *				
Totals from SC's Ozone Early Action Program		6,522 Tons	703 Tons	36 Tons

* * * * *

[FR Doc. C5–10475 Filed 6–8–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 9, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus lentiginosus* var. *piscinensis* (Fish Slough Milk-Vetch); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ09

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus lentiginosus* var. *piscinensis* (Fish Slough Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the federally threatened *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 8,007 acres (ac) (3,240 hectares (ha)) fall within the boundary of the critical habitat designation. The critical habitat is located in Mono and Inyo Counties, California.

DATES: This rule becomes effective on July 11, 2005.

ADDRESSES: All comments and materials received during the comment periods, and supporting documentation used in preparation of the proposed and final rules, will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone number 805/644–1766). The final rule, economic analysis, and map will also be available via the Internet at *http://ventura.fws.gov/.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION

Designation of Critical Habitat Provides Little Additional Protection to Species

In the 30 years of implementing the Act (16 U.S.C. 1531 *et seq.*), we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Our present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. We believe that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to, and protection of, habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 473 species or 37 percent of the 1,264 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,264 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We believe that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the U.S. Court of Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected us to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left us with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This, in turn, fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis, provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects, and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act of 1969 (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Our intent is to discuss only those topics directly relevant to the final designation of critical habitat in this rule. For more information on *Astragalus lentiginosus* var. *piscinensis,* refer to the final listing rule for the taxon that was published in the **Federal Register** on October 6, 1998 (63 FR 53596), or the proposed designation of critical habitat for the taxon published on June 4, 2004 (69 FR 31552).

In the proposed critical habitat designation, we stated that it was unlikely that *Astragalus lentiginosus* var. *piscinensis* was present on a privately owned parcel in Township 6, South Range 33 East, section 18 and did not propose designating the parcel as critical habitat. However, we have determined that 8 individuals of the

listed plant taxon were present on or immediately adjacent to this parcel in 1992, and 1 individual was present in 2000. For more information, see the ''Criteria Used to Identify Critical Habitat'' section of this final rule.

Also, after the proposed rule was published, we received several documents that pertain to the Five Bridges Aggregate Pit that is operated by the Desert Aggregates company, and these documents are described in the ''Summary of Changes'' section of this final rule.

Previous Federal Action

On June 4, 2004, we published a proposed rule to designate approximately 8,490 ac (3,435 ha) of land in Mono and Inyo Counties, California, as critical habitat for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552). In the proposed rule, we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. The comment period associated with the proposed rule closed on August 3, 2004. On December 28, 2004, we published a notice of availability of the draft economic analysis (DEA) for the designation of critical habitat for *A. l.* var. *piscinensis,* and reopened the comment period for the proposed rule and DEA (69 FR 77703). This second comment period closed on January 27, 2005.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* in the proposed rule published on June 4, 2004 (69 FR 31552). We also contacted appropriate Federal, State, and local agencies, one Tribe, scientific organizations, and other interested parties and invited them to comment on the proposed rule. During the comment period that opened on June 4, 2004, and closed on August 3, 2004, we received 11 comment letters directly addressing the proposed critical habitat designation: 5 from peer reviewers, 2 from environmental groups, 4 from companies or individuals, and none from local, State, or Federal agencies or Tribes.

During the comment period that opened on December 28, 2004, and closed on January 27, 2005, we received four comment letters addressing the proposed critical habitat designation and the DEA. Of these latter comments, one was from a peer reviewer, one was from an environmental group, and two were from a company or individual. None were from local, State, or Federal agencies, or Tribes. For those letters received during both comment periods, five commenters supported the designation of critical habitat for *A. l.* var. *piscinensis* and one opposed the designation. Seven entities responded with comments or information, but did not express support or opposition to the proposed critical habitat designation. Comments received during both comment periods are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from nine knowledgeable individuals with scientific expertise that included familiarity with *Astragalus lentiginosus* var. *piscinensis* or the habitat the taxon requires, the geographic region in which the taxon occurs, and conservation biology principles. We received responses from six peer reviewers. The peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the *Astragalus lentiginosus* var. *piscinensis*, and incorporated them into the final rule as appropriate.

Peer Review Comments

Issue 1: Hydrology

Comment 1: One peer reviewer noted that changes in aquifer conditions have the potential to adversely affect the quality of habitat upon which the endemic plant and animal species depend in Fish Slough. Another peer reviewer noted that many of the threats affecting *Astragalus lentiginosus* var. *piscinensis* habitat have also caused the extinction, or decreases in the abundance and distribution, of several other species occupying springs in the southwestern United States.

Our Response: We recognize that the threats affecting or potentially affecting *Astragalus lentiginosus* var. *piscinensis* include many of the same factors that have caused the extinction or reduction in the distribution and abundance of other species that occupy riparian and wetland habitats in the southwestern United States. We agree that changes in hydrologic conditions have the potential to affect the quality of the alkaline habitat that *A. l.* var. *piscinensis* depends upon. We have, therefore, included a primary constituent element (PCE) in this final rule that reflects the hydrologic conditions needed by the species to provide suitable periods of soil moisture and chemistry for *A. l.* var. *piscinensis* germination, growth, reproduction, and dispersal.

Comment 2: Two peer reviewers expressed concerns that ground water pumping activities outside, or near the boundary of, the proposed critical habitat unit may adversely affect the water table or spring discharge in Fish Slough, and therefore, affect the quality of habitat in Fish Slough.

Our Response: We agree that ground water pumping activities could potentially affect the character of wetland or riparian habitat in Fish Slough. A portion of the Five Bridges Aggregate Pit was included in the southern portion of the proposed critical habitat unit. The expansion of the pit will occur in multiple phases and include ground disturbance and the pumping of ground water (Secor International Incorporated and Lilburn Corporation 2004). One documented occurrence (California Natural Diversity Data Base 2004) of *Astragalus lentiginosus* var. *piscinensis* occurs within 1,600 to 4,600 feet (ft) (488 to 1,402 meters (m)) of phase 1 of the planned expansion project. If the pumping activities alter the soil moisture and chemistry of the area where *A. l.* var. *piscinensis* occurs, then germination, growth, reproduction, and dispersal of the species could be adversely affected. Our concern regarding the pumping activity is highlighted by the fact that meadows depending on ground water exist in, and immediately adjacent to, phases 1 and 2 of the proposed mine expansion. Past pumping activity has been identified as a factor affecting the soil moisture and plant communities in these habitats (Secor International Incorporated and Lilburn Corporation 2004). We will periodically review monitoring data to determine if ground water pumping is affecting the local water table.

Comment 3: One peer reviewer noted it can be difficult to attribute the current hydrologic conditions in a given area to specific anthropogenic activities, climate, or other environmental factors because they may occur during different time frames. Another reviewer noted it is not possible, at the present time, to specifically identify the factor(s) that are responsible for the decline in the spring discharge in the Fish Slough area that has occurred since the early 1920s.

Our Response: We agree that some factors influencing the habitats or

species in Fish Slough have occurred on a short-term temporal scale, while other factors have occurred over a longer period of time. We also agree it is sometimes difficult to attribute specific activities or factors to particular changes in the hydrologic conditions at Fish Slough. We did not attempt to attribute the decline in spring discharge in Fish Slough to specific activities or factors. We believe a combination of activities or factors, including anthropogenic activities, climate, and environmental factors, are likely to affect the hydrology of Fish Slough and the alkaline habitat occupied by *Astragalus lentiginosus* var. *piscinensis*. We fully support activities that are designed to, and result in, collection of additional data that can be used to understand the hydrologic and geologic features that promote the creation and maintenance of alkaline habitat upon which *A. l.* var. *piscinensis* depends. Such data will create a greater opportunity to proactively manage the critical habitat unit described in this final rule, and thereby manage for the conservation of *A. l.* var. *piscinensis*.

Comment 4: One peer reviewer noted that the proposed rule appeared to have contradictory text when it suggested *Astragalus lentiginosus* var. *piscinensis* was adversely affected by reduced water availability (that may be associated with ground water pumping activities in areas adjacent to Fish Slough), and by an overabundance of water (resulting from storage of water behind a berm near Fish Slough Lake).

Our Response: Activities affecting the amount, distribution, and character of alkaline habitat that *Astragalus lentiginosus* var. *piscinensis* depends upon have the potential to affect the taxon. Some land management activities in Fish Slough have created increased levels of soil moisture in particular areas, and this species cannot tolerate excessive levels of inundation. In other instances, reductions in the amount of water discharging from springs have likely reduced the acreage or affected the chemistry of alkaline habitat that historically occurred in Fish Slough. Both of these changes have likely affected *A. l.* var. *piscinensis* because there may be less habitat for the taxon to occupy, or the chemistry of that habitat may no longer be optimum for it. *Astragalus lentiginosus* var. *piscinensis* occupies a relatively narrow ecological niche, and the taxon can be adversely affected by either too much or too little water.

Comment 5: One peer reviewer suggested that the findings described in a report prepared by MHA Environmental Consulting, Inc. (MHA 2001) should be described in greater detail in the final rule. These findings suggest that ground water levels and spring discharges could decline in Fish Slough as a result of particular pumping activities outside the critical habitat unit.

Our Response: MHA (2001) provided a preliminary hydrologic model that described the groundwater flow system in the Tri-Valley area. The Tri-Valley area includes Benton, Hammil, and Chalfant Valleys, which are located 2 to 30 miles (mi) (5 to 48 kilometers (km)) east and northeast of Fish Slough. Intensive ground water pumping activities in the Hammil-Chalfant Valley area have occurred, and water levels have declined over the last 10 to 20 years, suggesting that pumping activities are depleting the amount of groundwater underneath the wells. Because the surface elevation decreases from Benton Valley in the north to Chalfant Valley in the south, and because Fish Slough is lower in elevation than all three of these valleys, groundwater tends to move in a southerly or southwesterly direction toward Fish Slough or toward Chalfant Valley east of Fish Slough. Therefore, there may be a potential for water diversion activities in Chalfant and Hammil Valleys to adversely affect the amount of water that discharges from springs in Fish Slough (MHA 2001). Alternatively, it may also be possible that pumping activities in these two valleys affect the hydrostatic pressure within the local aquifer and thereby influence the water table in Fish Slough.

Astragalus lentiginosus var. *piscinensis* occupies alkaline soils that form as a result of spring discharge in Fish Slough. If groundwater pumping activities east or northeast of Fish Slough affect spring discharge or the hydrostatic pressure in Fish Slough, there may be a potential that the soil moisture or chemistry conditions in habitat where *A. l.* var. *piscinensis* occurs could be altered. If these changes were to occur, plant reproduction or persistence could be adversely affected.

Issue 2: Grazing

Comment 6: One peer reviewer stated that controlling livestock grazing in upland areas is necessary to minimize the trampling of potential food resources that may be used by native bee species. The reviewer also stated that grazing in habitat used by bee species should not occur before, during, or after the period when host plants bloom.

Our Response: We would agree with the peer reviewer that grazing could affect the habitat used by insect species that pollinate *Astragalus lentiginosus* var. *piscinensis*, but that would depend on the number of cattle involved. The Los Angeles Department of Water and Power (LADWP) has issued a lease to one individual that intermittently turns out a limited number of cattle and horses in Fish Slough on some of the lands that agency owns. The number of cattle, and length of time they are authorized to be in Fish Slough, has been reduced in recent years in an effort to reduce the potential that *A. l.* var. *piscinensis* is trampled or its habitat adversely affected. At the present level of grazing within the area designated for *A. l.* var. *piscinensis*, any impacts to pollinators would likely be minor. We have also encouraged LADWP to complete a management plan for the grazing allotment that would provide specific prescriptions that describe how grazing-related effects to *A. l.* var. *piscinensis* and associated habitat could be minimized.

Comment 7: One peer reviewer asked if we had used statistical tests to determine if there was a significant difference in the abundance of *Astragalus lentiginosus* var. *piscinensis* in grazed and ungrazed plots.

Our Response: We have not employed statistical methods to determine if the abundance of Astragalus lentiginosus var. *piscinensis* in grazed and ungrazed plots is significantly different. This type of analysis is beyond the scope of this rule making in that it does not identify or evaluate areas to be considered as critical habitat for *A. l.* var. *piscinensis*.

Issue 3: Delineation of the Proposed Unit Boundary

Comment 8: One peer reviewer suggested that the proposed critical habitat boundary may be too small to ensure the conservation of *Astragalus lentiginosus* var. *piscinensis* because the source areas that are likely to provide the water that discharges in Fish Slough are outside the critical habitat unit. Another reviewer felt that delineating a larger critical habitat unit to include the aquifer contributing to the springs and near-surface ground water in Fish Slough was not warranted at this time. This reviewer stated that insufficient information is available to identify the precise location of the source(s) of the water that promote the presence of the alkaline habitat upon which *A. l.* var. *piscinensis* depends.

Our Response: We considered delineating a critical habitat unit boundary that includes the source areas that provide water to Fish Slough such as: (1) Casa Diablo Mountain area northwest of Fish Slough; (2) the nearby Tri-Valley east and northeast of Fish Slough; or (3) a combination of these

two areas (Bureau of Land Management (BLM) 1984; MHA 2001). We determined that information on the location of the source(s) of the water that sustain the alkaline habitat upon which *Astragalus lentiginosus* var. *piscinensis* depends is not available at the present time. As a result, we did not include the above mentioned areas in the critical habitat unit. We encourage local land managers and entities with expertise in hydrology to collect additional data that would more precisely determine the location of the source(s) of the water that discharge in Fish Slough and sustain *A. l.* var. *piscinensis* habitat. We believe this information is necessary to proactively manage this listed plant for its conservation.

Comment 9: One peer reviewer questioned why the area south of the McNally Canals was included in the proposed critical habitat unit when the proposed rule stated this area contained little suitable habitat for *Astragalus lentiginosus* var. *piscinensis*. The individual also recommended that we specifically refer to a particular McNally Canal (north vs. south) when referring to the drainage canal network.

Our Response: We recognize there are two artificial ditches in the southern portion of the proposed critical habitat unit, the North and South McNally Canals, and have provided text in this final rule that specifically refers by name to one or both of the canals. We have reviewed recent information that suggests that habitat quality in this area has been degraded by past pumping and water spreading activities, grazing, or agricultural activities (Pavlik 1998, 1999; The Twining Laboratories and ESR, Inc. 2004). We have determined that the area south of the southern McNally Canal is unoccupied and is not essential for the conservation of *Astragalus lentiginosus* var. *piscinensis*. We have, therefore, not included the area south of the southern McNally Canal in the designated critical habitat unit (see Summary of Changes from the Proposed Rule section).

Even though the mine expansion area, south of the southern McNally Canal, is not essential to the conservation of the taxon, we note that ground water pumping in the area where future mining activities are scheduled to occur is likely to create a cone of depression for ground water (Secor International Incorporated and Lilburn Corporation 2004). If such an effect occurs, we are concerned that the pumping may affect the PCEs (*e.g.*, alkaline soils, plant communities, and hydrologic conditions) in the portion of the designated critical habitat unit directly adjacent to the mine expansion area.

Comment 10: One peer reviewer believes our rationale for including a 3,281 ft (1,000 m) wide upland area around the habitat occupied by *Astragalus lentiginosus* var. *piscinensis* requires additional support because we based it on a study done in Germany. The reviewer stated that the study results may not be applicable to Fish Slough because the two areas have different habitats, climate, and host plant composition.

Our Response: When we delineated the perimeter of the proposed critical habitat unit, we assessed the significance of the information collected by Steffan-Dewenter and Tscharntke (2000) in Germany. We were influenced by their findings that showed that alteration and fragmentation of habitat used by pollinator species can lead to reduced levels of plant pollination. After we published the proposed rule in the **Federal Register**, another journal article was published that stated ''pollination services provided by native bee communities in California strongly depended on the proportion of natural upland habitat within 1–2.5 km of the farm site'' (Kremen *et al.* 2004). We conclude that alteration and fragmentation of habitat used by bee species is also likely to result in reduced levels of pollination in *Astragalus lentiginosus* var. *piscinensis*. This is because a reduction in the number of pollinators in an area is likely to reduce the number of bees that could potentially be available to pollinate *A. l.* var. *piscinensis*.

In the proposed rule, we noted that successful reproduction for *Astragalus lentiginosus* var. *piscinensis* requires bee pollination. The specific bee species that pollinate the plant have not been identified, but at a minimum, include bumblebees (*Bombus* sp.) in the family Apidae (Mazer and Travers 1992). Bumblebees may forage many kilometers from a colony (Heinrich 1979), and the distance they will fly to forage is not unique. European honeybees (*Aphis mellifer*) are also known to have an ability to forage a similar distance (Beekman and Ratnieks 2000). We have, therefore, been conservative in defining a 3,281 ft (1,000 m) wide boundary around the habitat occupied by *A. l.* var. *piscinensis*.

The conservation of this upland area in Fish Slough is essential to ensure that alteration and fragmentation of habitat used by pollinator species does not occur, so that adequate levels of *Astragalus lentiginosus* var. *piscinensis* pollination and seed formation can continue. We also note that none of the agencies owning land within the critical habitat unit have expressed any concern regarding the 3,281 ft (1,000 m) wide upland area around the alkaline habitat occurring in the critical habitat unit.

Comment 11: One peer reviewer recommended that the unit boundary be redrawn to reflect local topographic differences, *i.e.*, expand its boundary to the west, and narrow it to the east. This recommendation was based on the assumption that bee pollinators are less likely to fly up steep slopes, and the watershed to the west of where *Astragalus lentiginosus* var. *piscinensis* occurrences is larger. Therefore, it is likely to have a greater influence on the surface hydrology that may affect the plant's alkaline habitat.

Our Response: The final rule designating critical habitat for *Astragalus lentiginosus* var. *piscinensis* has retained a unit boundary that has a symmetrical shape because we are not aware of data suggesting that likely *A. l.* var. *piscinensis* pollinators would be unable to fly up the relatively short (280 ft (85 m) high) ridge east of where the plant occurs. We agree that surface topography is less steep west of where *A. l.* var. *piscinensis* occurs, and there is a larger topographic area in this direction that could potentially affect the surface water hydrology of Fish Slough. The available hydrologic data do not suggest that surface water inflows or human activities within the 1.5 mi (2.4 km) distance referred to in the peer reviewer's comment letter affect the character of the alkaline habitat occupied by the plant species. Therefore, we are not able to identify the benefit that might be associated with shifting the unit boundary to the west, and have retained the original configuration of the unit boundary in the final rule.

Issue 4: Miscellaneous Topics

Comment 12: One peer reviewer suggested that new studies should be completed to identify the taxonomic identity and habitat requirements of the insects that pollinate *Astragalus lentiginosus* var. *piscinensis*. Habitat essential to conserve *A.l.* var. *piscinensis* could then be defined more precisely. Another reviewer advocated new studies that could provide a greater understanding of the hydrology of the Fish Slough area.

Our Response: We welcome any additional data to characterize the hydrology that affects Fish Slough and the ecology of the insect species that pollinate *Astragalus lentiginosus* var. *piscinensis*. However, we cannot delay our decision to allow for the

development of additional data, and have used the best available scientific data in our critical habitat designation.

Comment 13: A peer reviewer suggested we should have organized particular portions of the proposed rule in a different manner than was presented. The reviewer also suggested we conduct additional statistical analyses to identify and determine the significance of particular relationships between species abundance and environmental factors, or trends in plant numbers. He questioned why we summarized data on population trends for *Astragalus lentiginosus* var. *piscinensis* in 5-year increments (*i.e.*, 1991–1996 and 1997–2002), and asked if the overall trend in the available population data was consistent with trends in particular plots that have been monitored.

Our Response: The format and organization of the proposed rule followed the procedural guidance for the preparation of rules established by the Service and the **Federal Register**. We appreciate the peer reviewer's suggestions, and will consider his comments as new rules are developed in the future.

We agree it would be beneficial to conduct additional statistical analyses to identify and determine the significance of particular relationships between species abundance and environmental factors, or trends in plant numbers. These types of analyses are routinely done during a status review for a listed species but are not commonly done during a rule making process for critical habitat. In this case, the additional analysis suggested would not help identify areas for the critical habitat designation. To provide readers with an indication of how the abundance of *Astragalus lentiginosus* var. *piscinensis* has changed over time, and because data were available for a 12-year period, we chose to summarize population trend data for *A. l.* var. *piscinensis* in two time periods of equal duration, *i.e.*, 1991–1996 and 1997–2002.

Comment 14: One peer reviewer suggested that, instead of providing personal communications between Service staff and other individuals, we should provide information contained within peer-reviewed journals.

Our Response: We agree with the standard practice of providing information that is contained within published documents when these are available. Some of the information described in the proposed rule, *e.g.*, population survey data that were collected by staff from the BLM or LADWP, was cited as a personal communication because this information only exists in tabular form in agency files and does not exist as a publication or formal report. The Act requires that we use the best available scientific data, but does not require that we only use data in published documents. Also, our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106–554; H.R. 5658) and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available.

Comment 15: Two peer reviewers supported our inclusion of upland areas outside of, but adjacent to, where *Astragalus lentiginosus* var. *piscinensis* occurs as these areas are likely to be used by insect species that pollinate it. One peer reviewer suggested that the PCE involving upland areas be modified to provide a stronger emphasis on the need to proactively manage pollinator species, surface water hydrology, and nonnative plant species by including an upland buffer.

Our Response: We agree that the upland areas likely contain the burrows and cover sites that are used by the insect species that pollinate *Astragalus lentiginosus* var. *piscinensis*, and are essential for the conservation of this species. Although we agree with the peer reviewer's suggestion that multiple factors in the upland portion of the designated critical habitat unit require special management, we did not designate the upland area as a buffer. The upland area has one or more of the PCE's for *Astragalus lentiginosus* var. *piscinensis* and is essential to the conservation of the species.

Public Comments

We reviewed all comments received from the public for substantive issues and new information regarding critical habitat for the *Astragalus lentiginosus* var. *piscinensis*, addressed them in the following summary, and incorporated them into the final rule as appropriate.

Issue 1: Biological Justification and Methodology

Comment 16: One commenter disagreed with a suggestion in the proposed rule that water diversion activities have taken place at the Five Bridges Aggregate Pit. The commenter instead characterized the groundwater table as high in this area, and the mine is required to pump water from the current operating pit, but this water is pumped into on-site recharge basins. Therefore, the ground water is recharged, not diverted. The same commenter also inferred that the Service assumed that mining company staff did the pumping, and the commenter stated that staff from the LADWP did the pumping.

Our Response: We continue to believe that groundwater in the vicinity of the mining activities has been diverted because ground water has been moved from one location to another. Our statement is based on the fact that water was pumped from sumps that were constructed near the pits where gravel was mined, and then conveyed to another location that was several hundred to a few thousand meters from the location where water was collected. It is possible that the diverted water is recharged at the point where it is released after it is diverted.

We do not state in the proposed rule which entity conducted the water diversion activities that adversely affected riparian vegetation down-gradient of the mine. We only stated that pumping took place and riparian vegetation was adversely affected.

Comment 17: One commenter requested that the critical habitat boundary be delineated to include the entire historic range of *Astragalus lentiginosus* var. *piscinensis.*

Our Response: The critical habitat unit delineated in this final rule includes all of the known locations that were occupied by *Astragalus lentiginosus* var. *piscinensis* at the time of listing.

Comment 18: One commenter requested we extend the deadline for submitting comments.

Our Response: Our first comment period was open for 60 days, from June 4, 2004, until August 3, 2004. We reopened the comment period on December 28, 2004, for an additional 30 days when we published a notice of availability of the DEA for the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* (69 FR 77703). This gave the public an opportunity to review and comment on the DEA and proposed rule concurrently. This second comment period closed on January 27, 2005. Unfortunately, our ability to accept comments and work with stakeholders regarding the critical habitat designation for *A. l.* var. *piscinensis* is limited by a deadline imposed by a court order.

Comment 19: One commenter noted that the long-term effect of designating critical habitat was beneficial, particularly because a large portion of

the local economy in the Fish Slough area relies on biological resources and scenery that attracts tourists to the area.

Our Response: We recognize that one of the predominate sources of income for businesses in the town of Bishop and the Owens Valley area is derived from outdoor recreational activities and ecotourism. We note that the protection of *Astragalus lentiginosus* var. *piscinensis* and its habitat is beneficial for a variety of reasons, including the conservation of biological resources, an environment that people use and enjoy, and a local growing economy.

Comment 20: A commenter that operates a grazing lease in Fish Slough suggested that cattle grazing activities are compatible with stable populations of *Astragalus lentiginosus* var. *piscinensis,* based on the number of plants that were observed in ''zones'' surveyed in 1992 (Novak 1992), and again in 2000.

Our Response: To show how the number of *Astragalus lentiginosus* var. *piscinensis* plants has varied through time, we presented data that were collected in monitoring plots on LADWP-owned land, as compared to the number of individuals within particular zones. We believe the plot data provide a more precise and robust assessment of how plant numbers have changed over time because the plots are sampled on an annual basis. These plots are designed to quantify the number of individuals in a repeatable manner and in well-defined, discrete areas.

When data collected from one grazed plot are compared between 1991–1996 and 1997–2002, these data suggest that the abundance of *Astragalus lentiginosus* var. *piscinensis* within this plot increased. During this same period, the number of *A. l.* var. *piscinensis* individuals decreased in two other plots where grazing occurred, and in two plots where grazing did not occur. We, therefore, believe the plot data do not provide definitive proof that grazing activities are compatible with stable populations of *A. l.* var. *piscinensis.* Within the zones referred to in the comment letter, the number of *A. l.* var. *piscinensis* individuals in the ungrazed zones has decreased in three zones and increased in one zone.

Comment 21: One commenter suggested that the Fish Slough Area of Critical Environmental Concern (ACEC) should be replaced with an area that is managed under a habitat conservation plan (HCP).

Our Response: HCPs cannot serve as a viable substitute for an ACEC because they exist for different reasons and are meant to serve different functions. An ACEC is a special land use classification that is designated by the BLM on lands they manage. HCPs, developed within the context of the Endangered Species Act, are documents that are completed when a non-Federal entity anticipates that incidental take of a listed animal species is likely to occur as a result of a project they propose. Because *Astragalus lentiginosus* var. *piscinensis* is a listed plant taxon, and the LADWP and California Department of Fish and Game (CDFG) have not determined their activities in Fish Slough are likely to result in the take of a listed animal, e.g., Owens pupfish (*Cyprinodon radiosus*), the development of a HCP is not warranted or appropriate at this time.

Comment 22: A commenter noted that the proposed rule did not attempt to summarize all of the demographic data for all of the monitoring plots that occur on land owned by BLM and LADWP, creating a bias because some data are presented in the proposed rule and some are not.

Our Response: Rules in the **Federal Register** that propose critical habitat are not intended to serve as a mechanism for reviewing all of the demographic data that may pertain to a species (e.g., the number of adult and juveniles that may be present at select locations across a species' range). We believe such a synthesis is more appropriate in a document that would evaluate the taxon's status, or that the demographic data be used to develop strategies that are designed to provide alternative management scenarios that will benefit the species. The process for designating critical habitat for listed species focuses on identifying those habitat-related features that are essential for the species' conservation, and we used the data that were appropriate to this task.

Comment 23: One commenter suggests cattle grazing is repeatedly and wrongfully referred to as a factor that adversely affects *Astragalus lentiginosus* var. *piscinensis.*

Our Response: The proposed rule does not suggest that all cattle grazing, no matter how light or intense, would adversely affect *Astragalus lentiginosus* var. *piscinensis.* Moderate to intense levels of livestock grazing have been documented to adversely affect at least one other *Astragalus* taxon in southern California (e.g., *Astragalus monoensis* (Sugden 1985)), and we believe it is likely that *A. l.* var. *piscinensis* would be adversely affected if moderate to large numbers of cattle were allowed to graze in Fish Slough. Such adverse effects would arise if listed plants were eaten by cattle, habitat used by pollinator species were trampled or crushed, or the amount of habitat that could be occupied by *A. l.* var. *piscinensis* was reduced. We have not discounted the possibility, however, that light levels of cattle grazing may be benign.

Comment 24: A commenter suggested that the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* implies that we are disproportionately preoccupied with the management of a single taxon.

Our Response: Though this critical habitat designation process is limited to a single taxon, we agree that the management objectives for Fish Slough should consider all of the plant and animal communities in this area. We continue to support this general principle as it is described in the Owens Basin Wetland and Aquatic Species Recovery Plan, Inyo and Mono Counties, California (Service 1998). The recovery plan suggests a conservation area management plan for Fish Slough should be completed. We believe the development of such a plan would maximize the opportunity to manage all of the resources in Fish Slough in a more productive manner. Thus far, we have not developed a plan with the BLM or CDFG due to a lack of funds.

Comment 25: A commenter noted that the proposed rule emphasized the need to ''ensure an adequate supply of pollinators.'' They asked how many pollinators are required to sustain *Astragalus lentiginosus* var. *piscinensis,* what the distribution of these insects needed to be, and what the requirements of these insects were.

Our Response: Quantitative data that specifically pertain to the items listed by the commenter are not available for the species that pollinate *Astragalus lentiginosus* var. *piscinensis.* Such data are rarely available, and we have used the best available scientific data in our critical habitat designation. We believe the references cited in the rules proposing and designating critical habitat for *A. l.* var. *piscinensis* are directly applicable to the taxon and the needs of its pollinators, and provide a solid foundation for identifying the geographic boundary and PCEs that relate to the critical habitat unit.

Comment 26: A commenter suggested that additional information was needed to more effectively manage *Astragalus lentiginosus* var. *piscinensis* and its habitat to understand how herbivory by native animals and water tables affected the taxon. They also thought it was important to identify the factors that caused the mortality, or affected the recruitment of, juvenile *A. l.* var. *piscinensis* individuals.

Our Response: We agree that acquisition of such data would be extremely useful, and improve the

ability of land managers to conserve the listed plant taxon. We believe, however, that processes that historically occurred, e.g., water table fluctuations that may result from earthquakes, or herbivory by native animals, are normal and should continue, and that management of the Fish Slough area should focus on the restoration of natural ecosystem processes and functions.

Issue 2: Legal and Procedural

Comment 27: A commenter challenged statements in the proposed rule that the designation of critical habitat is of little additional value for most listed species.

Our Response: Although the designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or conservation actions, it does help focus Federal, Tribal, State, and private conservation and management efforts in such areas. A critical habitat designation benefits species conservation primarily by identifying important areas and describing the features within those areas that are essential to conservation of the species, thereby alerting public and private entities to the areas' importance. In addition, designating critical habitat may also provide some educational or informational benefits.

Issue 3: Economic Issues

Comment 28: One commenter noted that many of the conservation efforts quantified in the DEA benefit multiple species, as well as unique alkaline meadows and significant scenic and cultural values. They stated it is not appropriate to allocate the total cost of conserving all of these biological resources to *Astragalus lentiginosus* var. *piscinensis.* Costs of consultations and conservation measures should be prorated by species that benefit from the critical habitat designation and other conservation actions.

Our Response: To the extent possible, the economic analysis distinguishes costs related specifically to *Astragalus lentiginosus* var. *piscinensis* conservation where multiple species are subject of a single conservation effort or section 7 consultation. In the case that another species clearly drives a project modification or conservation effort, the associated costs are appropriately not attributed to *A. l.* var. *piscinensis*.

In the case of administrative consultation costs, the DEA applies a standard cost model used to estimate a range of administrative costs of consultation (see Exhibit 4–1 in the DEA). These costs are considered representative of the potential range of costs typically experienced for a consultation regarding a single species. That is, the cost model assumes that consultations involving more than one species typically involve higher administrative costs. Accordingly, although consultations described in the DEA may involve multiple species, the administrative costs as estimated by applying this cost model are considered to be predictive of those costs due specifically to the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis*.

Comment 29: One commenter felt that including the cost of managing the Fish Slough ACEC in the DEA overstates costs associated with critical habitat designation for *Astragalus lentiginosus* var. *piscinensis.* Every direct cost of managing the ACEC, except the propagation of *A. l.* var. *piscinensis*, benefits a number of species and should therefore not be considered critical habitat designation costs.

Our Response: As mentioned above, for each consultation and conservation effort, the DEA attempts to identify costs specifically related to *Astragalus lentiginosus* var. *piscinensis*. In some instances, however, it is not possible to determine the relative contribution of the multiple causative factors to the implementation of a conservation effort. For example, management of the Fish Slough ACEC by the BLM, including posting signage to mark the presence of sensitive species, and prescribed burns to control vegetation, is undertaken to benefit all Fish Slough resources, including *A. l.* var. *piscinensis*. In these instances, the DEA presents the full cost of the conservation effort. Importantly, however, the DEA only includes the costs of these efforts within the proposed critical habitat designation for *A. l.* var. *piscinensis*. That is, it is assumed that ACEC management efforts outside of the proposed critical habitat designation are not undertaken to benefit *A. l.* var. *piscinensis*, and are therefore not included in the DEA.

Comment 30: Another commenter stated that the DEA should include a rigorous analysis of the continued status of the Fish Slough as an ACEC. This commenter stated that the *Astragalus lentiginosus* var. *piscinensis* critical habitat designation constitutes a shift to a single species management objective rather than a multi-species management plan, and the designation will only increase the administrative and management burden of the ACEC area.

Our Response: The DEA quantifies economic effects of the critical habitat designation for *Astragalus lentiginosus* var. *piscinensis*, along with the economic effects of protective measures taken as a result of the listing of *A. l.* var. *piscinensis* or other Federal, State, and local laws that aid habitat conservation in the areas proposed for critical habitat. This information is intended to assist the Secretary in determining whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas. It is, therefore, beyond the scope of the DEA to include an analysis of the benefit of preserving the Fish Slough region as an ACEC managed by the BLM.

Comment 31: A commenter stated that a cumulative economic analysis should be developed to reflect the potential that critical habitat could be proposed or designated for the other 22 species identified in the Owens Basin recovery plan; *i.e.*, the DEA should include evaluation of cumulative impacts of additional designations.

Our Response: The Act does not require us to conduct assessments to quantify the cumulative cost of designating critical habitat in one general area. Also, we do not believe it is reasonable to calculate the potential cost of designating critical habitat for 22 species identified in the recovery plan because almost all of these species have not been listed as threatened or endangered, and we only designate critical habitat for listed species. Furthermore, for the three species that are listed and covered under the Owens Basin recovery plan, only one other species besides *Astragalus lentiginosus* var. *piscinensis* has designated critical habitat, *i.e.*, the Owens tui chub (*Gila bicolor snyderi*) (August 5, 1985, 50 FR 31592), and there are no current plans to propose critical habitat for the Owens pupfish (*Cyprinodon radiosus*) as it was listed in 1967, which is before critical habitat amendments were added to the Act (August 5, 1985, 50 FR 31592). The southwestern willow flycatcher (*Empidonax traillii extimus*) does occur in Owens Valley, and critical habitat for the taxon has been proposed (October 12, 2004, 69 FR 60705); an economic analysis will be prepared in conjunction with this listing process, and an estimate of the cost associated with the proposed critical habitat will be prepared. Also, we have already considered the costs of conducting other management activities; see Comment 29.

Comment 32: Another commenter states the DEA failed to provide a balanced assessment of economic benefits and costs in relation to the proposed critical habitat designation.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available, after taking into

consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Our approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which are the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. For example, if the fencing of *Astragalus lentiginosus* var. *piscinensis* habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would attempt to net out the positive, offsetting economic impacts associated with their visits (*e.g.*, impacts that would be associated with an increase in tourism spending). However, while this scenario remains a possibility, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus, we believe that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance. As a practical matter, we note the difficulty in being able to develop credible estimates of such values as they are not readily observed through typical market transactions. In sum, we believe that society places the utmost value on conserving any and all threatened and endangered species and the habitats upon which they depend, and thus the required considerations under section 4(b)(2) of the Act occur in light of this basic premise.

Comment 33: One commenter stated that indirect costs associated with reductions in grazing opportunity should not be included in the DEA. The reductions in grazing, along with installation and maintenance of the grazing exclosure in Fish Slough, have already been instituted and are therefore not affected by critical habitat designation. The commenter further notes that these conservation efforts are independent landowner decisions and not a mandate under the Act and should, therefore, not be considered in the DEA. The cost of this conservation effort should not be included as a post-designation cost.

Our Response: The DEA assesses not only the direct economic effects of the critical habitat designation, but also the economic effects of protective measures taken as a result of the listing of *Astragalus lentiginosus* var. *piscinensis* or other Federal, State, and local laws that also aid habitat conservation in the areas proposed for critical habitat designation. The reductions in grazing were a result of conversations regarding management of the Fish Slough between the lessee of the grazing lands, LADWP (the landowner), and the other managing agencies of the Fish Slough (BLM and CDFG). This reduction in grazing activity was undertaken to benefit the multiple resources of the Fish Slough, including *A. l.* var. *piscinensis*, and is therefore included in the DEA.

Comment 34: The DEA seems to imply that the LADWP will bear all the costs of maintaining the 80-ac (32-ha) grazing exclosure. The lessee has been responsible for much of the costs of maintenance, materials, and labor. The following components should be added to predesignation impacts: Fencing of the LADWP lease in cooperation with the lessee, with materials furnished by LADWP; and the lessee's cost of the installment of approximately 3.5 mi (5.6 km) of perimeter and cross fencing between 1990 and 1994 for better livestock control and vegetation management.

Our Response: As detailed in sections 4.1.2 and 4.2.2 of the DEA, impacts to livestock grazing activities are expected to be incurred by both the LADWP for fencing and fence maintenance, and the lessee for precluding particular acres of lands from grazing activities. In the case that the lessee provides the labor to maintain the exclosure, costs to the lessee associated with *Astragalus lentiginosus* var. *piscinensis* conservation efforts is underestimated. The DEA, however, only quantifies impacts of *A. l.* var. *piscinensis* conservation efforts occurring from the time of the species' listing in 1998 through 20 years from the final critical habitat designation in 2005. Impacts incurred by the lessee between 1990 and 1994 are, therefore, not included in the DEA.

Comment 35: A commenter stated that, following construction of the grazing exclosure, the lessee found it necessary to develop a whole ranch vegetation management plan to match vegetation requirements with the health requirements of the livestock. This effort cost $15,000 to $20,000 in consultant fees and meetings. In addition, the lessee had to lease additional facilities to ship, receive, and handle livestock during the period when *Astragalus lentiginosus* var. *piscinensis* flowers. These increased production costs for the ranch operation should also be included in the analysis.

Our Response: Lone Tree Cattle Company was contacted following the public comment period for the DEA to discuss expected increased production costs as a result of *Astragalus lentiginosus* var. *piscinensis* conservation efforts on its grazing lease. As a result of this communication, the revised economic analysis includes additional economic impacts to Lone Tree Cattle Company. An additional $15,000 to $20,000 is added to the assessment of pre-designation costs to account for the development of a vegetation management plan. The costs of implementing the vegetation management are speculative at this time as the plan has not yet been adopted, and BLM review of the plan is the subject of a future hearing by the Department of the Interior (DOI)'s Office of Hearing and Appeals. Additionally, the grazing lessee acquired an additional lease specifically to avoid grazing on the Fish Slough ACEC during periods when *A. l.* var. *piscinensis* blooms. This resulted in increased costs to the grazing operation of $7,600 to $11,000 for purchase of materials for fencing and corral construction, and $500 per year for the cost of the additional lease. Potential labor costs of construction and maintenance of fencing and corrals on the new lease is unknown, but are also expected to increase costs to the lessee's grazing operation (Ken Zimmerman, Lone Tree Cattle Company, pers. comm. 2005).

Comment 36: Section 3.2.2 of the DEA should caveat that restrictions on grazing in Fish Slough are pending a hearing with the DOI, Office of Hearing and Appeals, to address the appropriateness of the increased permit restrictions. Further, the lessee is currently grazing 60 head of cattle, not 40, as stated in the DEA.

Our Response: The revised economic analysis will reflect the information in the comment letter. The DEA estimates the value per acre of lost grazing land based on the economically viable utilization of these lands. That is, the number of head of cattle currently grazed is divided by the total acreage

available for grazing and multiplied by the value per head of cattle to determine the value per acre of grazing land. This is then applied to the 80 ac (32 ha) of land lost to grazing due to the construction of the cattle exclosure to protect *Astragalus lentiginosus* var. *piscinensis*. The DEA incorrectly stated that the lessee grazed 40 head instead of the current 60 head. This changes the economically viable number of head per acre from 0.02 to 0.03. Therefore, the lost head per year on the 80 ac (32 ha) of land lost to grazing increases from 1.6 to 2.4 head. Applying the value per head of cattle of $1,114, as discussed in section 4.1.2 of the DEA, this correction results in a change of annual losses to the lessee of $2,760, as opposed to the $1,780 previously reported in the DEA.

Comment 37: The Five Bridges Aggregate Pit is located in the southern portion of Fish Slough and is subject to active mining operations. Plans to expand the pit have resulted in a requirement to conduct groundwater monitoring activities. The monitoring activities will be completed, regardless of the proximity of the pit to the critical habitat designation. A commenter suggested that because the groundwater monitoring will benefit a number of species, the costs of the monitoring activities should be accordingly prorated. Additionally, a reduction in groundwater levels will affect the production of downstream mining activities and downstream water extraction; costs should also be prorated to account for these human benefits.

Our Response: Our major concern regarding the potential affect of the mining activity and a proposed expansion of the pit on *Astragalus lentiginosus* var. *piscinensis* was the affect of future mining on groundwater levels within Fish Slough. Establishment of a groundwater monitoring system using existing and new wells was undertaken, in part, to ensure sensitive species, including *A. l.* var. *piscinensis*, would not be subject to fluctuating groundwater levels.

The DEA acknowledges that multiple factors contribute to the need for mitigation of groundwater effects of the mine operations, including California Environmental Quality Act (CEQA) compliance, California Surface Mining and Reclamation Act compliance, and general consideration of the Fish Slough ACEC. The DEA considers not only the direct economic effects of the critical habitat designation, but also the economic effects of protective measures taken as a result of the listing of *Astragalus lentiginosus* var. *piscinensis* or other Federal, State, and local laws that aid habitat conservation in the areas proposed for critical habitat designation. The costs of groundwater monitoring are accordingly included in the DEA, with the recognition that this conservation effort would likely be undertaken absent consideration for the *A. l.* var. *piscinensis* and its habitat. Of note, however, the final rule excludes from critical habitat designation the area of the Five Bridges Aggregate Pit proposed for designation because this area is not occupied by *A. l.* var. *piscinensis* and is not considered essential to the conservation of the taxon.

Comment 38: One commenter requested that the data used for calculation of costs should be included in the DEA so that the methods can be evaluated.

Our Response: The source of each economic impact as described in the DEA is cited within the text or as a footnote to the text. In general, costs of conservation efforts were gathered by using budgetary information from participating agencies, by consulting market data, and by extrapolating from the costs of similar past activities. Standard methods for inflating past costs and discounting future costs were employed in order to compare economic impacts occurring in different time periods.

Comment 39: A commenter stated that the use of the term ''volunteer routes'' in the DEA is inappropriate, and highlighted that these routes are illegal and are an increasing problem in the area. The comment offered that these routes should be identified as ''illegal routes'' throughout the DEA.

Our Response: The BLM uses the term ''volunteer routes'' to describe those routes created through the use of illegal motorized off-highway vehicles (OHV) off of designated routes. The DEA acknowledges the illegality of this activity but uses the term for consistency in describing BLM management of the region.

Comment 40: One commenter stated that the DEA should highlight that the LADWP is a municipality with fee title to the lands in which agricultural and ranch leases are administered. This should be made clear, as the public often believes LADWP lands to be public lands.

Our Response: The revised economic analysis will clarify this point.

Comment 41: A commenter stated that he spent a number of hours searching for accreditations and references of Industrial Economics, Inc., the group that prepared the DEA for the Service, but was unable to establish its credentials.

Our Response: Industrial Economics, Incorporated (IEc), founded in 1981, is an 80-person economic and policy consultancy that provides analytic services to government decision-makers and regulators, trade associations, private entities, and international organizations. IEc has prepared economic analyses of critical habitat designations for more than 60 species. Particular to this analysis, IEc has expertise in analyses of the regional and national economic effects of environmental regulation, including significant experience analyzing issues related to water use and management, grazing, and wildlife management in the western United States.

Comment 42: One commenter stated it is not appropriate to include ''pre-designation'' cost estimates as part of the economic analysis associated with the critical habitat designation, because these costs are associated with the listing of *Astragalus lentiginosus* var. *piscinensis*, and not with the critical habitat designation process for the species.

Our Response: The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis*. The Act defines critical habitat to mean those specific areas that are essential to the conservation of the species, and defines conservation to mean the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures of the Act are no longer necessary. Thus, we interpret that the economic analysis should include all of the economic impacts associated with the conservation of the species, which may include some of the effects associated with listing because the species was listed prior to the proposed designation of critical habitat. We note that the Act generally requires critical habitat to be designated at the time of listing, and had we conducted an economic analysis at that time, the impacts associated with listing would not be readily distinguishable from those associated with critical habitat designation.

The DEA discusses other relevant regulations and protection efforts for other listed species that included *Astragalus lentiginosus* var. *piscinensis* and its habitat. In general, the analysis errs conservatively in order to make certain that economic effects have not been missed. It treats as ''co-extensive'' other Federal and State requirements that may result in overlapping protection measures (*e.g.*, CEQA) for *A. l.* var. *piscinensis*. In some cases, however, non-habitat-related regulations

will limit land uses activities within critical habitat in ways that will directly or indirectly benefit *A. l.* var. *piscinensis* or its habitat (*e.g.*, local zoning ordinances). These impacts were not considered to be ''co-extensive'' with *A. l.* var. *piscinensis* listing or designation for two reasons. First, such impacts would occur even if *A. l.* var. *piscinensis* was not listed. Second, we must be able to differentiate economic impacts solely associated with the conservation of *A. l.* var. *piscinensis* and its habitat in order to understand whether the benefit of excluding any particular area from *A. l.* var. *piscinensis* critical habitat outweighs the benefit of including the area.

Comment 43: A commenter requested that the DEA be reissued and amended to include cost estimates that reflect the economic value of biological attributes that may be beneficial, i.e., nitrogen fixation services. The commenter stated that while it may not be possible to calculate a precise economic value for ecosystem functions such as nitrogen fixation, ecosystem functions and services should at least be mentioned as a benefit of species conservation.

Our Response: We recognize that the various functions of an ecosystem have value, but we are unable to put an economic value on such biological attributes. We believe that the benefits of proposed critical habitat are best expressed in biological terms that can be weighed against the expected costs impacts of the rulemaking. We must remember that the critical habitat economic analysis helps the Secretary decide whether to exclude areas, and whether the benefits of exclusion outweigh the benefits of inclusion. So, we are looking at the burden on the public of the regulation, and whether any areas have a disproportionate burden. We balance these burdens against the benefits of including that area—including the benefits of the area to the species and the benefits of the species' existence and conservation. We do this in the section 4(b)(2) discussion in our rules.

Comments From States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for her failure to adopt regulation consistent with the agency's comments or petition.'' We did not receive any comments from CDFG or any other State agency. Therefore, we have not developed a written justification that pertains to section 4(i) of the Act.

Summary of Changes From the Proposed Rule

One area that was included in the proposed rule for *Astragalus lentiginosus* var. *piscinensis* was not included in the final critical habitat designation. This area consists of the 483 ac (195 ha) area south of the southern McNally Canal; this land is not privately owned, and instead belongs to the LADWP. After we published the proposed rule, we acquired a variety of documents that pertain to the Five Bridges Aggregate Pit (mistakenly called the ''Desert Aggregate Mine'' in the proposed rule), which is operated by the Desert Aggregates company in the 483 ac (195 ha) parcel. The County of Inyo issued a Draft and Final Environmental Impact Report in April and July, 2004, respectively, in response to a proposal by Desert Aggregates to expand mining operations (Secor International Incorporated and Lilburn Corporation 2004; Lilburn Corporation 2004). In 2004, the County of Inyo issued a conditional use permit that authorizes various activities associated with the mine expansion. The expansion of the mine will include new ground-disturbing activities in areas that have not been previously mined, and dewatering activities that facilitate extraction of sand and gravel deposits (Secor International Incorporated and Lilburn Corporation 2004).

Dewatering activities at the mine historically have been done by constructing a perimeter ditch adjacent to a pit to be excavated, constructing a sump to collect water from the perimeter ditch, and pumping groundwater from the ditch or sump as the local water table intersected the ditch or sump. In the past, the water pumped from the sump was discharged into a ditch that is immediately north of, and parallel to, the Owens River. Desert Aggregates estimates that ground water extraction rates during previous mining activities ranged from approximately 80,000 to 500,000 gallons per day (302,832 to 1,892,705 liters per day) (Secor International Incorporated and Lilburn Corporation 2004). Future dewatering activities at the mine will be similar to those done in the past, except that water pumped from sumps will be directed to recharge basins that will be constructed during different phases of the mine expansion project. The recharge basins will be located at various locations on the mine property.

Habitat surveys that were carried out in conjunction with the aforementioned environmental impact reports provide documentation on the character of habitat within the 483-ac (195-ha) parcel south of the southern McNally Canal. Future mining activities within the parcel are likely to result in the elimination of up to 48-ac (19-ha) of alkaline meadow habitat (Secor International Incorporated and Lilburn Corporation 2004). The habitat surveys indicate that *Astragalus lentiginosus* var. *piscinensis* does not occur in this alkaline meadow habitat, these meadows are drier than other meadows that are occupied by *A. l.* var. *piscinensis,* and habitat quality within the remaining portion of the 483-ac (195-ha) parcel has been degraded by historical pumping and water spreading practices, livestock grazing, or agricultural activities (Pavlik 1998, 1999; The Twining Laboratories and ESR Inc. 2004).

The 483-ac (195-ha) parcel south of the southern McNally Canal lacks three of the four PCEs that are used to identify critical habitat, *e.g.*, the arid nature of the soils throughout the parcel suggests the groundwater table is more than 19 to 60 in (48 to 152 cm) below the land surface (PCE 1), the plant associations that co-occur with *Astragalus lentiginosus* var. *piscinensis* are absent (PCE 2), and the available documentation suggest that the hydrologic conditions that provide suitable periods of soil moisture and chemistry for *A. l.* var. *piscinensis* germination, growth, reproduction, and dispersal do not exist (PCE 4). *Astragalus lentiginosus* var. *piscinensis* does not occupy the 483-ac (195-ha) parcel, and the habitat in this area is highly degraded by a number of previous land management activities. These factors, in combination, have led us to conclude that the 483-ac (195-ha) parcel south of the southern McNally Canal is not essential to the conservation of *A. l.* var. *piscinensis,* and it is therefore not included in this final critical habitat designation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which

listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs), as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and our associated Information Quality Guidelines.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for the conservation of the species.

Areas that support populations, but are outside the critical habitat designation, 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 determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we used the best scientific and commercial information available in determining areas that are essential to the conservation of *Astragalus lentiginosus* var. *piscinensis.* This included information from our own documents on this plant and related taxa, and documentation provided by staff from BLM and LADWP. We considered information contained within BLM (1984); Odion *et al.* (1991); Ferren (1991a); Mazer and Travers (1992); Danskin (1998); and MHA (2001), in addition to other peer-reviewed journal articles, book excerpts, and unpublished biological documents regarding *A. l.* var. *piscinensis,* similar species, and more generalized issues of conservation biology. We also conducted two site visits to Fish Slough. We met and routinely corresponded with staff from the BLM, LADWP, and CDFG to solicit their views on various management aspects involving *A. l.* var. *piscinensis.* We also participated in several discussions with botanical and hydrologic experts familiar with Fish Slough, and factors that are likely to affect the habitat that *A. l.* var. *piscinensis* occupies.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (PCEs) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

All areas designated as critical habitat for *Astragalus lentiginosus* var. *piscinensis* are within the species' historical range and contain one or more of the biological and physical features (PCEs) identified as essential for the conservation of the species. The PCEs essential to the conservation of *A. l.* var. *piscinensis* habitat are based on specific components that are described below.

Space for Individual and Population Growth and for Normal Behavior

The alkaline flats where *Astragalus lentiginosus* var. *piscinensis* occurs are typically dominated by a *Spartina—Sporobolis* (cordgrass—dropseed) plant association. *Astragalus lentiginosus* var. *piscinensis* may also occur where a

sparse amount of *Chrysothamnus albidus* (rabbit-brush) exists in the transition zone between *Spartina-Sporobolis* and *Chrysothamnus albidus-Distichlis* (rabbit-brush-saltgrass) plant associations. Sawyer and Keeler-Wolf (1995) classify the alkaline habitats where *A. l.* var. *piscinensis* occurs as a cordgrass series or saltgrass series. *Astragalus lentiginosus* var. *piscinensis* is frequently sympatric with *Ivesia kingii* (alkali ivesia). The higher elevation areas where *A. l.* var. *piscinensis* is absent consist of dry shadscale scrub communities that are dominated by various species of *Atriplex* spp. (saltbush).

Food, Water, Air, Light, Minerals or Other Nutritional or Physiological Requirements

The presence of water is essential to the development and maintenance of alkaline soils and habitat upon which *Astragalus lentiginosus* var. *piscinensis* depends. The alkaline soils in Fish Slough where alkali flat, alkali scrub, and meadow habitats occur are generally classified as aquatic torriorthents-aquent complex with 0 to 2 percent slope. These alkaline soils develop as mineral-rich, shallow ground water rises under capillary action to the surface by the high evaporation rates which prevail in the Fish Slough area. As this water evaporates at the soil surface, its solute load precipitates, creating a veneer of white salts and minerals. The alkaline habitat that *A. l.* var. *piscinensis* occupies is likely to have a water table that fluctuates between 19 to 60 inches (in) (48 to 152 centimeters (cm)) below the land surface (Odion *et al.* 1991). In areas where water tables are more than 6.6 ft (2.0 m) deep, capillary action is insufficient to promote and maintain the development of alkaline soils (Odion *et al.* 1991). A comparison of the distribution of alkaline habitat that exists in Fish Slough today with aerial photographs taken in 1950 suggests the geographic extent of alkaline habitat in Fish Slough has decreased over time (Anne Halford, BLM, pers. comm. 2004).

Between May 1999 and October 2001, a variety of *in situ* and experimental studies were conducted to evaluate the relationship between photosynthetic rates, growth rates, fecundity, and survivorship of *Astragalus lentiginosus* var. *piscinensis* as depth to a water table varied (Murray and Sala 2003). Data from these studies suggest that elevated water tables are likely to adversely affect these variables if local water tables are less than 13.8 to 15.7 in (35 to 40 cm) below the land surface. Therefore, water tables that rise too close to the land surface and the root zone of *A. l.* var. *piscinensis* may be detrimental to individual plants that are subjected to saturated soils for a prolonged period of time.

Fish Slough is a wetland in an otherwise arid landscape. The average annual rainfall in the town of Bishop is 5.0 in (12.7 cm). The average annual evapo-transpiration rates in alkaline meadows or alkaline scrub habitats in the greater Owens Valley area, which are most similar to the habitat type occupied by *Astragalus lentiginosus* var. *piscinensis,* range between 18.5 to 40.5 in (47.0 to 102.9 cm) and 15.2 to 23.6 in (38.6 to 59.9 cm), respectively (Danskin 1998). Because the low annual rainfall and high annual evapo-transpiration rates in the Bishop area create an arid environment, it is essential that a substantial and sustained amount of surface and groundwater exists to maintain the wetland and riparian habitats that are present in Fish Slough.

The sources of water that discharge from springs in Fish Slough have not yet been conclusively identified. Available data indicate that Fish Slough water is derived from the Casa Diablo Mountain area (BLM 1984; MHA 2001), the Tri-Valley area, or a combination of the two areas (MHA 2001). The Casa Diablo Mountain area reaches a maximum elevation of 7,913 ft (2,412 m) and is located 9.5 mi (15.3 km) northwest of Fish Slough. The area between Fish Slough and Casa Diablo Mountain is locally referred to as the Volcanic Tableland. The geology of the Volcanic Tableland predominantly consists of the Bishop Tuff, which has a welded ash and tuff surface veneer. Underneath the surface veneer, a thicker, more permeable layer is present in the Volcanic Tableland. The lower unit of the tuff is extensively fractured and faulted, and some areas are more permeable than windblown sand (Department of Water Resources 1964). These fractures act as conduits that convey groundwater from higher elevation areas with greater levels of precipitation to the lower elevation Fish Slough area where low amounts of precipitation predominate.

The Tri-Valley area is bounded on the east by the White Mountains, which reach an elevation of up to 14,245 ft (4,342 m), and to the west by a ridge that separates it from Fish Slough. This ridge is less than 280 ft (85 m) higher than the valley floor. The high elevation of the White Mountains promotes the precipitation deposition. This water then percolates into alluvial fans at the base of the mountains, and ultimately enters the coarse alluvium that is present on the floors of Benton, Hammil, and Chalfant Valleys. Because the surface elevation decreases from Benton Valley in the north to Chalfant Valley in the south, and because Fish Slough is lower in elevation than all three of these valleys, groundwater tends to move in a southerly or southwesterly direction toward Fish Slough or toward Chalfant Valley east of Fish Slough. A number of fault lines are present in the Fish Slough and Volcanic Tableland area (MHA 2001), and these features likely affect the presence, distribution, and volume of groundwater present in the local area (Andy Zdon, TEAM Engineering and Management, Inc., pers. comm. 2004).

Distribution of many alkaline-tolerant plant species is largely determined by a combination of environmental factors, predominantly soil moisture and salinity. These two factors in combination may affect the physiology of adult and immature plants, seed germination, and seedling survival. Mazer and Travers (1992) suggest that seed germination and successful establishment of *Astragalus lentiginosus* var. *piscinensis* seedlings are infrequent events, and that sufficient rainfall is necessary to promote seed germination and survivorship of young plants. The suite of environmental factors that determine where *A.l.* var. *piscinensis* occurs is also likely to determine the composition of the broader plant community of which *A.l.* var. *piscinensis* is a part. Changes in soil moisture and salinity are likely to influence not only the abundance and presence of *A.l.* var. *piscinensis* but also to affect the persistence and character of the *Spartina-Sporobolis* plant association in which *A.l.* var. *piscinensis* occurs.

Sites for Breeding, Reproduction, and Rearing (or Development) of Offspring

Mazer and Travers (1992), in examining the pollination ecology of *Astragalus lentiginosus* var. *piscinensis*, found that *A.l.* var. *piscinensis* is dependent on insects for flower pollination and fertilization, and the taxon is not capable of producing fruits in the absence of pollinators. Thus, the presence of pollinator populations is essential to the conservation of the species. Bumblebees in the family Apidae were observed to pollinate *A.l.* var. *piscinensis* flowers on three occasions. Bees in the family Megachilidae are also believed to be important pollinator insects for *A. brauntonii* (Fotheringham and Keeley 1998), and various bee taxa in this family may occur in and adjacent to Fish Slough. Unless a specific endemic

bee species is responsible for flower pollination, it is possible that multiple bee species pollinate the flowers of *A.l.* var. *piscinensis* (Terry Griswold, Utah State University, pers. comm. 2003).

Bumblebees usually nest in abandoned rodent burrows or bird nests (Thorp *et al.* 1983), and bees in the family Megachilidae also nest in underground rodent burrows or in dry woody material. The alkaline nature of the habitat occupied by *Astragalus lentiginosus* var. *piscinensis* makes it unlikely that burrowing rodents are present in such areas, and therefore it is unlikely that these pollinators live there. We believe insect pollinators are more likely to nest in upland habitats adjacent to alkaline areas because nesting and cover sites for various species of mice, kangaroo rats, and pocket mice are more likely to be common there (T. Griswold, pers. comm. 2003), and these plants are likely pollinated by bees in the surrounding uplands. Thus, we have determined that inclusion of currently unoccupied upland habitat within 3,280 ft (1,000 m) of the alkaline habitat occupied by *A.l.* var. *piscinensis* that provides nesting and cover sites for pollinators is essential to the conservation of *A.l.* var. *piscinensis.*

Studies to quantify the distance that bees will fly to pollinate their host plants are limited in number, but the few that exist show that some bees will routinely fly 328 to 984 ft (100 to 300 m) to pollinate plants. Studies by Steffan-Dewenter and Tscharntke (2000) have demonstrated that it is possible for bees to fly at least 3,280 ft (1,000 m) to pollinate flowers, and at least one study suggests that bumblebees may forage many kilometers from a colony (Heinrich 1979).

There are a few studies that provide insight into how alterations to habitat used by bees may affect the host plants they visit. Studies by Steffan-Dewenter and Tscharntke (2000) indicate that if pollinator habitat within 3,280 ft (1,000 m) of some host plants is eliminated, seed set of some plant species may be decreased by as much as 50 percent. One study that was done in California noted that ''pollination services provided by native bee communities in California strongly depended on the proportion of natural upland habitat within 1–2.5 km of the farm site'' (Kremen *et al.* 2004). Additional studies also suggest that the degradation of habitat used by pollinator species is likely to adversely affect the abundance of the species they pollinate (Jennersten 1988; Rathcke and Jules 1993).

The area we are designating as critical habitat provides some or all of the habitat components and the physical and hydrologic attributes that are essential for the conservation of *Astragalus lentiginosus* var. *piscinensis.* Based on the best available information at this time, the PCEs for *A.l.* var. *piscinensis* include, but are not limited to:

(1) Alkaline soils that occur in areas with little or no slope, and which overlay a groundwater table that is 19 to 60 in (48 to 152 cm) below the land surface;

(2) Plant associations dominated by *Spartina-Sporobolis*, or where a sparse amount of *Chrysothamnus albidus* occurs in the transition zone between *Spartina-Sporobolis* and *Chrysothamnus albidus-Distichlis* plant associations;

(3) The presence of pollinator populations for *Astragalus lentiginosus* var. *piscinensis*; and

(4) Hydrologic conditions that provide suitable periods of soil moisture and chemistry for *Astragalus lentiginosus* var. *piscinensis* germination, growth, reproduction, and dispersal.

All of the PCEs outlined above do not have to occur simultaneously within the unit to constitute critical habitat for *Astragalus lentiginosus* var. *piscinensis.* We determined these PCEs based on the best available scientific and commercial information, including professional studies and reports that pertain to its habitat and ecology, and the hydrological conditions that are relevant to the quality of habitat in Fish Slough.

Criteria Used To Identify Critical Habitat

The criteria used to identify the critical habitat unit for *Astragalus lentiginosus* var. *piscinensis* include the known range of the taxon, the alkaline habitat where the taxon and its associated flora occur, the upland areas within 1,000 m (3,280 ft) of the alkaline soils that are occupied by the taxon, and the hydrologic features that are essential to promote the plant's survival and persistence.

A number of botanical surveys have been completed in most of the alkaline habitats in the greater Owens Valley area, and *Astragalus lentiginosus* var. *piscinensis* has not been found outside of Fish Slough (Paula Hubbard, LADWP, pers. comm. 2003). Considering this, we conclude that the geographic range of *A.l.* var. *piscinensis* is limited to those disjunct occurrences within a 6.0-mi (9.6-km) stretch of alkaline habitat that borders aquatic habitat in Fish Slough in Inyo and Mono Counties, California. Because the taxon occurs within a relatively limited area, and the alkaline habitat within the taxon's range forms a relatively continuous feature in the landscape, we are designating a single critical habitat unit that is not separated into smaller, separate units. The critical habitat unit being designated for *A.l.* var. *piscinensis* includes virtually all of the locations where the taxon has been documented to occur.

With the exception of one small area described below, the entire geographic area that is or was known to be occupied by the *Astragalus lentiginosus* var. *piscinensis* is being designated as critical habitat because the taxon occupies a small geographic area, and that area is occupied by plants that are likely to function as one cohesive population. These areas are all considered essential to the conservation of the species, in accordance with section 3(5)(C) of the Act.

In the proposed critical habitat rule, we determined that one privately-owned, 49-acre (20-ha) parcel (which is different than the 48-ac (19-ha) alkaline meadow within the 483-ac (195-ha) parcel south of the southern McNally Canal) within the historic range of *Astragalus lentiginosus* var. *piscinensis* was not essential for its conservation. That parcel is in Township 6 South, Range 33 East, section 18 of U.S. Geological Survey quadrangle map titled ''Fish Slough.'' In the proposed rule, we stated it was highly unlikely that this area was currently occupied by the taxon. After the proposed rule was published, we discovered that the area contained eight individuals in 1992, and one individual in 2000; these numbers represent less than one percent of the total number of *A.l.* var. *piscinensis* that were documented to occur in the 1992 and 2000 surveys that were done for the taxon. Because the 49-acre (20-ha) privately owned parcel contains less than 1 percent of the total number of *A.l.* var. *piscinensis* that are known to occur, it has little alkaline soil habitat, and the parcel is not a location where habitat enhancement activities are likely to occur within the foreseeable future, we continue to find that the parcel is not essential to conservation of the taxon and it is not included in the final critical habitat designation.

We are also not designating the area south of the southern McNally Canal, and which is owned by the LADWP, as critical habitat because *A.l.* var. *piscinensis* does not occupy it, , the habitat is highly degraded and is not suitable for recolonization or restoration activities, and does not provide pollinator habitat that would contribute in any significant way to the conservation of nearby occurrences.

The critical habitat unit is designed to encompass a large enough area to

support existing ecological processes that may be essential to the conservation of *Astragalus lentiginosus* var. *piscinensis*. Some upland areas adjacent to the alkaline habitat where *A.l.* var. *piscinensis* occurs could potentially be restored to create additional habitat for the taxon. Upland areas within 3,280 ft (1,000 m) of the alkaline habitat also provide nest sites and cover for pollinators, and are important to help minimize the potential of introducing new nonnative plant species that may adversely affect *A.l.* var. *piscinensis*, and to control nonnative plant species already present. Because these areas are essential for conservation of the species, we have included them in the designated critical habitat unit in accordance with section 3(5)(A)(ii) of the Act.

Determining the geographic boundary of the critical habitat unit for *Astragalus lentiginosus* var. *piscinensis* would be relatively straightforward if the unit boundary was based only on the presence of alkaline soils, the *Spartina-Sporobolis* plant association where *A. l.* var. *piscinensis* is found, and an upland zone inhabited by the plant's pollinators. We believe, however, that the long-term maintenance and conservation of *A. l.* var. *piscinensis* is ultimately dependent on the maintenance of the hydrologic system that promotes the development and persistence of the alkaline soils and plant communities that *A. l.* var. *piscinensis* is associated with. We believe that adverse changes in the hydrology of Fish Slough may reduce or eliminate those physical features essential for the species' conservation.

Delineating a critical habitat unit for *Astragalus lentiginosus* var. *piscinensis* that includes the hydrologic system that supports it poses a challenge because the source(s) of the water that issues from the springs in Fish Slough is not precisely known, and the location of the groundwater flow paths between these sources and the spring orifices in Fish Slough have not yet been determined. Our current understanding of how pumping activities in Chalfant and Hammil Valleys affects spring discharge rates or the local aquifer in Fish Slough is not sufficient to clearly illustrate these cause and effect relationships.

Because we believe the protection of the hydrologic conditions that supports the formation and maintenance of alkaline soils is essential to conserve occupied and suitable unoccupied habitat for *Astragalus lentiginosus* var. *piscinensis*, we have identified these hydrologic conditions as a PCE in the ''Primary Constituent Element'' section of this final rule.

When determining critical habitat boundaries, we made every effort to avoid the designation of developed areas such as buildings, paved areas, and other structures that lack PCEs for *Astragalus lentiginosus* var. *piscinensis*. Any such structures inadvertently left inside critical habitat boundaries are not considered part of the critical habitat unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

A brief discussion of the area designated as critical habitat is provided in the unit description below. Additional detailed documentation concerning the essential nature of this area is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the physical and biological features determined to be essential for conservation may require special management considerations or protection. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection.

In 1982, BLM established the Fish Slough ACEC in an effort to provide protection for the federally endangered Owens pupfish, several rare plant taxa including *Astragalus lentiginosus* var. *piscinensis*, and the wetland and riparian habitats upon which these species depend. The Fish Slough ACEC has three zones (BLM 1984). The designated critical habitat unit is predominantly located within Zone 1 of the ACEC, includes a very small portion of Zone 2, and also extends slightly beyond the southern boundary of the ACEC. The land in Zone 1 is owned by BLM, CDFG, LADWP, and one private landowner. The portion of the designated critical habitat unit in Zone 2, or in the area immediately south of the ACEC, is owned by BLM or LADWP. A management plan for the ACEC was finalized in 1984, but the plan has not been revised since it was completed.

Previously identified threats to *Astragalus lentiginosus* var. *piscinensis* include the presence of roads, effects related to the use of OHV, effects related to cattle grazing, and effects from herbivory by native vertebrates and insects (Service 1998). A potential threat to *A. l.* var. *piscinensis* not previously identified in other documents includes competition with, or displacement by, nonnative plant species (P. Hubbard, LADWP, pers. comm. 2003). The modification of wetland habitats that results from groundwater pumping or water diversion activities altering the surface and underground hydrology of Fish Slough is also a threat to the species (Service 1998).

The suite of threats affecting *Astragalus lentiginosus* var. *piscinensis* is complex. The establishment of the Fish Slough ACEC has helped provide some benefit for *A. l.* var. *piscinensis* by coordinating the activities of staff from BLM, LADWP, and CDFG on various land management challenges that exist in the local area. Because the long, narrow configuration of the slough is bounded by upland habitat, the amount of alkaline habitat that can be occupied by *A. l.* var. *piscinensis* is limited. Ferren (1991b) summarizes threats to botanical resources at Fish Slough, noting that those threats related to the enhancement of fisheries (construction of ponds, impoundments, roads, and ditches) may have had the greatest effect on the Fish Slough ecosystem because they modified the hydrological conditions that historically occurred in Fish Slough.

In the central portion of the slough, Fish Slough Lake appears to have expanded in size between 1944 and 1981. This increase may be due to natural geologic subsidence, the construction of Red Willow Dam, or the construction of water impoundments by beavers. The increase in aquatic habitat has likely resulted in the loss of alkaline habitat for *Astragalus lentiginosus* var. *piscinensis* as soils near the lake are now saturated for greater portions of the year (Ferren 1991c). Some earthquake events in Chalfant Valley appear to have resulted in decreases in spring discharge or changes in local water table levels (Brian Tillemans, LADWP, pers. comm. 2000), thereby making it more difficult to clearly understand the nature of the local aquifer. Modifications to the slough environment from changes in the local hydrology are not well understood or easily reversed. These factors, in combination with essential data gaps that include, but are not limited to, a more thorough understanding of the ecology and habitat requirements of the species, have made it difficult for local land managers to understand and reverse the decline in the number of *A. l.* var. *piscinensis* within the ACEC over

the past decade. A downward trend in the species' abundance during the past decade suggests that, despite the ongoing efforts by the relevant land management agencies, additional factors need to be addressed to reverse the decline in the status of *A. l.* var. *piscinensis*.

We believe that the designated critical habitat unit may require special management considerations to maintain the identified primary constituent elements. These include the potential need to respond to the following:

(1) Activities that have the potential to change the hydrology of Fish Slough and adversely affect the survivorship, seed germination, growth, or photosynthesis of *Astragalus lentiginosus* var. *piscinensis*, unless such activities are designed and have the effect of recreating the historic environmental conditions that existed in Fish Slough;

(2) Activities that have the potential to adversely affect the suitability of alkaline areas that could provide habitat for *Astragalus lentiginosus* var. *piscinensis* including, but not limited to, OHV use, levels of cattle grazing that could result in increased soil compaction, road construction and maintenance activities, and water diversion activities;

(3) Activities that have the potential to modify the species composition, character, or persistence of the native plant associations that are associated with *Astragalus lentiginosus* var. *piscinensis*;

(4) Activities that could adversely affect the insect pollinators that inhabit the native upland desert scrub community that is adjacent to alkaline habitats in Fish Slough, including, but not limited to, livestock grazing at levels that would increase soil compaction, use of heavy-wheeled vehicles or OHVs (including motorcycles and all terrain vehicles), pesticide use, and incompatible recreational activities; and

(5) Management activities, particularly those that involve cattle grazing and road maintenance, which have the potential to introduce new nonnative plant species that may compete with or displace *Astragalus lentiginosus* var. *piscinensis*.

Critical Habitat Designation

We are designating one unit as critical habitat for the *Astragalus lentiginosus* var. *piscinensis*. The critical habitat area described below constitutes our best assessment at this time of the areas essential for the conservation of the *A. l.* var. *piscinensis* containing the essential physical and biological features that may require special management considerations or protection.

The single critical habitat unit for *Astragalus lentiginosus* var. *piscinensis* encompasses approximately 8,007 ac (3,240 ha). Within the designated unit, the city of Los Angeles owns four separate parcels that total 2,440 ac (987 ha). CDFG owns a single 166 ac (67 ha) parcel in the designated critical habitat unit. The remaining land within the unit is owned by BLM and comprises 5,401 ac (2,186 ha). The approximate size of the different land ownership areas within the designated critical habitat unit is shown in Table 1. Lands managed by BLM and LADWP comprise 68 and 30 percent of the total unit, respectively, with State lands comprising approximately 2 percent.

TABLE 1.—APPROXIMATE AREAS IN ACRES (AC) (HECTARES (HA)) OF DESIGNATED CRITICAL HABITAT FOR *Astragalus lentiginosus* VAR. *piscinensis* BY LAND OWNERSHIP

Critical habitat unit name	City of Los Angeles	State of California	Federal (BLM)	Total
Fish Slough unit	2,440 ac (987 ha)	166 ac (67 ha)	5,401 ac (2,185 ha)	8,007 ac (3,240 ha)

The land within the critical habitat unit contains at least ninety-nine percent of the known occurrences of *A. l.* var. *piscinensis*, and we consider these occurrences to be essential to the conservation of the listed taxon. The critical habitat unit also contains (1) the alkaline habitat occupied by this taxon, (2) the *Spartina-Sporobolis* plant association and *Chrysothamnus albidus* that is present in the transition zone between the *Spartina-Sporobolis* and *Chrysothamnus albidus—Distichlis* plant associations, and (3) some of the hydrologic features that we believe are necessary to promote the persistence and successful recruitment of the species. The critical habitat unit also includes unoccupied upland areas that provide cover sites for insect pollinators.

The unit boundary overlaps the boundary of Inyo and Mono Counties in California. The northernmost boundary of the designated Fish Slough critical habitat unit is located approximately 3,444 ft (1,050 m) north of Northeast Spring in the northern portion of Fish Slough. The southern boundary of the designated critical habitat unit abuts, and is in direct contact with, the southern McNally Canal. The eastern and western boundaries of the unit are parallel to, overlap, or are adjacent to the eastern and western boundaries of Zone 1 of BLM's Fish Slough ACEC, respectively.

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated, and to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy

or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Astragalus lentiginosus* var. *piscinensis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding from Federal agencies (*e.g.*, Federal Highway Administration or Natural Resources Conservation Service), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the *Astragalus lentiginosus* var. *piscinensis*. Federal activities that, when carried out, may adversely affect critical habitat for the *A. l.* var. *piscinensis* include, but are not limited to:

(1) Activities that disturb or degrade the character of alkaline soils or hydrology necessary to support wetlands in Fish Slough;

(2) Activities that have the potential to introduce nonnative plant species to Fish Slough or promote the spread of nonnative plant species present in the local area.

(3) Activities that alter the character of the native plant associations that co-occur with *Astragalus lentiginosus* var. *piscinensis;*

(4) Activities that adversely affect insect pollinators that facilitate viable seed production in *Astragalus lentiginosus* var. *piscinensis;*

(5) Activities on Federal or private lands that require permits from Federal agencies or use Federal funding;

(6) Sale or exchange of lands by a Federal agency to a non-Federal entity; and

(7) Promulgation and implementation of a land use plan by a Federal agency, such as the BLM, which may alter management practices for critical habitat.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species containing features essential for the conservation of the species that do not require special management considerations or protection also are not, by definition, critical habitat. To determine whether essential features within an area require special management, we determine if the essential features generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering including in a proposal to designate critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the

conservation measures they outline will be implemented, effective, and cover the species: (1) Legally operative HCPs; (2) draft HCPs that have undergone public review and comment (*i.e.*, pending HCPs); (3) Tribal conservation plans; (4) State conservation plans; and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* are not owned or managed by the U.S. Department of Defense, there are currently no HCPs for *A. l.* var. *piscinensis,* and the designation does not include any Tribal lands or trust resources. In addition, there are no State conservation plans covering the plant. We anticipate no impact to national security, Tribal lands, partnerships, or HCPs from this critical habitat designation. Based on the best available information, including the prepared economic analysis, we believe that the critical habitat unit is essential for the conservation of this species. Our economic analysis indicates an overall low cost resulting from the designation. Therefore, we have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not excluded any areas from this designation of critical habitat for *A. l.* var. *piscinensis* based on economic impacts. As such, we have considered but not excluded any lands from this designation based on any relevant impacts.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The DEA was made available for public review on December 28, 2004 (69 FR 77703). We accepted comments on the DEA until January 27, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis.* This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The economic analysis addresses the effects of *Astragalus lentiginosus* var. *piscinensis* conservation efforts on activities occurring on lands proposed for designation. The analysis measures lost economic efficiency associated with indirect costs of reduced grazing opportunities, and direct costs of species and habitat conservation activities, monitoring and reporting on the status of water diversion activities associated with mining activities, cattle exclosure construction and maintenance costs, and the cost of signage for OHV routes of travel.

Estimated pre-designation costs (occurring from the time of the listing of *Astragalus lentiginosus* var. *piscinensis* to final designation of critical habitat, *i.e.*, 1998–2004) range from $778,000 to $845,000. Total post-designation costs are estimated to be approximately $895,000, or $45,000 on an annualized basis over the 20-year post-designation analysis period. Approximately 92 percent of the post-designation costs will be borne by BLM. These expenditures will involve resource management activities such as enforcement of OHV recreation guidelines, habitat restoration activities, prescribed burns, public outreach, etc.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting the U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section), or by downloading the document from the Internet at: *http://ventura.fws.gov/.*

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this final rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the final rule clearly stated? (2) Does the final rule contain technical jargon that interferes with the clarity? (3) Does the format of the final rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the final rule? (5) What else could we do to make this final rule easier to understand?

Send a copy of any comments on how we could make this final rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine,

based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

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

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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. SBREFA amended the RFA to require Federal agencies to provide a statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under Section 7 of the Act on activities they fund, permit, or implement that may affect *Astragalus lentiginosus* var. *piscinensis.* Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The final economic analysis (May 2005) was based on acreages from the proposed rule and predicts potential costs of the proposed designation to several industry sectors (agricultural production, livestock grazing, recreation, commercial mining, groundwater exportation, and resource management activities in the ACEC where the species occurs). Based on this economic analysis, pre-designation costs range from $778,000 to $845,000. The majority of the pre-designation costs, 59 percent, are associated with resource management efforts within the Fish Slough ACEC, including modifications of impoundments and fish barriers, prescribed burning, invasive plant species control, and enforcement of OHV restrictions.

An addendum to the final economic analysis (memorandum dated May 26, 2005) provides information on the economic impacts of the final critical habitat as described in the final rule. Pre-designation costs remain unchanged from the final EA. Post-designation costs are approximately $895,000, or $45,000 on an annualized basis over the 20-year post-designation analysis period. The following components comprise post-designation costs: (1) Direct annual costs of species and habitat conservation activities ($41,000 per year, primarily borne by BLM); (2) Direct costs of cattle exclosure maintenance and constructions ($500 per year, borne by LADWP); (3) Direct cost of additional lease and increased property taxes borne by grazing lessee ($540 per year, borne by a private rancher); (4) Indirect costs of reduced grazing opportunities ($2,670 per year, borne by a private rancher); and (5) Direct costs of signage for OHV routes of travel ($500 per year, borne by BLM).

Of the forecast post-designation costs, 92 percent are associated with the implementation of projects specifically intended to benefit the species and habitat (prescribed burns, control of invasive plant species, plant propagation and out planting, and public outreach). Of the remaining 8 percent of post-designation costs, approximately 7 percent is associated with exclusion of cattle grazing activities, and 1 percent is associated with signage of open routes for OHV use. No impacts to small entities within the agricultural production industry are expected to result from this designation. Likewise, no impacts to small businesses that benefit from either recreational fishing or OHV recreation in Fish Slough are expected. Thus, the only anticipated costs to small entities are increased costs for one rancher. Based on these data, we have determined that this designation would not affect a substantial number of small entities. As such, we are certifying that this designation of critical habitat would not result in a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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. Refer to the final economic analysis for a

discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for *Astragalus lentiginosus* var. *piscinensis* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(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. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Astragalus lentiginosus* var. *piscinensis* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the *Astragalus lentiginosus* var. *piscinensis.*

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act of 1969 in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and DOI's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are

no Tribal lands essential for the conservation of the *Astragalus lentiginosus* var. *piscinensis.* Therefore, we have not designated critical habitat for the *A. l.* var. *piscinensis* on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The authors of this package are staff from the Ventura Fish and Wildlife Office staff (see **ADDRESSES** section).

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. In § 17.12(h), revise the entry for *Astragalus lentiginosus* var. *piscinensis* under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Astragalus lentiginosus var. *piscinensis*.	Fish Slough milk-vetch.	U.S.A. (CA)	Fabaceae	T	647	17.96(a)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Astragalus lentiginosus* var. *piscinensis* in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—Plants.

(a) *Flowering plants.*

* * * * *

Family Fabaceae: *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch)

(1) The critical habitat unit is depicted for Inyo and Mono Counties, California, on the map below.

(2) The PCEs of critical habitat for *Astragalus lentiginosus* var. *piscinensis* consist of:

(i) Alkaline soils that occur in areas with little or no slope, and which overlay a groundwater table that is 19 to 60 in (48 to 152 cm) below the land surface;

(ii) Plant associations dominated by *Spartina-Sporobolis*, or where a sparse amount of *Chrysothamnus albidus* occurs in the transition zone between *Spartina-Sporobolis* and *Chrysothamnus albidus-Distichlis* plant associations;

(iii) The presence of pollinator populations for *Astragalus lentiginosus* var. *piscinensis*; and

(iv) Hydrologic conditions that provide suitable periods of soil moisture and chemistry for *Astragalus lentiginosus* var. *piscinensis* germination, growth, reproduction, and dispersal.

(3) Critical habitat does not include the land upon which are found existing features and structures, such as buildings, roads, parking lots, and other paved surfaces, or areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Unit.

(i) Map Unit 1: Fish Slough unit, Inyo and Mono Counties, California. From USGS 1:24,000 quadrangle maps Chidago Canyon and Fish Slough, California. Lands bounded by the following UTM Zone 11, NAD 1927 coordinates (E, N): 373700, 4149500; 373800, 4149800; 373800, 4150300; 373900, 4150700; 373900, 4151400; 374000, 4151800; 374100, 4152400; 374200, 4152700; 374400, 4153000; 374500, 4153100; 374800, 4153200; 375000, 4153300; 375100, 4153500; 375200, 4153700; 375400, 4154000; 375700, 4154200; 375800, 4154200; 376100, 4154300; 376500, 4154200; 376700, 4154100; 377000, 4153900; 377200, 4153600; 377300, 4153400; 377400, 4153100; 377400, 4152400; 377300, 4151900; 377200, 4151600; 377300, 4150200; 377200, 4149900; 377100, 4149700; 377000, 4149500; 377300, 4149100; 377400, 4148900; 377500, 4148200; 377500, 4147700; 377400, 4147100; 377300, 4146400; 377200, 4145800; 377100, 4145600; 377000, 4145300; 377000, 4145200; 376900, 4144600; 376900, 4144300; 376900, 4144200; 376800, 4144000; 376800, 4143800; 376900, 4143700; 377100, 4143600; 377500, 4143000; 377500, 4142600; thence to 377466; 4142464, where the boundary intersects the south McNally Canal. Thence westerly along the south McNally Canal to 375331, 4141934; thence northwest and following coordinates: 375200, 4142000; 375000, 4142200; 374800, 4142500; 374700, 4142900; 374600, 4143500; 374500, 4144000; 374600, 4144400; 374700, 4144600; 374700, 4145600; 374800, 4145900; 374900, 4146300; 374900, 4146900; 374800, 4147300; 374700, 4147500; 374400, 4147800; 374000, 4148600; 373800, 4149200; and returning to 373700, 4149500.

(ii) Excluding land bounded by 375700, 4143400; 375700, 4142900; 376300, 4142900; and 376300, 4143400; and returning to 375700, 4143400.

(iii) **Note:** Map of the critical habitat unit follows.

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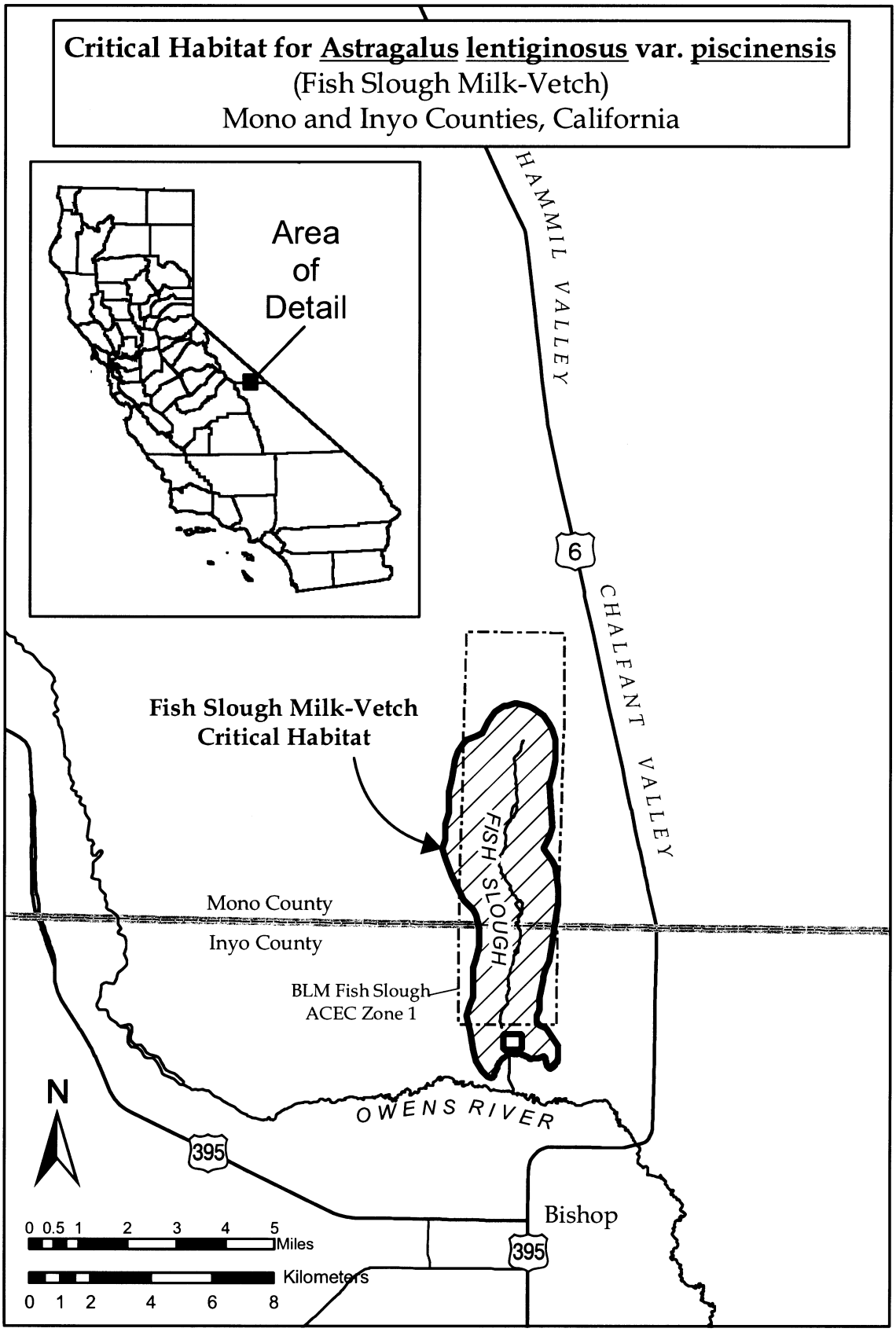
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(Fish Slough Milk-Vetch)
Mono and Inyo Counties, California
Area of Detail
HAMMIL VALLEY
6
CHALFANT VALLEY
Fish Slough Milk-Vetch Critical Habitat
FISH SLOUGH
Mono County
Inyo County
BLM Fish Slough ACEC Zone 1
N
OWENS RIVER
395
Bishop
395
0 0.5 1 2 3 4 5
Miles
Kilometers
0 1 2 4 6 8

* * * * *

Dated: June 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–11315 Filed 6–8–05; 8:45 am]

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Trade Representative, Office of United States

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2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 6-13-05; published 5-12-05 [FR 05-09472]

Boeing; comments due by 6-13-05; published 4-27-05 [FR 05-08403]

Cessna; comments due by 6-13-05; published 4-14-05 [FR 05-07379]

General Electric Co.; comments due by 6-13-05; published 4-13-05 [FR 05-07387]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Motor carrier safety standards:

Motor carrier, broker, freight forwarder, and hazardous materials proceedings; practice rules; comments due by 6-17-05; published 5-18-05 [FR 05-09898]

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Maritime Administration

Coastwise trade laws; administrative waivers:

Fee increase; comments due by 6-13-05; published 5-12-05 [FR 05-09433]

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District of Columbia retirement plans; Federal benefit payments; comments due by 6-13-05; published 4-13-05 [FR 05-07291]

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Alcohol and Tobacco Tax and Trade Bureau

Alcohol, tobacco, and other excise taxes:

Tobacco products and cigarette papers and tubes; removal without tax payment for use in law enforcement activities; comments due by 6-14-05; published 4-15-05 [FR 05-07582]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 2566/P.L. 109–14

Surface Transportation Extension Act of 2005 (May 31, 2005; 119 Stat. 324)

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