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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

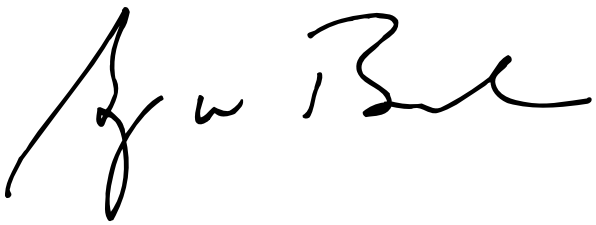
Memorandum of July 30, 2005

Assignment of Functions Relating to Certain Funding for Unanticipated Needs

Memorandum for the Director of the Office of Management and Budget

By virtue of the authority vested in me by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, the functions of the President with respect to appropriations made under the heading ''Unanticipated Needs'' in the Military Construction Appropriations and Emergency Hurricane Supplemental Appropriations Act, 2005 (Public Law 108–324) are assigned to the Director of the Office of Management and Budget and the Director shall administer such funds as provided under that heading.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, July 30, 2005.

[FR Doc. 05–15873
Filed 8–10–05; 8:45 am]
Billing code 3110–01–P

Rules and Regulations

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22026; Directorate Identifier 2005–SW–05–AD; Amendment 39–14210; AD 2005–16–05]

RIN 2120–AA64

Airworthiness Directives; Robinson Helicopter Company Model R–22 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Robinson Helicopter Company (Robinson) Model R–22 series helicopters that have been modified in accordance with Supplemental Type Certificate (STC) No. SR09189RC. This action requires inspecting the left-hand door and right-hand door for a crack in the door assembly integral frame, and replacing the door assembly if a crack is found. This AD also requires inspecting each door assembly to determine if the weather seal set is airworthy and installed properly, inspecting each door hinge for the proper installation of a cotter pin, and thereafter, at intervals not to exceed 100 hours time-in-service (TIS), inspecting each door assembly integral frame for a crack. This amendment is prompted by one accident and one incident involving Robinson Model R–22 series helicopters. The actions specified in this AD are intended to prevent separation of a door window or door assembly from the helicopter, which could damage the tail rotor during flight and result in loss of control of the helicopter.

DATES: Effective August 26, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 26, 2005.

Comments for inclusion in the Rules Docket must be received on or before October 11, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this 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;
- Fax: (202) 493–2251; or
- 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.

You may get the service information identified in this AD from Tech-Tool Plastics, Inc., 7800 Skyline Park Drive, Fort Worth, Texas 76108; telephone: (817) 246–4694; fax: (817) 246–7402; e-mail: *info@tech-tool.com.*

Examining the Docket

You may examine the docket that contains the AD, any comments, and other information on the Internet at *http://dms.dot.gov,* or in person at the Docket Management System (DMS) Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for Robinson Model R–22 series helicopters that have been modified with door assemblies manufactured by Tech-Tool Plastics, Inc., in accordance with STC No. SR09189RC. This action requires:

- Within 30 days, inspecting each door assembly integral frame for a crack, and before further flight, replacing the left-hand door assembly, part number (P/N) R–22–101–51 or P/N R–22–101–53, or right-hand door assembly, P/N R–22–101–52 or P/N R–22–101–54, if a crack is found;
- Within 30 days, if crack is not found on a door assembly, inspecting the door assembly weather seal set to determine if it is airworthy and installed properly, and if it is not, before further flight, reinstalling or replacing the weather seal set with weather seal set, P/N 74418x14L and P/N 74814x12BL, or with any other appropriate airworthy weather seal set;
- Within 30 days, if a crack is not found on a door assembly, inspecting to determine that a cotter pin, P/N MS24665–136, is installed properly in each of the two hinges on the door assembly, and if it is not, before further flight, properly installing the cotter pin;
- Thereafter, at intervals not to exceed 100 hours (TIS), inspecting each door assembly integral frame for a crack and replacing the door assembly if a crack is found; and,
- Within 30 days after discovering a crack, reporting that information as well as the helicopter model to the FAA. You may submit your report via mail, Fax, or telephone to the FAA, ATTN: ASW–170 (Marc Belhumeur), 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5177; Fax: (817) 222–5783.

This amendment is prompted by an accident on November 27, 2004, involving a Robinson Model R–22 Beta helicopter, which resulted in two fatalities. This amendment is also prompted by one incident involving a Robinson Model R–22 series helicopter, which was reported to Tech-Tool Plastics, Inc., the door assembly manufacturer, on September 20, 2004. A preliminary investigation of the helicopter involved in the accident indicated that the doors separated from the helicopter at some undetermined time and that the separation may have been partially due to the door hinge cotter pins not being installed properly. In the incident, an operator reported that the window in the pilot door had separated from the helicopter during flight at an altitude of 4,500 feet.

Subsequent investigation revealed cracking across the composite door assembly integral frame stiffener bead, just beneath the lower hinge on the forward edge of the door, and at the upper and lower door cam lock on the trailing edge of the door. Further investigation revealed that the door weather seal set was not the weather seal set supplied by the door assembly manufacturer. Additionally, the two nylon adjustment screws, which are required to relieve excessive force on the door hinges, were broken or missing. Finally, the door may not have been trimmed to the cabin door opening as stated in the manufacturer's door assembly installation drawings. The actions specified in this AD are intended to prevent separation of a door window or door assembly from the helicopter, which could damage the tail rotor during flight and result in loss of control of the helicopter.

We have reviewed Tech-Tool Plastics, Inc. Installation Instructions, TTP–1R, Revision A, dated November 21, 1997, which is part of STC SR09189RC authorizing installation of door assemblies on these affected helicopters. We have also reviewed Tech-Tool Plastics, Inc. Service Bulletin No. TTP2005–01, Revision A, dated February 1, 2005 (SB), which describes procedures for a one-time visual inspection for cracks and proper installation of the door assemblies and before the first flight of each day recurring visual checks for cracks. The SB also includes weather seal set and cotter pin installation instructions that were inadvertently omitted from the Installation Instructions of TTP–1R, Revision A, dated November 21 1997. Cracks in a helicopter door or improper installation create an unsafe condition.

This unsafe condition is likely to exist or develop on other helicopters of the same supplemental type design. Therefore, this AD is being issued to prevent separation of a door window or door assembly from the helicopter, which could damage the tail rotor during flight and result in loss of control of the helicopter. This AD requires inspecting the left-hand door and right-hand door for a crack in the door assembly integral frame, and replacing the door assembly if a crack is found. This AD also requires inspecting each door assembly to determine if the weather seal set is airworthy and installed properly, inspecting each door hinge for the proper installation of a cotter pin, and inspecting each door assembly integral frame for a crack at intervals not to exceed 100 hours TIS. Also, reporting the results of the inspections to the FAA is required if a crack is found. Accomplish the required actions in accordance with the specified portions of the service information described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Since the one-time inspections of each door assembly frame, cotter pins, and weather seal set are required within 30 days, and because each 100-hour TIS interval for inspecting each door assembly frame for cracking may occur within 30 calendar days for those helicopters being used for training or other high usage missions, this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 200 helicopters of U.S. registry, and the actions will take approximately:

- .1 work hour to inspect for cracking in each door assembly integral frame;
- .1 work hour to inspect the weather seal set, and both cotter pins in each door assembly; and
- .5 work hour to install each door assembly.

The average labor rate is $65 per work hour. Required parts will cost approximately $4,464 per helicopter if replacing each door assembly and reinstalling and trimming each door is required. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,857,400, assuming 366 inspections for cracking in each door assembly integral frame are accomplished, and that both door assemblies on all Robinson Model R–22 series helicopters are replaced.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–14210; Directorate Identifier 2005–SW–05–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those 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 AD. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. 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.*

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 an economic evaluation of the estimated costs to comply with this AD. See the DMS to examine the economic evaluation.

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2005–16–05 Robinson Helicopter Company: Amendment 39–14210. Docket No. FAA–2005–22026; Directorate Identifier 2005–SW–05–AD.

Applicability: Model R–22 series helicopters, modified with a door assembly manufactured by Tech-Tool Plastics, Inc., in accordance with STC No. SR09189RC, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of a door window or door assembly from the helicopter, which could damage the tail rotor during flight and result in loss of control of the helicopter, accomplish the following:

(a) Within 30 days, inspect the left-hand and right-hand door assemblies as follows:

(1) Visually inspect each pilot and copilot door assembly integral frame for a crack in the locations depicted in Figure 1 of this AD. If a crack is found, before further flight, replace the cracked door assembly, part number (P/N) R–22–101–51 or P/N R–22–101–53 (left-hand door assembly), or P/N R–22–101–52 or P/N R–22–101–54 (right-hand door assembly), with an airworthy door assembly. If you use door assembly, P/N R–22–101–51 or P/N R–22–101–53 (left-hand door assembly), or P/N R–22–101–52 or P/N R–22–101–54 (right-hand door assembly) as the replacement, then install it in accordance with Tech-Tool Plastics, Inc. Installation Instructions TTP–1R, Revision A, dated November 21, 1997, and with the sections titled ''Door Weather Seal Installation'' and ''Cotter Pin Installation'' in Tech-Tool Plastics, Inc. Service Bulletin No. TTP2005–01, Revision A, dated February 1, 2005 (SB).

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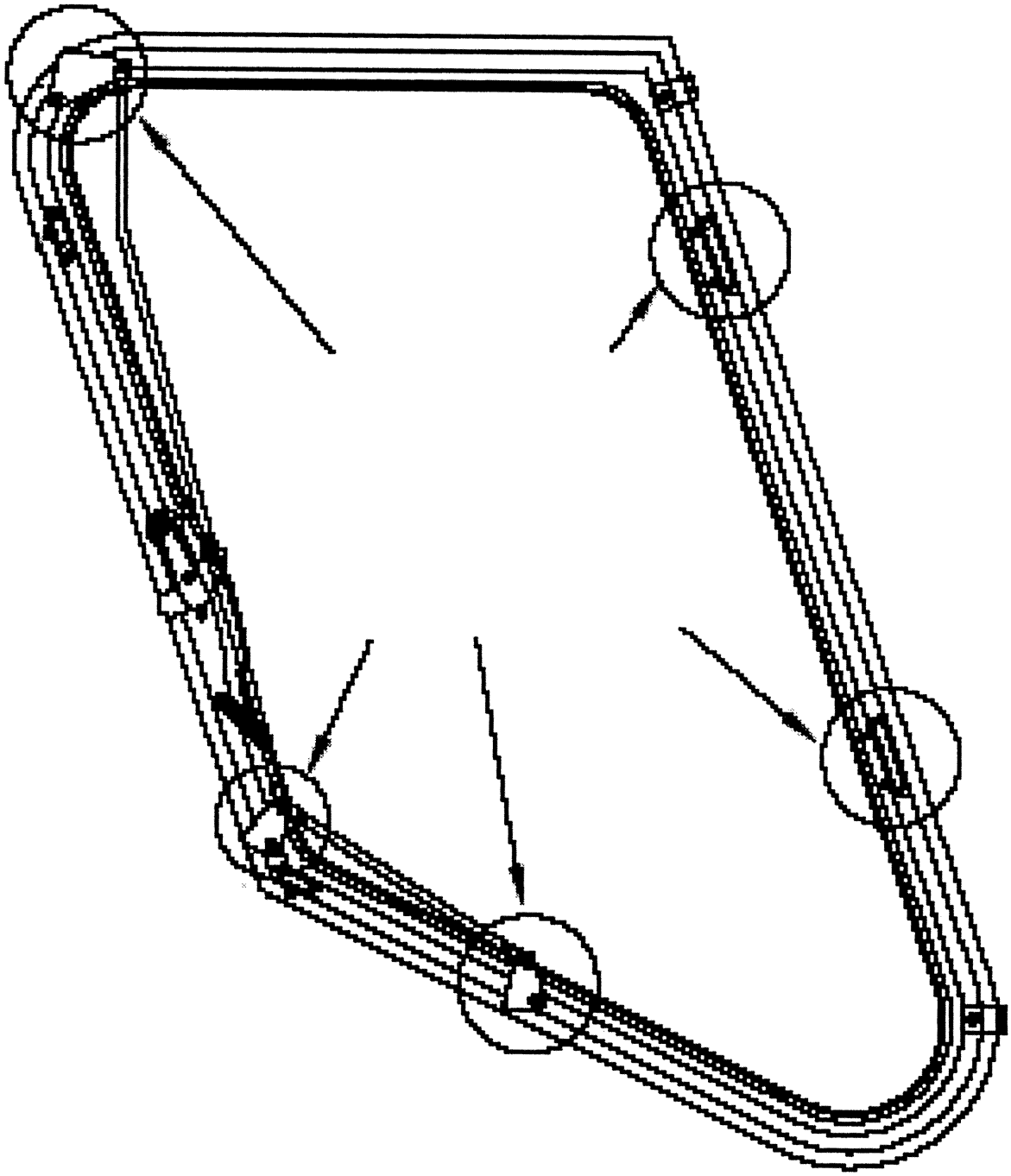

Door Assembly (left-hand shown) View Looking Outboard

Figure 1

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(2) If no crack is found in any door assembly integral frame, do the following:

(i) Visually inspect the weather seal set in each door assembly to determine if it is airworthy and installed properly. If it is not airworthy, before further flight, replace it with either the weather seal set, P/N 74418X14L and P/N 74814X12BL, supplied by Tech-Tool Plastics, Inc., in accordance with the ''Door Weather Seal Installation'' section of the SB, or replace it with any other airworthy door weather seal set in accordance with the applicable FAA-approved installation instructions. If an airworthy weather seal set, P/N 74418X14L and P/N 74814X12BL, is not installed properly, before further flight, reinstall it in accordance with the ''Door Weather Seal Installation'' section of the SB. If the improperly installed weather seal set is not the weather seal set supplied by Tech-Tool Plastics, Inc., before further flight, reinstall it in accordance with the applicable FAA-approved installation instructions.

(ii) Visually inspect each door hinge on each door assembly to determine if the cotter pins, P/N MS24665–136, are installed in accordance with the ''Cotter Pin Installation'' section of the SB. If a cotter pin is not installed in accordance with the ''Cotter Pin Installation'' section of the SB, before further flight, install the cotter pins in accordance with the ''Cotter Pin Installation'' section of the SB.

Note: The installation of nylon adjustment screws and the trimming of door assembly edges are important maintenance actions that may reduce the strength of a door assembly if not done properly.

(b) After accomplishing the inspections in paragraphs (a) through (a)(2)(ii) of this AD, at intervals not to exceed 100 hours time-in-service, visually inspect each pilot and copilot door assembly integral frame for a crack in the locations depicted in Figure 1 of this AD.

(c) If a crack is found, before further flight, replace the cracked door assembly, P/N R–22–101–51 or P/N R–22–101–53 (left-hand door assembly), or P/N R–22–101–52 or P/N R–22–101–54 (right-hand door assembly), with an airworthy door assembly. If the replacement door assembly is P/N R–22–101–51 or P/N R–22–101–53 (left-hand door assembly), or P/N R–22–101–52 or P/N R–22–101–54 (right-hand door assembly), then install it in accordance with Tech-Tool Plastics, Inc. Installation Instructions TTP–1R, Revision A, dated November 21, 1997, and ''Door Weather Seal Installation'' and ''Cotter Pin Installation'' sections of the SB.

(d) If any of the inspections required by this AD reveal a crack in any door assembly frame, report the following information to the FAA within 30 days after discovering the crack: a description of the crack and the specific helicopter model involved. You may submit your report via mail, Fax, or telephone to the FAA, ATTN: ASW–170 (Marc Belhumeur), 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5177, fax (817) 222–5783. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Rotorcraft Certification Office, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) The inspections, repairs and replacements, if necessary, shall be done in accordance with the specified portions of Tech-Tool Plastics, Inc. Installation Instructions TTP–1R, Revision A, dated November 21, 1997, which provides door assembly installation instructions, and the specified portions of Tech-Tool Plastics, Inc. Service Bulletin No. TTP2005–01, Revision A, dated February 1, 2005, which describes door weather seal and cotter pin installation procedures and door assembly inspection procedures. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Tech-Tool Plastics, Inc., 7800 Skyline Park Drive, Fort Worth, Texas, 76108; telephone: (817) 246–4694; fax: (817) 246–7402; E-mail: *info@tech-tool.com.*

(g) This amendment becomes effective on August 26, 2005.

Issued in Fort Worth, Texas, on July 29, 2005.

S. Frances Cox,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–15580 Filed 8–10–05; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22054; Directorate Identifier 2005–NM–137–AD; Amendment 39–14216; AD 2005–04–14 R1]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, 757–200CB, and 757–200PF Series Airplanes Equipped With Rolls Royce Model RB211 Engines

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: The FAA is revising an existing airworthiness directive (AD), which applies to certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. That AD currently requires repetitive inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings; repetitive inspections for cracking of the mid-bulkhead; and corrective action if necessary. That AD also provides optional terminating action for the repetitive inspections. This AD continues to require the existing requirements and optional actions and clarifies certain terminating actions. This AD results from comments received in response to an existing AD, requesting clarification. We are issuing this AD to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings and cracking of the mid-bulkhead, which could result in cracking of the strut and consequent loss of the strut and engine.

DATES: Effective March 15, 2005.

On March 15, 2005 (70 FR 9511, February 28, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; and Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005.

On April 18, 2003 (68 FR 16200, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002.

We must receive any comments on this AD by October 11, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this 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.
- Fax: (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.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

On February 14, 2005, we issued AD 2005–04–14, amendment 39–13986 (70 FR 9511, February 28, 2005). That AD applies to certain Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes. That AD requires repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings; repetitive detailed inspections for cracking of the mid-bulkhead; and corrective action if necessary. That AD also provides optional terminating action for the repetitive inspections. That AD resulted from reports of cracks in the mid-bulkhead lower vertical flange common to the lower chord and stiffener and reports of cracking at other locations on the mid-bulkhead. The actions specified in that AD are intended to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings and cracking of the mid-bulkhead, which could result in cracking of the strut and consequent loss of the strut and engine.

Comments

We provided the public the opportunity to submit any relevant written data, views, or arguments about AD 2005–04–14. We have considered the comments received. We have revised AD 2005–04–14 based on the following comments:

Requests To Clarify Terminating Actions

One commenter, the airplane manufacturer, requests that paragraph (k) of AD 2005–04–14 be revised to clarify that accomplishing the optional one-time high frequency eddy current (HFEC) inspection specified only in paragraph (m) ends the repetitive inspections required by paragraph (j)(1). The commenter notes that those repetitive inspections are only applicable to airplanes on which the actions specified in Boeing Alert Service Bulletin (ASB) 757–54A0039, dated November 2, 2000, have been accomplished prior to April 18, 2003. The commenter states that operators of those airplanes have already done the shim replacement specified in paragraph (l), making that action redundant.

We agree and have revised paragraph (k) of AD 2005–04–14 in this AD accordingly.

The same commenter also requests that paragraphs (k) and (s) of AD 2005–04–14 be revised to clarify that accomplishing the optional one-time HFEC inspection specified in paragraphs (m) and (u), as applicable, ends the repetitive detailed inspections required by paragraph (r)(1). The commenter notes that, in paragraph (k), similar repetitive detailed inspections required by paragraph (j)(1) are terminated by accomplishing the optional actions specified in paragraphs (l) and (m). The commenter also states that the optional one-time HFEC inspection in paragraph (m) is equivalent to that in paragraph (u).

We partially agree. We agree with the commenter that paragraphs (k) and (s) need to be revised. However, we do not agree with the commenter that accomplishing the actions specified only in paragraphs (m) and (u), as applicable, ends the repetitive inspection in paragraph (r)(1). We have determined that accomplishing the optional terminating actions specified in both paragraphs (l) and (m) and both paragraphs (t) and (u), as applicable, are necessary to end the repetitive detailed inspections in paragraph (r)(1). We have revised paragraphs (k) and (s) of AD 2005–04–14 in this AD accordingly.

Another commenter requests that AD 2005–04–14 be revised to clarify that accomplishing the initial detailed inspection required by paragraph (r) ends the repetitive detailed inspections required by paragraph (j)(1). The commenter believes that the detailed inspections in paragraph (r) are redundant to those in paragraph (j). The commenter states that the detailed inspections required by paragraph (r) seem inconsistent with the explanation in ''Differences Between the AD and the Service Information'' section of AD 2005–04–14. That section states, ''[The FAA has] determined that, for airplanes on which the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert SB 757–54A0039, dated November 2, 2000, have been accomplished previously, a detailed inspection for cracking, and repair if necessary, within 90 days of the effective date of this AD, and repetitive detailed inspections, are adequate to continue to provide an acceptable level of safety for this interim action.'' The commenter further states that paragraph (r) requires a detailed inspection of all airplanes, including those on which the optional one-time HFEC inspection specified in paragraph (m) or (u) has been previously done.

We agree with the commenter that clarification is necessary. The detailed inspections required by paragraphs (j) and (r) of AD 2005–04–14 are identical. The affected airplanes of those two paragraphs are different; however, there is some overlap in the affected airplanes. Paragraph (r), which is applicable to ''Groups 1, 2, and 3 airplanes, identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005,'' includes all airplanes specified in paragraph (j) (*i.e.*, airplanes on which the actions specified in Boeing ASB 757–54A0039, dated November 2, 2000, have been accomplished prior to April 18, 2003). It was our intent that, after accomplishing the initial detailed inspection required by paragraph (r) at the new compliance time, the repetitive detailed inspections required by paragraph (j)(1) end for affected airplanes. Therefore, we have revised paragraph (r) of this AD to clarify this point.

In addition, our intent in the ''Difference Between the AD and the Service Information'' section of AD 2005–04–14 was to point out that referenced Boeing ASB 757–54A0039 recommended a one-time non-destructive test and/or HFEC inspection whereas the AD required repetitive detailed inspections. As discussed in that AD, we determined that the repetitive detailed inspections were adequate to continue to provide an acceptable level of safety for the interim. That section does not reappear in this AD. Therefore, no change to this AD is necessary in this regard.

Request To Refer to Additional Figure

One commenter requests that the last sentence in paragraph (r) be revised to ''* * * perform a detailed inspection for cracking around the four Lower Mid-Spar Bolts as shown in Figure 9 or Figure 17 of SB 757–54A0039, Revision 3, dated January 13, 2005.'' The commenter believes that, like Figure 9, Figure 17 ''Mid-Bulkhead Inspection'' in Revision 3 of Boeing Service Bulletin 757–54A0039 also addresses the areas around the four lower mid-spar bolts. The commenter states that Figure 17 provides pictorial views of the subject two front and two rear lower mid-bulkhead bolts whereas Figure 9 shows a sectional view of the area only.

We partially agree. We agree with the commenter to revise paragraph (r) to refer to Figure 17 as an alternative figure for accomplishing the required detailed inspection, but do not agree with the commenter's revised description of the area. We find that ''around the four bolt heads, nuts, washer, and radius fillers'' is more descriptive of the required inspection area. Therefore, we have revised paragraph (r) to state, ''* * * perform a detailed inspection * * * specified in Figure 9 or 17 of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.''

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other airplanes of the same type design. For this reason, we are issuing this AD to revise AD 2005–04–14. This new AD continues to require repetitive detailed inspections to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings; repetitive detailed inspections for cracking of the mid-bulkhead; and corrective action if necessary. This new AD also continues to provide optional terminating actions for certain repetitive inspections. This new AD also clarifies certain terminating actions.

Interim Action

This is considered to be interim action. We are currently considering requiring HFEC inspections for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut, and repair if necessary. However, the planned compliance time for the HFEC inspections in this AD ''is sufficiently long so that notice and opportunity for prior public comment will be practicable.''

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to the address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2005–22054; Directorate Identifier 2005–NM–137–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

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 AD. Using the search function of that Web site, anyone can find and read the comments in 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.). 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.*

Examining the Dockets

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13986 (70 FR 9511, February 28, 2005) and adding the following new airworthiness directive (AD):

2005–04–14 R1 Boeing: Amendment 39–14216. Docket No. FAA–2005–22054; Directorate Identifier 2005–NM–137–AD.

Effective Date

(a) The effective date of this AD is March 15, 2005.

Affected ADs

(b) This AD revises AD 2005–04–14, amendment 39–13986.

Applicability

(c) This AD applies to Boeing Model 757–200, 757–200CB, and 757–200PF series airplanes; certificated in any category; equipped with Rolls Royce Model RB211 engines; as identified in Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the mid-bulkhead lower vertical flange common to the lower chord and stiffener and reports of cracking at other locations on the mid-bulkhead. We are issuing this AD to detect and correct migration of shims at the joint of the mid-bulkhead and the upper link fittings and cracking on the mid-bulkhead, which could result in cracking of the strut and consequent loss of the strut and engine.

Compliance

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

Requirements of 2005–04–14

Inspection for Movement of Shims and Corrective Actions

(f) For Groups 1 and 2 airplanes, as identified in Boeing Alert Service Bulletin (ASB) 757–54A0039, Revision 1, dated June 20, 2002; Boeing Service Bulletin (SB) 757–54A0039, Revision 2, dated December 2, 2004; and Boeing SB 757–54A0039, Revision 3, dated January 13, 2005; with the exception of the airplanes specified in paragraph (j) of this AD: Within 90 days after April 18, 2003 (the effective date of AD 2003–07–08, amendment 39–13104), perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(g) If all laminated shims have not moved, or if all laminated shims have moved less than 0.25 inch: Before further flight, perform the actions specified in either paragraph (g)(1) or (g)(2) of this AD, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) Perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (*e.g.*, measure and record movement of the shim, cut the exposed plies, and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 12,000 flight cycles or 72 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement exceeds 0.25 inch but is less than 0.90 inch, before further flight, perform the actions specified in paragraph (h) of this AD. If the cumulative total movement measures 0.90 inch or more: Before further flight, perform the actions specified in paragraph (i) of this AD. Or

(2) Perform the actions specified in paragraphs (l) and (m) of this AD.

(h) If any laminated shim has moved 0.25 inch or more but less than 0.90 inch: Before further flight, perform the actions specified in paragraph (h)(1) or (h)(2) of this AD, per Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) Before further flight, perform the actions specified in paragraph 3.B.6 of the Accomplishment Instructions of the ASB (*e.g.*, measure and record movement of the shim, cut the exposed plies and seal adjacent surfaces and edges), and repeat the detailed inspections at intervals not to exceed 3,000 flight cycles or 18 months, whichever occurs first. At each inspection interval, the previously recorded measurement must be added to the current measurement so that the cumulative total movement of the shim is recorded. If the cumulative total movement measures 0.90 inch or more, before further flight, perform the actions specified in paragraph (i) of this AD. Or,

(2) Perform the actions specified in paragraphs (l) and (m) of this AD.

(i) If any laminated shim has moved 0.90 inch or more: Before further flight, perform the actions specified in paragraphs (l) and (m) of this AD.

Inspection of Lower Mid-Spar Bolts

(j) For airplanes on which the actions specified in Boeing ASB 757–54A0039, dated November 2, 2000, have been accomplished prior to April 18, 2003: Within 90 days after April 18, 2003, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 of Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings; or by an Authorized Representative (AR) for the Boeing Delegation Option Authorization (DOA) Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Terminating Action for Certain Requirements of This AD

(k) For Groups 1, 2, and 3, as identified in Boeing SB 757–54A0039, Revision 2, dated December 2, 2004; or Revision 3, dated January 13, 2005: Accomplishment of the actions specified in paragraphs (l) and (m) of this AD constitutes terminating action for the repetitive inspection requirements of paragraphs (g)(1), (h)(1), and (r)(1) of this AD. Accomplishment of paragraphs (l) and (m) of this AD also constitutes terminating action for paragraphs (o), (p), and (q), if accomplished prior to March 15, 2005 (the effective date of AD 2005–04–14). For airplanes specified in paragraph (j) of this AD, accomplishment of paragraph (m) of this AD constitutes terminating action for paragraph (j) of this AD.

(l) Replace any laminated shim with a solid shim; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and high-frequency eddy current (HFEC) inspection to detect cracking and deformation in the sleevebolt holes and in the fittings, as shown in Part II, Figure 3, of Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing DER who has been authorized by the Manager, Seattle ACO, to make such findings; or by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair to be approved, the approval must specifically reference this AD. No further action is required by this paragraph.

(m) Perform a one-time HFEC inspection for cracking in and around the bolt holes of the left and right side of the mid-bulkhead strut as shown in Part III, Figure 9, of Boeing ASB 757–54A0039, Revision 1, dated June 20, 2002; or Boeing SB 757–54A0039, Revision 2, dated December 2, 2004, or Revision 3, dated January 13, 2005.

(1) If no cracking is found during any inspection specified in paragraph (m) of this AD, before further flight, install oversized bolts per Figure 10 of the ASB. No further action is required by this paragraph.

(2) If any cracking is found during any inspection specified in paragraph (m) of this AD that is within the limits specified in the ASB: Before further flight, repair per the ASB.

(3) If any cracking is found during any inspection specified in paragraph (m) of this AD that is outside the limits specified by the ASB and the ASB specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing DER who has been authorized by the Manager, Seattle ACO, to make such findings; or by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Detailed Inspections of the Mid-Bulkhead

(n) For all airplanes: Prior to the accumulation of 8,000 total flight cycles, or within 90 days after March 15, 2005, whichever occurs later, perform a detailed inspection for cracking of the entire mid-bulkhead, in accordance with the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is detected, before further flight, repair in accordance with a method approved by the Manager, Seattle

ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles.

Inspections for Migration of Shims for Certain Airplanes

(o) For Group 3 airplanes, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Within 90 days after March 15, 2005, perform a detailed inspection to detect horizontal or vertical movement of the shims at the joint of the mid-bulkhead and the upper link fittings; in accordance with the Accomplishment Instructions of the SB. If the total shim migration is 0.3 inch or less, repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to March 15, 2005.

Inspections for Migration of Shims for Certain Other Airplanes

(p) For Groups 1 and 2 airplanes, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: If the total shim migration was 0.3 inch or less at the last inspection performed in accordance with paragraph (g)(1) of this AD, within 3,000 flight cycles after the last inspection performed, or within 90 days after March 15, 2005, whichever occurs later, perform the next shim migration inspection in accordance with the Accomplishment Instructions of Revision 3 of the SB. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles. Accomplishment of the initial inspection in accordance with Revision 3 terminates the requirements of paragraphs (g) and (h) of this AD. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to March 15, 2005.

For Shim Migration That Is More Than 0.3 Inch

(q) For Groups 1, 2, and 3 airplanes, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: If any total shim migration is more than 0.30 inch, prior to further flight or within 90 days after March 15, 2005, whichever occurs later, perform the actions specified in paragraphs (t) and (u) of this AD. Accomplishment of paragraphs (l) and (m) of this AD constitute terminating action for the requirements of this paragraph, if accomplished prior to March 15, 2005.

Note 2: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Inspection of Lower Mid-Spar Bolts

(r) For Groups 1, 2, and 3 airplanes, identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Within 90 days after March 15, 2005, or within 3,000 flight cycles after the last inspection of the lower mid-spar bolts required by paragraph (j) of this AD, whichever occurs later, perform a detailed inspection for cracking around the four bolt heads, nuts, washers, and radius fillers specified in Figure 9 or 17 of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005. Accomplishing the initial detailed inspection ends the repetitive detailed inspection requirements of paragraph (j)(1) this AD.

(1) If no cracking is found, repeat the detailed inspection at intervals not to exceed 3,000 flight cycles.

(2) If any cracking is found, before further flight, repair per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles.

Terminating Action for Certain Requirements

(s) For Groups 1, 2, and 3 airplanes, identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Accomplishment of paragraphs (t) and (u) of this AD constitutes terminating action for the repetitive inspections of paragraphs (g)(1), (h)(1), (o), (p), and (r)(1) of this AD.

Replacement of Shims and Sleevebolts

(t) For Groups 1, 2, and 3 airplanes, identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Replace all laminated shims with solid shims; replace existing sleevebolts with new, oversized sleevebolts; and perform a general visual and HFEC inspection to detect cracking and deformation in the sleevebolt holes and in the fittings; as specified in Part II of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005. If any shim cannot be removed, or if any cracking or deformation is found: Before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

One-Time HFEC Inspection

(u) For Groups 1, 2, and 3, as identified in Boeing SB 757–54A0039, Revision 3, dated January 13, 2005: Perform a one-time HFEC inspection for cracking in and around the bolt holes of the right and left side of the mid-bulkhead lower flanges, in accordance with Part III of the Accomplishment Instructions of Boeing SB 757–54A0039, Revision 3, dated January 13, 2005.

(1) If no cracking is found: Before further flight, install oversized bolts per Figure 10 of the SB.

(2) If any cracking is found that is within the limits of the SB: Before further flight, repair per the SB.

(3) If any cracking is found that is outside the limits of the SB and the SB specifies to contact Boeing for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance (AMOCs)

(v)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an AR for the Boeing DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically reference this AD.

Material Incorporated by Reference

(w) You must use Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002; Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; or Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) On March 15, 2005 (70 FR 9511, February 28, 2005), the Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin 757–54A0039, Revision 2, dated December 2, 2004; and Boeing Service Bulletin 757–54A0039, Revision 3, dated January 13, 2005.

(2) On April 18, 2003 (68 FR 16200, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 757–54A0039, Revision 1, dated June 20, 2002.

(3) Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on August 1, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15801 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22070; Directorate Identifier 2005–NE–23–AD; Amendment 39–14218; AD 2005–16–12]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) Model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. This AD requires a onetime inspection of the Independent Overspeed Protection (IOP) unit, part number (P/N) 112E9321G2, for 19 specific serial numbers (SNs), and removal from service of those units. This AD results from a report that incorrect capacitors were installed in 19 IOP units. The incorrect capacitor in the IOP unit can lead to an inadvertent IOP command resulting in an in-flight engine shutdown. We are issuing this AD to prevent inadvertent dual-engine in-flight shutdown.

DATES: Effective August 26, 2005.

We must receive any comments on this AD by October 11, 2005.

ADDRESSES: Use one of the following addresses to comment on this 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 20590–0001.
- Fax: (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.

Contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, 15827 Blankenfelde-Mahlow, Germany, telephone: 011 49 (0) 33–7086–1768, fax: 011 49 (0) 33–7086–3356 for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7747, fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified us that an unsafe condition may exist on RRD model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. The LBA advises that the supplier of the IOP unit informed RRD that incorrect capacitors were installed in 19 IOP units, P/N 112E9321G2. The incorrect capacitor in the IOP unit can lead to an inadvertent IOP command and an in-flight engine shutdown. If both engines of an airplane have an affected IOP unit, inadvertent dual-engine in-flight shutdown could occur. The LBA issued airworthiness directive D–2005–221, dated June 17, 2005, in order to ensure the airworthiness of these engines in Germany.

Bilateral Airworthiness Agreement

These model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the LBA kept the FAA informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines of the same type design. We are issuing this AD to prevent inadvertent dual-engine in-flight shutdown. This AD requires:

- Within 10 flight cycles after the effective date of the AD, inspection of each engine's IOP unit, part number 112E9321G2, for the affected serial numbers; and
- If neither engine has an IOP unit listed in Table 1 of this AD, no further action is required; and
- If both engines have IOP units listed in Table 1 of this AD installed, remove at least one of the IOP units from service before further flight.
- If one engine has an IOP unit listed in Table 1 of this AD, remove the listed IOP from service no later than August 31, 2005.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to send us any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. FAA–2005–22070; Directorate Identifier 2005–NE–23–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 AD. Using the search function of the Docket Management System (DMS) Web site, anyone can find and read the comments in 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.). 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.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the Docket Office receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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:

2005–16–12 Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH): Amendment 39–14218. Docket No. FAA–2005–22070; Directorate Identifier 2005–NE–23–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) model BR700–715A1–30, BR700–715B1–30, and BR700–715C1–30 turbofan engines. These engines are installed on, but not limited to, McDonnell Douglas model 717–200 airplanes.

Unsafe Condition

(d) This AD results from a report that incorrect capacitors were installed in 19 Independent Overspeed Protection (IOP) units. The incorrect capacitor in the IOP unit can lead to an inadvertent IOP command resulting in an in-flight engine shutdown. We are issuing this AD to prevent inadvertent dual-engine in-flight shutdown.

Compliance

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

Onetime Inspection

(f) Within 10 flight cycles after the effective date of this AD, inspect each engine's IOP unit, part number 112E9321G2, for the serial numbers listed in the following Table 1:

TABLE 1.—AFFECTED IOP UNIT SERIAL NUMBERS

LHBR0371	LHBR0372	LHBR0373	LHBR0374	LHBR0375	LHBR0376
LHBR0377	LHBR0378	LHBR0379	LHBR0380	LHBR0381	LHBR0382
LHBR0383	LHBR0384	LHBR0385	LHBR0386	LHBR0387	LHBR0388
LHBR0389					

(g) If neither engine has an IOP unit listed in Table 1 of this AD, no further action is required.

(h) If both engines have IOP units listed in Table 1 of this AD installed, remove at least one of the IOP units from service before further flight.

(i) If one engine has an IOP unit listed in Table 1 of this AD, remove the listed IOP from service no later than August 31, 2005.

(j) After the effective date of this AD, do not install any IOP units listed in Table 1 of this AD onto any engine.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) LBA airworthiness directive D–2005–221, dated June 17, 2005, and RRD Alert Service Bulletin No. SB-BR700–73–A900371, dated June 17, 2005, also address the subject of this AD.

Issued in Burlington, Massachusetts, on August 5, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–15895 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18538; Directorate Identifier 2004–NE–29–AD; Amendment 39–13711; AD 2004–14–02]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) Models 250–C28, –C28B, and –C28C Turboshaft Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–14–02. That AD applies to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) models 250–C28, –C28B, and –C28C turboshaft engines with certain serial number (SN) third-stage turbine wheels, part number (P/N) 6899383. We published AD 2004–14–02 in the **Federal Register** on July 9, 2004 (69 FR 41389). The **SUMMARY** and the **SUPPLEMENTAL INFORMATION** paragraphs each have a sentence that is not clear. This document corrects these two sentences. In all other respects, the original document remains the same.

DATES: Effective August 11, 2005.

FOR FURTHER INFORMATION CONTACT: John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–8180; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments AD, FR Doc. 04–15508, that applies to Rolls-Royce Corporation (formerly Allison Engine Company, Allison Gas Turbine Division, and Detroit Diesel Allison) models 250–C28, –C28B, and –C28C turboshaft engines with certain SN third-stage turbine wheels, P/N 6899383, was published in the **Federal Register** on July 9, 2004, (69 FR 41389). The following corrections are needed:

■ On page 41390, in the first column, in the **SUMMARY**, in the twelfth line, ''before reaching new reduced life limits'' is corrected to read ''before the new reduced life limits for these turbine wheels are reached''.

■ On page 41390, in the first column, in the **SUPPLEMENTARY INFORMATION**, in the twelfth line, ''manufactured and accepted with a blueprint variance'' is corrected to read ''manufactured and inadvertently accepted with a blueprint variance''.

Issued in Burlington, MA, on August 4, 2005.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–15896 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18612; Airspace Docket No. 04–AWA–05]

RIN 2120–AA66

Modification of the Los Angeles Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Los Angeles (LAX), CA, Class B airspace. Specifically, this action expands the eastern boundary of the airspace to ensure containment of the LAX Standard Terminal Arrival Routes (STAR), and correct the inefficiencies of several existing areas identified during public meetings and Southern California TRACON (SCT) reviews of the airspace. The FAA is taking this action to improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the LAX Class B airspace, while accommodating the concerns of airspace users. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace to reduce aircraft delays and improve system capacity.

EFFECTIVE DATE: 0901 UTC, December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, 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:

Background

On March 24, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify the LAX Class B airspace area (70 FE 15022). The FAA proposed this action to improve several areas where boundary locations and identification could be enhanced, and modified several areas to ensure the containment of arrivals within the LAX Class B airspace. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. In response to the notice, the FAA received four written comments. All comments received were considered before making a determination on the final rule. An analysis of the comments received and the FAA's responses are summarized in the ''Discussion of Comments'' section.

Discussion of Comments

The Aircraft Owners and Pilots Association (AOPA) cited the work of the Southern California Airspace User Working Group (SCAUWG) and the collaborative efforts of the FAA in developing this rule. They pointed out that the overall modifications will prove beneficial to the general aviation community and result in a reduction of approximately 100 square miles of existing Class B airspace.

The Airline Pilots Association, International endorsed the proposal stating ''This is a significant improvement to the current Class B airspace.''

The FAA agrees with these comments. The modifications will improve the flow of air traffic, enhance safety, and reduce the potential for midair collision in the LAX Class B airspace, while accommodating the concerns of airspace users.

One commenter stated it would be helpful for General Aviation pilots if the FAA reinstated (with multiple altitudes) a shoreline transition, so that we don't have to lose Flight following to transit LAX airspace, and then re-establish it on the other side. The commenter stated, ''I think it would decrease the workload for both pilots and controllers, and increase safety.''

The FAA agrees. In concert with the SCAUWG, the Shoreline Route has been redesigned to allow uninterrupted transitions where pilots can retain Flight Following at all times. This change should become effective on or before the revised LAX Class B airspace becomes effective.

One commenter suggested the FAA use approach and climb corridors, and eliminate the need for taking 3000 square miles away from general aviation to free an airport from traffic.

The FAA does not agree. If the FAA adopted a rule in which only approach and climb corridors were used in the LAX Class B airspace, it would result in a reduced air traffic control capability to maintain an efficient flow of air traffic

into and out of LAX area airports. Most certainly, the use of corridors alone would result in a drop in capacity in the LAX area because of the different performance characteristics of the various aircraft flying into and out of the area.

The Rule

This action amends Title 14 Code of Federal Aviation Regulations (14 CFR) part 71 to modify the LAX Class B airspace. Specifically, this action expands the eastern boundary to ensure the containment of the LAX STAR's within Class B airspace and reconfigures several existing areas, correcting areas of inefficiencies identified during public meeting and during reviews of the existing Class B airspace by SCT. These modifications reduce the overall size of the LAX Class B airspace, improve the containment of turbo-jet aircraft within the airspace, and improve the alignment of lateral boundaries with VOR radials and visual landmarks for improved VFR navigation. The following are the revisions for each area of the LAX Class B airspace:

Area A: The east/west line along the northwestern boundary will be aligned to the SMO 267 radial to provide redundant reference for VFR navigation, and allow VFR aircraft to transition along the shoreline at Point Dume.

Area B: No change.

Area C: The east/west and northwest/southeast lines along the southern boundary will be aligned with the SLI 315 radial and PDZ 267 radial providing a redundant reference for VFR navigation.

Area D: The east/west line along the southern boundary will be aligned with the PDZ 267 radial to provide redundant reference for VFR navigation.

Area E: The east/west line along the southern boundary will be aligned with the PDZ 267 radial, and the northern boundary aligned with the SMO 086 radial. The eastern boundary will be aligned with the ELB 347 radial. This modification will align the eastern boundary with existing VOR radials to provide redundant reference for VFR navigation, and lowers the floor to 7000 feet, ensuring containment of aircraft descending on the LAX profile.

Area F: The east/west line along the southern boundary will be aligned with the with the PDZ 267 radial, and the northern boundary aligned with the SMO 086 radial. The western boundary will be aligned with Block E of the Class B airspace along the ELB 347 radial. The eastern boundary will be aligned with the ELB 357 radial. These modifications will align the boundaries with existing VOR radials providing a redundant reference for VFR navigation, and lower the floor to 8000 feet, ensuring containment of aircraft descending on the LAX profile.

Area G: The east/west line along the southern boundary will be aligned with the PDZ 267 radial, and the northern boundary aligned with the SMO 086 radial. The western boundary will be aligned with Block F along the ELB 357 radial. The eastern boundary will be aligned with the ELB 007 radial, and the POM 127 radial. The modifications will align the boundaries with existing VOR radials providing a redundant reference for VFR navigation. This area will expand the existing LAX Class B airspace slightly to ensure containment of aircraft descending on the LAX profile.

Area H: The east/west and northwest/southeast lines along the northern boundary will be aligned with the SLI 315 radial and PDZ 267 radial to provide a redundant reference for VFR navigation.

Area I: The east/west line along the northern boundary will be aligned with the PDZ 267 radial to provide a redundant reference for VFR navigation.

Area J: The southern boundary will be aligned with the ELB 241 radial. The eastern boundary will be shortened to end at the ELB 241 radial. The western boundaries will be realigned to the LAX 142 radial and the LGB extended runway 16R centerline. These modifications will align the boundaries with existing VOR radials where possible, providing a redundant reference for VFR navigation.

Area K: The southern boundary will be aligned with the ELB 263 radial to provide a redundant reference for VFR navigation, and the eastern boundary will be realigned with the LGB extended runway 16R centerline.

Area L: The southern boundary will be aligned with the ELB 263 radial to provide a redundant reference for VFR navigation.

Area M: The northern boundaries will be aligned with the SMO 267 radial and VNY 235 radial to provide a redundant reference for VFR navigation.

Area N: The western boundary will be aligned with the VNY 235 radial. The southern boundary aligned with the SMO 267 radial. These modifications align the boundaries with existing VOR radials to provide a redundant reference for VFR navigation.

Regulatory Evaluation Summary

Final Rule changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on small entities changes on international trade. In conducting these analyses, the FAA has determined that this final rule: (1) Will generate benefits that justify its minimal costs and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. These analyses are summarized below in the docket.

This final rule will modify the Los Angeles, CA, Class B airspace. The rule will expend the eastern boundary of the airspace, and alter several existing airspace.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement

providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined, since Class B airspace is already in place in the LAX terminal area, and the modifications in this rule are not a major expansion, but rather a contraction of Class B airspace, minimal costs would result. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of small aircraft manufacturers.

International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this final rule and determined that it will have only a domestic impact and thefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this action.

Conclusion

In view of the minimal or zero cost of compliance of this action and the enhancements to operational efficiency, the FAA has determined that this action would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 289.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 3000 Subpart B—Class B Airspace.

* * * * *

AWP CA B Los Angeles, CA [Revised]

Los Angeles International Airport (Primary Airport)
(lat. 33°56′55″ N., long. 118°24′49″ W.)

Area A. That airspace extending upward from the surface to 10,000 feet MSL beginning at
Lat. 33°59′50″ N., long. 118°44′43″ W.
Lat. 34°00′23″ N., long. 118°32′33″ W.
Lat. 33°57′42″ N., long. 118°27′23″ W. Ballone Creek/Pacific Ocean
Lat. 33°57′42″ N., long. 118°22′10″ W. Manchester/405 Fwy
Lat. 34°01′00″ N., long. 118°15′00″ W.
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 315 12.4 DME
Lat. 33°55′51″ N., long. 118°26′05″ W. Imperial Hwy/Pacific Ocean
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO intersection
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH intersection
to point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 34°01′00″ N., long. 118°15′00″ W.
Lat. 34°00′01″ N., long. 118°07′58″ W. Garfield/Washington Blvd
Lat. 33°56′10″ N., long. 118°07′21″ W. Stonewood Center
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 315 12.4 DME
to point of beginning.

Area C. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL beginning at
Lat. 34°57′42″ N., long. 118°22′10″ W. Manchester/405 Fwy
Lat. 34°00′20″ N., long. 118°23′05″ W. West Los Angeles College
Lat. 34°02′49″ N., long. 118°21′48″ W.
Lat. 34°06′00″ N., long. 118°14′24″ W. Railroad Freight Yard
Lat. 34°06′00″ N., long. 118°11′23″ W. Ernest E. Debs Regional Park
Lat. 34°02′03″ N., long. 118°03′39″ W. Legg Lake
Lat. 33°58′40″ N., long. 118°01′49″ W. Whittier College
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 267 25.1 DME
Lat. 33°53′17″ N., long. 118°10′50″ W. Dominguez High School
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 315 12.4 DME
Lat. 33°56′10″ N., long. 118°07′21″ W. Stonewood Center
Lat. 34°00′01″ N., long. 118°07′58″ W. Garfield/Washington Blvd
Lat. 34°01′00″ N., long. 118°15′00″ W.
to point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL beginning at

Lat. 34°06′00″ N., long. 118°11′23″ W. Ernest E. Bebs Regional Park
Lat. 34°00′45″ N., long. 117°54′03″ W.
Lat. 33°57′40″ N., long. 117°53′35″ W.
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 267 25.1 DME
Lat. 33°58′40″ N., long. 118°01′49″ W. Whittier College
Lat. 34°02′03″ N., long. 118°03′39″ W. Legg Lake
to point of beginning.

Area E. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′00″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°54′23″ N., long. 117°47′42″ W.
Lat. 34°02′42″ N., long. 117°50′00″ W. Mt. San Antonio College
Lat. 34°02′22″ N., long. 117°59′23″ W.
Lat. 34°02′22″ N., long. 117°59′23″ W.
Lat. 34°00′45″ N., long. 117°54′03″ W.
Lat. 33°57′40″ N., long. 117°53′35″ W.
to point of beginning.

Area F. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′23″ N., long. 117°47′42″ W. PDZ 267 ELB 347
Lat. 33°54′31″ N., long. 117°44′45″ W. PDZ 267 ELB 357
Lat. 34°02′57″ N., long. 117°45′16″ W. SMO 086 ELB 357
Lat. 34°02′42″ N., long. 117°50′00″ W. SMO 086 Mt. San Antonio College
to point of beginning.

Area G. That airspace extending upward from 9,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′31″ N., long. 117°44′45″ W. PDZ 267 ELB 357
Lat. 33°54′39″ N., long. 117°41′48″ W. PDZ 267 ELB 007
Lat. 34°00′44″ N., long. 117°40′54″ W. ELB 007 POM 127
Lat. 34°02′59″ N., long. 117°44′29″ W. SMO 086 POM 127
Lat. 34°02′57″ N., long. 117°45′16″ W. SMO 086 ELB 357
to point of beginning.

Area H. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 267 25.1 DME
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORTAC Los Alamitos AFRC
Lat. 33°46′40″ N., long. 118°08′53″ W. SLI 266 4.7 DME
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection
Lat. 33°55′51″ N., long. 118°26′05″ W. Imperial Hwy/Pacific Ocean
Lat. 33°55′48″ N., long. 118°13′52″ W. SLI 315 12.4 DME
Lat. 33°53′17″ N., long. 118°10′50″ W. Dominguez High School
to point of beginning.

Area I. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°54′04″ N., long. 117°54′35″ W. Brea Municipal Golf Course
Lat. 33°47′23″ N., long. 117°57′40″ W. Garden Grove Mall
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORACT/Los Alamitos AFRC
Lat. 33°53′44″ N., long. 118°01′52″ W. PDZ 267 25.1 DME
to point of beginning.

Area J. That airspace extending upward from 7,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°47′23″ N., long. 117°57′40″ W. Garden Grove Mall
Lat. 33°35′52″ N., long. 117°53′59″ W. Newport Bay/ELB 241 9.7 DME
Lat. 33°31′34″ N., long. 118°03′11″ W. ELB 241 18.5 DME
Lat. 33°37′56″ N., long. 118°09′04″ W. LAX 142 22.7 DME
Lat. 33°46′56″ N., long. 118°08′53″ W. SLI 266 4.7 DME
Lat. 33°47′00″ N., long. 118°03′17″ W. Seal Beach VORTAC/Los Alamitos AFRC
to point of beginning.

Area K. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°37′56″ N., long. 118°09′04″ W. LAX 142 22.7 DME
Lat. 33°36′09″ N., long. 118°25′38″ W. ELB 263 35.1 DME
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection
Lat. 33°46′40″ N., long. 118°08′53″ W. SLI 266 4.7 DME
to point of beginning.

Area L. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°36′09″ N., long. 118°25′38″ W. ELB 263 35.1 DME
Lat. 33°35′11″ N., long. 118°34′31″ W. ELB 263 42.6 DME
Lat. 33°44′27″ N., long. 118°42′23″ W. SLI 266 32.7 DME
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH Intersection
Lat. 33°45′34″ N., long. 118°27′01″ W. LIMBO Intersection
to point of beginning.

Area M. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°44′27″ N., long. 118°42′23″ W. SLI 266 32.7 DME
Lat. 33°58′48″ N., long. 118°54′27″ W. VNY 235 25.3 DME
Lat. 33°59′26″ N., long. 118°53′23″ W. VNY 235 SMO 267
Lat. 33°59′50″ N., long. 118°44′43″ W.
Lat. 33°45′14″ N., long. 118°32′29″ W. INISH Intersection

to point of beginning.

Area N. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL beginning at
Lat. 33°59′26″ N., long. 118°53′23″ W. VNY 235 24.2 DME
Lat. 34°06′00″ N., long. 118°42′12″ W. VNY 235 12.9 DME
Lat. 34°06′00″ N., long. 118°14′24″ W. Railroad Freight Yard
Lat. 34°02′49″ N., long. 118°21′48″ W.
Lat. 34°00′20″ N., long. 118°23′05″ W. West Los Angeles College
Lat. 33°57′42″ N., long. 118°22′10″ W. Manchester/405 Fwy
Lat. 33°57′42″ N., long. 118°27′23″ W. Ballona Creek/Pacific Ocean
Lat. 34°00′23″ N., long. 118°32′33″ W. SMO 267 4.3 DME
Lat. 33°59′50″ N., long. 118°44′43″ W.
to point of beginning.

* * * * *

Issued in Washington DC, on August 4, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–15855 Filed 8–10–05:8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9210]

RIN 1545–BE75

LIFO Recapture Under Section 1363(d); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations that were published in the **Federal Register** on July 12, 2005 (70 FR 39920) regarding the LIFO recapture by corporations converting from C Corporations to S Corporations.

DATES: This correction is effective July 12, 2005.

FOR FURTHER INFORMATION CONTACT: Pietro Canestrelli, at (202) 622–3060 and Martin Schaffer, at (202) 622–3070 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 1363 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9210), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the correction notice (TD 9210), which was the subject of FR Doc. 05–13383, is corrected as follows:

On page 39920, column 3, in the preamble, under the paragraph heading ''Summary of Comments and Explanation of Revisions'' first paragraph, lines 23 through 25, the language ''corporation, the date of recapture event is a transfer of a partnership interest to an S corporation, the date of the transfer'' is corrected to read as ''corporation, the date of the transfer''.

Guy Traynor,

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

[FR Doc. 05–15762 Filed 8–10–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS JIMMY CARTER (SSN 23) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS JIMMY CARTER (SSN 23) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 21(c), pertaining to the location and arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for USS JIMMY CARTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i) Annex I
*	*	*
USS JIMMY CARTER	SSN 23	4.32
*	*	*

■ 3. Table Three of § 706.2 is amended by adding, in numerical order, the following entry for USS JIMMY CARTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters; 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*	*	*	*	*	*	*
USS JIMMY CARTER	SSN 23	.....	.....	211°	5.12	10.7	2.8	1.63 below.
*	*	*	*	*	*	*	*	*

Approved: September 21, 2004.

G. A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register August 8, 2005.

[FR Doc. 05–15897 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS BAINBRIDGE (DDG 96) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: April 12, 2005.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS BAINBRIDGE (DDG 96) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and

Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS BAINBRIDGE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * *	* * *	*
USS BAINBRIDGE	DDG 96	1.90 meters.
* * *	* * *	*

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS BAINBRIDGE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * *	* * *	*
USS BAINBRIDGE	DDG 96	108.75 thru 112.50.
* * *	* * *	*

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS BAINBRIDGE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	* *	*	*	*	*
USS BAINBRIDGE	DDG 96	X	X	X	14.5
* * *	* *	*	*	*	*

Approved: April 12, 2005.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 05–15898 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS FORREST SHERMAN (DDG 98) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: April 12, 2005.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS FORREST SHERMAN (DDG 98) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights; Annex I, paragraph 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, and the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS FORREST SHERMAN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *		
USS FORREST SHERMAN	DDG 98	1.87 meters.
* * * * * * *		

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS FORREST SHERMAN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *		
USS FORREST SHERMAN	DDG 98	105.59° thru 112.50°.
* * * * * * *		

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS FORREST SHERMAN:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	* * *	*	*	*	*
USS FORREST SHERMAN	DDG 98	X	X	X	14.1.
* * *	* * *	*	*	*	*

Approved: April 12, 2005.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 05–15899 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that Landing Craft, Air Cushion (LCAC) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a Naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* May 21, 2004.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, 1322 Patterson Avenue, Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that Landing Craft, Air Cushion (LCAC) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of the 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 2(a)(i) pertaining to the height of the temporary masthead light above the hull, and paragraph 2(f)(i) pertaining to placement of the temporary masthead light above and clear of all obstructions. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Amend Table One of § 706.2 by revising the second notation for ''LCAC (class)'' and footnote 2, as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I

TABLE ONE—Continued

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i) Annex I
* * *	* * *	*
LCAC (class)	LCAC 1 through 100	7.84 (Temp.)[2]
* * *	* * *	*

* * * * * * *

[2] The temporary masthead light is 3.98 meters athwartship to starboard of centerline, 4.16 meters above the main deck.

■ 3. Amend Table Two of § 706.2 by revising the second notation for ''LCAC (class)'' and footnote 4 as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight deck in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight deck in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight deck in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
*	*	*	*	*	*	*	*	*	
LCAC Class	LCAC 1 through LCAC 100.	3.98 (Temp.)[4] ...	.....	.....	.....	.....	.....	[3] 1.5	
*	*	*	*	*	*	*	*	*	

* * * * * * *

[4] The temporary masthead light is 3.98 meters athwartship to starboard of centerline, 4.16 meters above the main deck.

■ 3. Amend Table Four, Paragraph 9 of § 706.2 by revising the third sentence of paragraph 2; and adding paragraph 3 to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

■ 9. * * *

* * * The temporary masthead light is located 3.98 meters athwartship to starboard of centerline, 4.16 meters in height above the hull. * * *

* * * * *

The arc of visibility of the temporary masthead light required by rule 21(a) may be obstructed at the following angles relative to the LCAC's heading, from 37.00 degrees thru 90.00 degrees up to a distance of 112.5 meters from the craft and from 276.75 degrees thru 277.25 degrees.

* * * * *

Approved: May 21, 2004.

G. A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register August 8, 2005.

[FR Doc. 05–15900 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS HALSEY (DDG 97) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: November 23, 2004.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS HALSEY (DDG 97) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS HALSEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
*	*	*
USS HALSEY	DDG 97	1.93 meters.
*	*	*

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS HALSEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
*	*	*
USS HALSEY	DDG 97	107.00 thru 112.50.
*	*	*

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS HALSEY:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
* *	*	*	*	*	*
USS HALSEY	DDG 97	X	X	X	14.3
* *	*	*	*	*	*

Approved: November 23, 2004.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register August 8, 2005.

[FR Doc. 05–15901 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS NITZE (DDG 94) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: Effective Date: September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NITZE (DDG 94) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; Annex I, paragraph 3(c), pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction; Annex I, paragraph 2(f)(i), pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions; and Annex I, paragraph 2(f)(ii), pertaining to the vertical placement of task lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS NITZE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* *	*	*
USS NITZE	DDG 94	1.90 meters
* *	*	*

■ 3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS NITZE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
*	*	*
USS NITZE	DDG 94	108.75 thru 112.50
*	*	*

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS NITZE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS NITZE	DDG 94	X	X	X	14.5
*	*	*	*	*	*

Approved: September 22, 2004.

G.A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

Editorial Note: This document was received at the Office of the Federal Register August 8, 2005.

[FR Doc. 05–15903 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has determined that USS SAN ANTONIO (LPD 17) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: *Effective Date:* March 25, 2005.

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS SAN ANTONIO (LPD 17) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27, pertaining to the placement of all-round task lights in a vertical line; Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights; and Annex I, paragraph 2(k), pertaining to the vertical separation between anchor lights. The Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of

the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

■ 2. Table Three of § 706.2 is amended by adding, in numerical order, the following entry for USS SAN ANTONIO:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) Annex 1
*	*	*	*	*	*	*		*
USS SAN ANTONIO.	LPD 17	.....	.....	.....	.....	.....	.....	1.3 below
*	*	*	*	*	*	*		*

■ 3. Table Four of § 706.2 is amended by adding the following paragraph:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

20. On the following ships, the all-round task lights (not under command or restricted in ability to maneuver) required by Rule 27(a) and (b) are unable to be mounted in a vertical line. Instead, the lights deviate from a vertical line by the indicated amount.

Vessel	Number	Angle in degrees of task lights off vertical as viewed from directly ahead or astern
USS SAN ANTONIO	LPD 17	10

■ 4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS SAN ANTONIO:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
*	*	*	*	*	*
USS SAN ANTONIO	LPD 17	.....	.....	X	71.0
*	*	*	*	*	*

Approved: March 25, 2005.

Gregg A. Cervi,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 05–15902 Filed 8–10–05; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Copper River

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board's in-season management action to protect sockeye salmon escapement in the Copper River, while still providing for a subsistence harvest. The revised fishing schedule for the Chitina Subdistrict of the Copper River will provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on March 21, 2005. Those regulations established seasons, harvest limits, methods, and means relating to the taking of fish and shellfish for subsistence uses during the 2005 regulatory year.

DATES: The fishing schedule for the Chitina Subdistrict of the Upper Copper River District is effective July 18, 2005, through September 17, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2005 fishing seasons, harvest limits, and methods and means were published on March 21, 2005 (70 FR 13377). Because this action relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Copper River—Chitina Subdistrict

In December 2001, the Board adopted regulatory proposals establishing a new Federal subsistence fishery in the Chitina Subdistrict of the Copper River. This fishery is open to Federally qualified users having customary and traditional use of salmon in this Subdistrict. The State conducts a personal use fishery in this Subdistrict that is open to all Alaska residents.

Management of the fishery is based on the numbers of salmon returning to the Copper River. A larger than predicted salmon run will allow additional fishing time. A smaller than predicted run will require restrictions to achieve upriver passage and spawning escapement goals. A run that approximates the pre-season forecast will allow fishing to proceed similar to the pre-season schedule with some adjustments made to fishing time based on in-season data. Adjustments to the preseason schedule are expected as a normal function of an abundance-based management strategy. State and Federal managers, reviewing and discussing all available in-season information, will make these adjustments.

While Federal and State regulations currently differ for this Subdistrict, the Board indicated that Federal in-season management actions regarding fishing periods were expected to mirror State actions. The State established a preseason schedule of allowable fishing periods based on daily projected sonar estimates. The preseason schedule was intended to distribute the harvest throughout the salmon run and provide salmon for upriver subsistence fisheries and the spawning escapement. During July 4–July 10, there were 55,740 salmon counted past the Miles Lake sonar. The preseason projection for this period was 48,848 salmon; therefore, an excess of 6,892 salmon passed the sonar during this period which will allow for increased fishing time during the eighth open period. Copper River sockeye salmon migratory timing and the previous 5-year average harvest and participation rates indicate sufficient numbers of salmon available to allow 168 hours of fishing time during the week of July 18–July 24. Depending on actual numbers of salmon passing the Miles Lake sonar, future openings may be increased or decreased accordingly.

Data from the sonar indicate that there are now sufficient salmon in the Copper River to allow additional fishing time in the Chitina Subdistrict, provide for the needs of upper Copper River users, and achieve spawning escapement objectives. Shown below are the fishing schedule openings for the Chitina Subdistrict of the Copper River:

Monday, July 11, 12:01 a.m.–Sunday, July 17, 11:59 p.m.
Monday, July 18, 12:01 a.m.–Sunday, July 24, 11:59 p.m.
Monday, July 25, 12:01 a.m.–Friday, September 30, 11:59 p.m.

State personal use and Federal subsistence fisheries in this Subdistrict close simultaneously by regulation on September 30, 2005. No deviation from this date is anticipated.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate conservation measures could seriously affect the continued viability of fish populations, could adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as boat, fishing gear, and gasoline dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Bill Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Nancy Swanton, Alaska

Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: July 22, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: July 22, 2005.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 05–15885 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–316–0484a; FRL–7949–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions of a variety of pollutants and sources. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 11, 2005 without further notice, unless EPA receives adverse comments by September 12, 2005. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814;

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726; and,

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4101	Visible Emissions	02/17/05	04/26/05
MBUAPCD	400	Visible Emissions	10/15/03	01/15/04

On June 3, 2005 and March 1, 2004 respectively, EPA found that the submittals for SJVUAPCD Rule 4101 and MBUAPCD Rule 400 met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review may begin.

B. Are There Other Versions of These Rules?

EPA has received three prior versions of Rule 4101. SJVUAPCD adopted the first version on December 17, 1992 and CARB submitted the rule to EPA on September 28, 1994. SJVUAPCD adopted the second version on June 21, 2001 and CARB submitted the rule to EPA on October 30, 2001. However, EPA has not acted on these two versions of Rule 4101. CARB submitted a third version of Rule 4101 to EPA on December 6, 2001, adopted on November 15, 2001. We proposed to approve this version of Rule 4101 on June 10, 2002 (*see* 67 FR 39659). However, after receiving adverse comments on our proposed approval, we proposed a disapproval on September 29, 2003 (see 68 FR 55917). On January 8, 2004, EPA disapproved Rule 4101 (see 69 FR 1271). Consequently, none of the prior adoptions of Rule 4101 were incorporated within the SIP. Because prior versions of Rule 4101 have been incorporated within the latest submittal of the rule, they are reviewed as part of this action in our Technical Support Document (TSD).

C. What is the Purpose of the Submitted Rules?

SJVUAPCD Rule 4101 and MBUAPCD Rule 400 limit the emissions of visible air contaminants of any type; usually, but not always, particulate matter from combustion sources and industrial sites. Specifically, the rules prohibit emissions beyond a defined opacity standard. Administratively, SJVUAPCD Rule 4101 replaces the individual 1970s

vintage county-level visible emissions rules now in the SIP; please see the TSD for more information on this subject.

II. EPA's Evaluation and Action

A. How is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must meet Reasonably Available Control Measure (RACM) requirements for nonattainment areas (see section 189), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates a serious PM nonattainment area (see 40 CFR part 81); so, Rule 4101 must fulfill Best Available Control Measure (BACM) requirements. The MBUAPCD regulates an area attaining the Federal particulate matter standard and must have PM rules sufficient to maintain this status.

Guidance and policy documents that we used to help evaluate consistently enforceability, RACM, and BACM requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

4. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 57 FR 13540–13541, April 16, 1992.

5. ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' at 59 FR 42008–42015, August 16, 1994.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM, and SIP relaxations.

Regarding SJVUAPCD Rule 4101, prior district constituent county Rules 401, 402, and 403 are now consolidated within a single rule format. The cumulative effect of the changes to these rules through the creation and amendment of Rule 4101 does not weaken the pre-existing county-level rules' emission limits. The 20% opacity limit is retained, limited specific exemptions are added, and broad exemptions are removed. SJVUAPCD remedied the deficiencies that provoked our January 8, 2004 disapproval by removing the problem exemptions with their February 17, 2005 amendments to Rule 4101. We believe that SJVUAPCD Rule is consistent with BACM requirements. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rules

We have no recommendations.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 12, 2005, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 11, 2005. This will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rulemaking action and if that provision may be severed from the remainder of the rulemaking action, EPA may adopt as final those provisions of the rulemaking action that are not the subject of an adverse comment. This action will incorporate SJVUAPCD Rule 4101 into the federally enforceable SIP and end all sanctions and Federal Implementation Plan obligations associated with our January 8, 2004 disapproval action.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(328)(i)(C) and (c)(336) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(328) * * *

(i) * * *

(C) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 400, adopted on July 1, 1969, and amended on October 15, 2003.

* * * * *

(336) New and amended regulations for the following APCDs were submitted on April 26, 2005, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4101, adopted on May 21, 1992, and amended on February 17, 2005.

* * * * *

[FR Doc. 05–15831 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–316–0484c; FRL–7949–2]

Interim Final Determination To Stay and/or Defer Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final rule.

SUMMARY: EPA is making an interim final determination to stay and/or defer imposition of sanctions based on a proposed approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP) published elsewhere in today's **Federal Register**. The revisions concern SJVUAPCD Rule 4101—Visible Emissions.

DATES: This interim final determination is effective on August 11, 2005. However, comments will be accepted until September 12, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted rule revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted rule revisions by appointment at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814; and,

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On January 8, 2004 (see 69 FR 1271), we published a disapproval of SJVUAPCD Rule 4101 as adopted locally on November 15, 2001 and submitted by the State on December 6, 2001. We based our disapproval action on certain deficiencies in the submittal. This disapproval action started a sanctions clock for imposition of offset sanctions 18 months after February 9, 2004 and highway sanctions 6 months later, pursuant to section 179 of the Clean Air Act (CAA) and our regulations at 40 CFR 52.31.

On February 17, 2005, SJVUAPCD adopted revisions to Rule 4101 that were intended to correct the deficiencies identified in our disapproval action. On April 26, 2005, the State submitted these revisions to EPA. In the Proposed Rules section of today's **Federal Register**, we have proposed approval of this submittal because we believe it corrects the deficiencies identified in our January 8, 2004 disapproval action. Based on today's proposed approval, we are taking this final rulemaking action, effective on publication, to stay and/or defer imposition of sanctions that were triggered by our January 8, 2004 disapproval.

EPA is providing the public with an opportunity to comment on this stay/deferral of sanctions. If comments are submitted that change our assessment described in this final determination and the proposed full approval of revised SJVUAPCD Rule 4101, we intend to take subsequent final action to reimpose sanctions pursuant to 40 CFR 51.31(d). If no comments are submitted that change our assessment, then all sanctions and sanction clocks will be permanently terminated on the effective date of a final rule approval.

II. EPA Action

We are making an interim final determination to stay and/or defer CAA

section 179 sanctions associated with SJVUAPCD Rule 4101 based on our concurrent proposal to approve the State's SIP revision as correcting deficiencies that initiated sanctions.

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)). However, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to stay and/or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this notice is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Statutory and Executive Order Reviews

This action stays and/or defers federal sanctions and imposes no additional requirements.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget.

This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action.

The administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not have Federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

This rule is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply to this rule because it imposes no standards.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to Congress and the Comptroller General. However, section 808 provides that any rule for which the issuing agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). EPA has made such a good cause finding, including the reasons therefor, and established an effective date of August 11, 2005. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purpose of judicial review nor does it extend the time within which petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 25, 2005.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–15833 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[RO3–OAR–2005–MD–0007; FRL–7951–3]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Maryland; Control of Emissions From Small Municipal Waste Combustor (SMWC) Units; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Maryland Department of the Environment's (MDE) request for delegation of authority to implement and enforce the Federal plan (68 FR 5144, January 31, 2003) for small municipal waste combustor (SMWC) units under sections 111(d) and 129 of the Clean Air Act (the ''Act''). The plan establishes emissions limits, compliance schedules, monitoring, operating, and recordkeeping requirements for existing SMWC units for which construction commenced on or before August 30,

1999. The request for delegation was submitted to EPA on March 28, 2005. EPA and the MDE signed a Memorandum of Agreement (MOA) which is the mechanism for the transfer of authority from EPA to the MDE. The MOA defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the ''Federal plan'') and 40 CFR 60 subpart BBBB (Emission Guidelines), by which the Federal plan will be administered by both the EPA and the MDE.

DATES: This rule is effective October 11, 2005 without further notice, unless EPA receives adverse written comment by September 12, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number RO3–OAR–2005–MD–0007 by one of the following methods:

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

B. Agency Web site: *http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *http://wilkie.walter@epa.gov*.

D. Mail: RO3–OAR–2005–MD–0007, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. RO3–OAR–2005–MD–0007. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21130.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In 1997, the United States Court of Appeals for the District of Columbia Circuit vacated the initial MWC unit rules, subparts Cb and Eb as they apply to MWC units with a capacity to combust less than or equal to 250 tons per day (TPD) of municipal solid waste (MSW). As a result, subparts Cb and Eb were amended to apply only to MWC units with the capacity to combust more than 250 TPD of MSW per unit (*i.e.*, large MWC units). In response to the court's decision, on December 6, 2000, EPA promulgated new source performance standards (NSPS) applicable to new small MWC units (*i.e.*, capacities of 35 to 250 TPD) and EG applicable to existing (*i.e.*, construction commenced on or before August 30, 1999) small MWC units. The NSPS and EG are codified at 40 CFR part 60, subparts AAAA and BBBB, respectively. *See* 65 FR 76350 and 76378. The SMWC rule regulates the following air pollutants: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Under sections 111 and 129 of the Act, EG are not Federally enforceable. However, section 129(b)(2) of the Act requires States to submit to EPA for approval State plans that implement and enforce the EG. State plans must be at least as protective as the EG, and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B.

As required by Section 129(b)(3) of the Act, on January 31, 2003 EPA promulgated a Federal plan (FP) for small MWCs that commenced construction on or before August 30, 1999. The FP is a set of maximum available control technology (MACT) requirements that implement the EG. It is applicable to those small existing MWC units not specifically covered by an approved State plan under sections 111(d) and 129 of the CAA. In addition, it fills a Federal enforceability gap until State plans are approved and ensures that the MWC units stay on track to complete, in an expeditious manner, pollution control equipment retrofits in order to meet the final compliance dates on or before of May 6, 2005, and November 6, 2005 for Class II and I units, respectively. On February 24, 2004, the U.S. Court of Appeals for the District of Columbia in the case of *Northeast Maryland Waste Disposal Authority* v. *EPA*, D.C. Cir., No. 01–1053, agreed with petitioners, including Earthjustice. In summary, EPA must show evidence that the emissions limits in its SMWC rule reflect the performance of the best performing units, as required by the Act, and explain its decision to subcategorize SMWC units according to aggregate capacities of the plants at which they are located. Without vacating the rule, the court remanded the rule back to EPA, and thus let stand the FP final compliance dates.

II. Submittal and Review of Request for Delegation by the MDE

On March 28, 2005, the MDE requested delegation of authority from

EPA to implement and enforce the FP for existing small MWC units, codified at 40 CFR part 62, subpart JJJ. The scope of the request includes all of the geographical area of Maryland.

Under EPA's Delegation Manual, item 7–139, the Regional Administrator is authorized to delegate implementation and enforcement of section 111(d)/129 Federal plans to State air pollution control agencies. The requirements and limitations of a delegation agreement are defined in item 7–139. On May 12, 2005, EPA signed a MOA between the EPA and the MDE that defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the ''Federal plan'') and 40 CFR 60 subpart BBBB (Emission Guidelines), by which the FP plan will be administered by both agencies. Subsequently, on May 25, 2005, Kendl P. Philbrick, Secretary, MDE, signed the MOA, thus agreeing to its terms and conditions, and accepting responsibility for implementation and enforcement of the policies and procedures of the FP.

III. Final Action

Pursuant to EPA's Delegation Manual and the FP preamble, section V, Implementation of the Federal Plan and Delegation, EPA is approving MDE's request for delegation of authority to implement and enforce the FP and to adhere to the terms and conditions of the subject MOA. The purpose of this delegation is to acknowledge MDE's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to the MDE for existing small MWC units. While MDE is delegated the authority to implement and enforce the FP, nothing in the delegation agreement shall prohibit EPA from enforcing sections 111(d) and 129 requirements of the Act or the FP for small MWC units.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The delegation imposes no additional requirements on the one known affected facility. This action simply reflects an already existing Federal requirement for State air pollution control agencies and existing small MWC units that are subject to the provisions of 40 CFR part 60, subpart BBBB, and 40 CFR part 62, subpart JJJ. Under the provisions of the MOA, both EPA and MDE are obligated to revise the delegation agreement as a result of any Federal regulatory changes. Accordingly, any EPA response to the court remand, which requires revision of the EG requirements, will also be incorporated into the MOA. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the section 111(d)/129 plan delegation should relevant adverse or critical comments be filed. This rule will be effective October 11, 2005 without further notice unless the Agency receives relevant adverse comments by September 12, 2005. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State request for implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing section 111(d)/129 plan delegation request submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a section 111(d)/129 plan related submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a section 111(d)/129 plan related submission, to use VCS in place of a section 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 2005. Filing a petition for reconsideration by the Administrator of this final rule does

not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the MDE's request for delegation of the Federal plan for small MWC units, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: August 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

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

Subpart V—Maryland

■ 2. A new center heading, after § 62.5112, §§ 62.5120, 62.5121, and 62.5122 are added to read as follows:

Emissions From Existing Small Municipal Waste Combustor (MWC) Units—Section 111(d)/129 Federal Plan Delegation

§ 62.5120 Identification of plan—delegation of authority.

On May 12, 2005, EPA signed a Memorandum of Agreement (MOA) that defines policies, responsibilities, and procedures pursuant to 40 CFR 62 subpart JJJ (the ''Federal plan'') by which it will be administered by the MDE for existing small MWC units. On May 25, 2005, the MDE Secretary signed the MOA, thus agreeing to its terms and conditions.

§ 62.5121 Identification of sources.

The MOA and related Federal plan apply to all affected small MWC units for which construction commenced on or before August 30, 1999.

§ 62.5122 Effective date of delegation.

The delegation became fully effective on May 25, 2005, the date the MOA was signed by the MDE Secretary.

[FR Doc. 05–15920 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation; Leadership in Environmental Management (E.O. 13148)

CFR Correction

In Title 48 of the Code of Federal Regulations, Chapter 1 (Parts 52 to 99), revised as of October 1, 2004, on page 58, in 52.213–4, the second paragraph (b)(1)(vii) is removed and the paragraph following (b)(1)(i), also designated as (vii), is inserted in its place, and paragraph (b)(1)(ii) is reinstated to read as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

(b) * * *

(1) * * *

(ii) 52.222–20, Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35–45) (Applies to supply contracts over $10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

* * * * *

[FR Doc. 05–55509 Filed 8–10–05; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 080805B]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; apportionment of reserves; request for comments.

SUMMARY: NMFS apportions amounts of the non-specified reserve of groundfish to the arrowtooth flounder initial total allowable catch (ITAC) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the fishery to continue operating. It is intended to promote the goals and objectives of the fishery management plan for the BSAI.

DATES: Effective August 11, 2005 through 2400 hrs, Alaska local time (A.l.t.), December 31, 2005. Comments must be received at the following address no later than 4:30 p.m., A.l.t., August 23, 2005.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to: P.O. Box 21668, Juneau, AK 99802;
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska;
- Fax to 907–586–7557;
- E-mail to *bsairelarth@noaa.gov* and include in the subject line of the e-mail comment the document identifier: bsairelarth; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 ITAC of arrowtooth flounder in the BSAI was established as 10,200 metric tons by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005). The Administrator, Alaska Region, NMFS, has determined that the ITAC for arrowtooth flounder in the BSAI needs to be supplemented from the non-specified reserve in order to continue operations.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions 3,000 metric tons from the non-specified reserve of groundfish to the arrowtooth flounder ITAC in the BSAI. This apportionment is consistent with § 679.20(b)(1)(ii) and does not result in overfishing of a target species because the revised ITAC is equal to or less than the specification of the acceptable biological catch (70 FR 8979, February 24, 2005).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(b)(3)(iii)(A) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the apportionment of the non-specified reserves of groundfish to the arrowtooth flounder fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 2, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Under 679.20(b)(3)(iii), interested persons are invited to submit written comments on this action (see *ADDRESSES*) until August 23, 2005.

This action is required by 50 CFR 679.20 and is exempt from review under Executive Order 12866.

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

Dated: August 8, 2005.

Anne M. Lange,

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

[FR Doc. 05–15962 Filed 8–8–05; 3:21 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 080805C]

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 Feet (18.3 Meters) Length Overall Using Hook-and-Line or Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 meters (m)) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the 2005 catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI to harvest their Pacific cod allocation.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 8, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI under § 679.21(d)(1)(iii) on April 19, 2005 (70 FR 20840, April 22, 2005).

NMFS has determined that as of August 2, 2005, approximately 453 metric tons of Pacific cod remain in the 2005 Pacific cod TAC specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI to harvest their Pacific cod allocation, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear in the BSAI. The reopening is effective 1200 hrs, Alaska local time (A.l.t.), August 8, 2005, through 2400 hrs, A.l.t., December 31, 2005.

Directed fishing by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line gear remains closed until August 15, 2005, when the third seasonal halibut mortality limit becomes available.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would unduly delay the opening of the fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 2, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: August 8, 2005.

Anne M. Lange,

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

[FR Doc. 05–15961 Filed 8–8–05; 3:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 154
Thursday, August 11, 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 AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG46

Interest Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule; correction and extension of comment period.

SUMMARY: This document corrects the e-mail address for submission of public comments on the proposed rule regarding the Farm Service Agency's (FSA's) Interest Assistance Program published June 22, 2005, and extends the comment period to ensure that all public comments are received by the Agency. The original comment period for the proposed rule closes on August 22, 2005, and FSA is extending it until September 6, 2005. Respondents who sent comments to the earlier e-mail address are encouraged to contact the person named below to find out if their comments were received and re-submit them to the e-mail address below if necessary.

DATES: The comment due date for the proposed rule published June 22, 2005 (70 FR 36055), is extended from August 22, 2005, to September 6, 2005.

FOR FURTHER INFORMATION CONTACT: Tracy L. Jones, Senior Loan Officer, Farm Service Agency; telephone: (202) 720–6771; facsimile: (202) 720–6797; E-mail: *Tracy.Jones@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD). All comments and supporting documents on this rule may be viewed by contacting the information contact. All comments received, including names and addresses, will become a matter of public record.

SUPPLEMENTARY INFORMATION: (1) This document corrects the proposed rule regarding FSA's Interest Assistance Program published June 22, 2005 (70 FR 36055–36060). Due to a computer system upgrade in FSA, some e-mail addresses were changed and, while the original addresses still work in most cases, some e-mail may not be received by the correct person. Accordingly, in the proposed rule, in the first column, in the **ADDRESSES** section, the e-mail address shown, ''*Tracy_Jones@wdc.usda.gov*'' is corrected to read ''*Tracy.Jones@wdc.usda.gov.*''

(2) As a result of the correction, this document also extends the comment period until September 6, 2005 in order to ensure that the public can submit timely comments.

Signed in Washington, DC, on August 5, 2005.

Thomas B. Hofeller,

Acting Administrator, Farm Service Agency.

[FR Doc. 05–15864 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 05–15]

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chap. II

[Docket No. OP–1232]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chap. III

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Chap. V

[No. 2005–26]

Request for Burden Reduction Recommendations; Rules Relating to Banking Operations; Directors, Officers and Employees; and Rules of Procedure; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: The OCC, Board, FDIC, and OTS (''we'' or ''the Agencies'') are reviewing our regulations to identify outdated, unnecessary, or unduly burdensome regulatory requirements pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA). Today, we request your comments and suggestions on ways to reduce burden in rules we have categorized as Banking Operations; Directors, Officers and Employees; and Rules of Procedure. All comments are welcome. We specifically invite comment on the following issues: whether statutory changes are needed; whether the regulations contain requirements that are not needed to serve the purposes of the statutes they implement; the extent to which the regulations may adversely affect competition; whether the cost of compliance associated with reporting, recordkeeping, and disclosure requirements, particularly on small institutions, is justified; whether any regulatory requirements are inconsistent or redundant; and whether any regulations are unclear.

We will analyze the comments received and propose burden-reducing changes to our regulations where appropriate. Some of your suggestions for burden reduction might require legislative changes. Where legislative changes would be required, we will consider your suggestions in recommending appropriate changes to Congress.

DATES: Written comments must be received no later than November 9, 2005.

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

EGRPRA Web site: *http://www.EGRPRA.gov.*

- Comments submitted at the Agencies' joint Web site will automatically be distributed to all the Agencies. Comments received at the EGRPRA Web site and by other means will be posted on the Web site to the extent possible.

Individual agency addresses: You are also welcome to submit comments to the Agencies at the following contact points (due to delays in paper mail delivery in the Washington area, commenters may prefer to submit their comments by alternative means):

OCC: You may submit comments, identified by [docket ##], by any of the following methods:

- *E-mail*: *regs.comments@occ.treas.gov*. Include [docket ##] in the subject line of the message. Please include your name and address.
- *Fax*: (202) 874–4448.
- *Mail*: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219. Attention: Docket ##.

Public Inspection: You may inspect and photocopy comments at the Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, identified by Docket Number ##, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- *Fax*: (202) 452–3819 or (202) 452–3102.
- *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

FDIC: You may submit comments, identified as EGRPRA burden reduction comments, by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html*.
- *E-mail*: *comments@fdic.gov*. Include ''EGRPRA burden reduction comment'' in the subject line of the message.
- *Mail*: Robert E. Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: You may inspect comments at the FDIC Public Information Center, Room 100, 801 17th Street, NW., between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments, identified by ''No. ##.'' by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-Mail: regs.comments@ots.treas.gov*. Include ''No. ##'' in the subject line of the message, and provide your name and telephone number.
- *Fax:* (202) 906–6518.
- Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery:* Comments may be hand delivered to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office.

Public Inspection: OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1*. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a fax to (202) 906–7755. (Please identify the material you would like to inspect to assist us in serving you.) OTS schedules appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date OTS receives a request.

FOR FURTHER INFORMATION CONTACT:

OCC

- *Heidi Thomas,* Special Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.
- *Lee Walzer,* Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

Board:

- *Patricia A. Robinson,* Assistant General Counsel, Legal Division, (202) 452–3005.
- *Michael J. O'Rourke,* Counsel, Legal Division, (202) 452–3288.
- *John C. Wood,* Counsel, Division of Consumer and Community Affairs, (202) 452–2412.
- *Kevin H. Wilson,* Supervisory Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2362.
- For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

FDIC

- *Claude A. Rollin,* Special Assistant to the Vice Chairman, (202) 898–8741.
- *Steven D. Fritts,* Associate Director, Division of Supervision and Consumer Protection, (202) 898–3723.
- *Ruth R. Amberg,* Senior Counsel, Legal Division, (202) 898–3736.
- *Susan van den Toorn,* Counsel, Legal Division, (202) 898–8707.

OTS

- *Glenn Gimble*, Senior Project Manager, Thrift Policy, Supervision Policy, (202) 906–7158.
- *Josephine Battle,* Program Analyst, Thrift Policy, Supervision Policy, (202) 906–6870.
- *Karen Osterloh,* Special Counsel, Regulations and Legislation Division, Chief Counsel's Office, (202) 906–6639.

SUPPLEMENTARY INFORMATION:

I. Overview of the EGRPRA Review and the Steps Taken So Far

The Agencies [1] are asking for your comments and suggestions on ways in which we can reduce regulatory burden consistent with our statutory obligations. Today, we request your input to help us identify which regulatory requirements in three categories—Banking Operations; Directors, Officers and Employees; and Rules of Procedure—are outdated, unnecessary, or unduly burdensome. We list the rules in these categories in a chart at the end of this notice. Please send us your recommendations at our Web site, *http://www.EGRPRA.gov*, or to one of the listed addresses.

Today's request for comment is the fifth notice in our multi-year review of regulations for burden reduction required by section 2222 of EGRPRA.[2] We described the EGRPRA review's requirements in our first EGRPRA notice. In summary, EGRPRA requires us to:

[1] The National Credit Union Administration has participated in planning the EGRPRA review but has issued, and will issue, requests for comment separately.

[2] Public Law 104–208, Sept. 30, 1996, 12 U.S.C. 3311. We published our first notice in the **Federal Register** on June 16, 2003, at 68 FR 35589; our second notice on January 21, 2004, at 69 FR 2852; our third notice on July 20, 2004, at 69 FR 43347; and our fourth notice on February 3, 2005, at 70 FR 5571. You may view the notices at our Web site, *http://www.EGRPRA.gov*.

- Categorize our regulations by type.
- Publish the regulations by category to request comments on which regulations contain requirements that are: outdated, unnecessary, or unduly burdensome.
- Publish a summary of those comments.
- Eliminate unnecessary regulations to the extent appropriate.
- Report to Congress: summarizing the significant issues raised and their relative merits and analyzing whether legislative change is required to reduce burden.

The first publication and review cycle must be completed by September 2006. The regulatory response and report to Congress will occur after the publication cycle is finished.

We have identified 13 categories of rules to implement our EGRPRA review. The categories are: Applications and Reporting; Banking Operations; Capital; Community Reinvestment Act; Consumer Protection: Lending Related Rules; Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules; Directors, Officers and Employees; International Operations; Money Laundering; Powers and Activities; Rules of Procedure; Safety and Soundness; and Securities. You may see the categories and the rules placed within them at our Web site, *http://www.EGRPRA.gov*.

We previously requested public comment about possible burden reduction in eight categories of rules. Our June 16, 2003, notice requested comment on three categories: Applications and Reporting; Powers and Activities; and International Operations. Our January 21, 2004, notice requested comment on Consumer Protection: Lending Related Rules. Our July 20, 2004, notice requested comment on Consumer Protection: Account/Deposit Relationships and Miscellaneous Consumer Rules. Our February 3, 2005, notice requested comment about three categories: Money Laundering, Safety and Soundness, and Securities. Today, we request comment on rules related to Banking Operations; Directors, Officers and Employees; and Rules of Procedure.

In addition to soliciting written comments, we held banker outreach meetings in Orlando, St. Louis, Denver, San Francisco, New York City, Nashville, Seattle, Chicago, Phoenix, and New Orleans to hear directly from the industry about ways the Agencies could reduce regulatory burden. More than 450 representatives from the industry have attended the outreach meetings. The Agencies also have held three outreach meetings with over 100 participants for representatives of consumer and community groups to obtain their input on regulatory burden reduction. The consumer meetings were held in Arlington, Virginia, San Francisco, and Chicago. Another consumer meeting is scheduled for September, 2005 in Boston. These meetings have helped focus our regulatory burden reduction efforts. We anticipate holding additional outreach events this year. You may learn more about the meetings and related recommendations at our EGRPRA Web site, *http://www.EGRPRA.gov*.

We received 19 comments in response to the first notice, about 560 to the second notice, over 100 to the third notice, and 123 to the fourth notice. The Agencies appreciate the response to our notices and outreach meetings. The written comments and remarks at the meetings came from individuals, banks, savings associations, holding companies, industry trade groups, and consumer and community groups. You may view the comments at our EGRPRA Web site, *http://www.EGRPRA.gov*. We are actively reviewing the feedback received about specific ways to reduce regulatory burden, as well as conducting our own analyses.

In addition, Congress has considered various legislative proposals to reduce burden on the financial services industry. In 2004 and 2005, representatives of the Agencies and industry leaders testified before congressional committees about these legislative reform proposals and other ideas for reducing burden on the financial services industry. We will continue to post information about legislative and regulatory reform efforts on our Web site.

II. Request for Comment on Rules Related to: Banking Operations; Directors, Officers and Employees; and Rules of Procedure

Today, we are asking the public to identify ways in which the rules related to Banking Operations; Directors, Officers and Employees; and Rules of Procedure may be outdated, unnecessary, or unduly burdensome. As shown on the chart at the end of this notice, there are 28 regulations in these categories.

Specific issues to consider. While all comments are welcome, we specifically invite comment on the following issues:

A. *Need for statutory change.* (1) Do any statutory requirements underlying the rules impose unnecessary, redundant, conflicting or unduly burdensome requirements? (2) Are there less burdensome alternatives?

B. *Need and purpose of the regulations.* (1) Are the regulations consistent with the purposes of the statutes that they implement? (2) Have circumstances changed so that a rule is no longer necessary or needs revision? (3) Do changes in the financial products and services offered to consumers and businesses suggest a need to revise certain regulations (or statutes)? (4) Do any of the regulations impose compliance burdens not required by the statutes they implement?

C. *General approach/flexibility.* (1) Would a different general approach to regulating achieve statutory goals with less burden? (2) Do any of these rules impose unnecessarily inflexible requirements?

D. *Effect of the regulations on competition.* Do any of the regulations or statutes create competitive disadvantages for insured depository institutions compared to the rest of the financial services industry or competitive disadvantages for one type of insured depository institution over another?

E. *Reporting, recordkeeping, and disclosure requirements.* (1) Which reporting, recordkeeping, or disclosure requirements impose the most compliance burdens? (2) Are any of the reporting or recordkeeping requirements unnecessary to demonstrate compliance with the law?

F. *Consistency and redundancy.* (1) Are any of the requirements under one regulation inconsistent with or duplicative of requirements under another regulation? (2) If so, are the inconsistencies not warranted by the purposes of the regulations?

G. *Clarity.* Are any of the regulations drafted unclearly?

H. *Burden on small insured institutions.* We have particular interest in minimizing burden on small insured institutions (those with assets of $150 million or less). Are there appropriate ways to amend these rules to minimize adverse economic impact on small insured institutions?

The Agencies appreciate the efforts of all interested parties to help us eliminate outdated, unnecessary, or unduly burdensome regulatory requirements.

BILLING CODE 4810–33; 6210–01; 6714–01; 6720–01–P

Rules for which we are requesting comment now: Banking Operations; Directors, Officers and Employees; and Rules of Procedure

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[3] --- Thrift
1. Banking Operations					
Interagency Regulations					
Prohibition of Payment of Interest on Demand Deposits	12 CFR Part 217 [Reg. Q]	12 CFR Part 217 [Reg. Q]	12 CFR Part 329	12 CFR 561.16	
OCC Regulations					
Assessment of Fees	12 CFR Part 8				
Bank Operations	12 CFR Part 7, Subpart C				
Board Regulations					
Availability of Funds and Collection of Checks	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	12 CFR Part 229 [Reg. CC]	
Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	12 CFR Part 210 [Reg. J]	
Reimbursement for Providing Financial Records; Recordkeeping Requirements for Certain Financial Records	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	12 CFR Part 219 [Reg. S]	
Reserve Requirements of Depository Institutions	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	12 CFR Part 204 [Reg. D]	
The Payment System Risk Reduction Policy	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	Federal Reserve Regulatory Service 9-1000	

[3] Foreign banking organizations that conduct banking operations in the U.S., either directly through branches and agencies or indirectly through U.S. bank subsidiaries or commercial lending company subsidiaries, generally are subject to the same regulatory regime as domestic bank holding companies.

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[3] - - - - - - - - Thrift
1. Banking Operations (continued)					
FDIC Regulations					
Assessments	12 CFR Part 327	12 CFR Part 327	12 CFR Part 327	12 CFR Part 327	
Assessment of Fees upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund	12 CFR Part 312	12 CFR Part 312	12 CFR Part 312	12 CFR Part 312	
Determination of Economically Depressed Regions				12 CFR Part 357	
OTS Regulations					
Assessments and Fees				12 CFR Part 502	---------- 12 CFR Part 502
2. Directors, Officers and Employees					
Interagency Regulations					
Disclosure of Financial Information	12 CFR Part 18		12 CFR Part 350		
Golden Parachute and Indemnification Programs	12 CFR Part 359	12 CFR Part 359	12 CFR Part 359	12 CFR Part 359; See also: 12 CFR 545.121	12 CFR Part 359 ---------- 12 CFR Part 359
Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirements	12 CFR Part 31	12 CFR Part 215 [Reg. O]	12 CFR 337.3; 12 CFR Part 349	12 CFR 563.43	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[3] - - - - - - - - Thrift
2. Directors, Officers and Employees (continued)					
Interagency Regulations (continued)					
Management Official Interlocks	12 CFR Part 26	12 CFR Part 212 [Reg. L]	12 CFR Part 348	12 CFR Part 563f	12 CFR Part 212 [Reg. L] ---------- 12 CFR Part 563f
OCC Regulations					
Bank Activities and Operations – Corporate Practices	12 CFR Part 7, Subpart B				
OTS Regulations					
Board of Directors Composition				12 CFR 563.33	
Bond Coverage				12 CFR 563.190-.191	
Employment Contracts, Compensation, Pension Plans				12 CFR 563.39; 12 CFR 563.47; 12 CFR 563.161	
Restrictions on Transactions with Officers, Directors, and Others				12 CFR 560.130; 12 CFR 563.200-.201	---------- 12 CFR 563.200-.201
3. Rules of Procedure					
Interagency Regulations					
Uniform Rules of Practice and Procedure	12 CFR Part 19	12 CFR Part 263	12 CFR Part 308	12 CFR Part 509	12 CFR Part 263 ---------- 12 CFR Part 509
OCC Regulations					
Voluntary Liquidation	12 CFR 5.48				
FDIC Regulations					
Resolution and Receivership Rules	12 CFR Part 360	12 CFR Part 360	12 CFR Part 360	12 CFR Part 360	

Subject	National Banks	State Member Banks	State Non-Member Banks	Thrifts	Holding Companies Bank[3] - - - - - - - - Thrift
3. Rules of Procedure (continued)					
FDIC Regulations (continued)					
Restrictions on Sale of Assets by the Federal Deposit Insurance Corporation	12 CFR Part 340	12 CFR Part 340	12 CFR Part 340	12 CFR Part 340	
OTS Regulations					
Investigative Proceedings and Formal Examinations				12 CFR Part 512	---------- 12 CFR Part 512
Possession by Conservators and Receivers for Federal and State Savings Associations				12 CFR Part 558	
Removals, Suspensions and Prohibitions Where a Crime is Charged or Proven				12 CFR Part 508	---------- 12 CFR Part 508

Dated: July 18, 2005.

Julie L. Williams,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System on August 1, 2005.

Jennifer J. Johnson,

Secretary of the Board.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 19th day of July, 2005.

Robert E. Feldman,

Executive Secretary.

Dated: July 19, 2005.

Richard M. Riccobono,

Acting Director, Office of Thrift Supervision.

[FR Doc. 05–15923 Filed 8–10–05; 8:45 am]

BILLING CODE 4810–33; 6210–01; 6714–01; 6720–01–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM323; Notice No. 25–05–18–SC]

Special Conditions: Boeing Model 747–400 Airplane; Large Non-Structural Glass in the Passenger Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for a Boeing Model 747–400 airplane modified by Lufthansa Technik AG. This airplane will have a novel or unusual design feature associated with the installation of large non-structural glass items in the cabin area of an executive interior occupied by passengers and crew. The proposed installation of these items in a passenger compartment, which can be occupied during taxi, takeoff, and landing, is a novel or unusual design feature with respect to the material used. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 12, 2005.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM323, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: Docket No. NM323. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW.,

Renton, Washington, 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1232, e-mail address *alan.sinclair@faa.gov.*

SUPPLEMENTARY INFORMATION

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On September 8, 2003, Lufthansa Technik AG, Weg beim Jäger 193, D–22335, Hamburg, Germany, applied for a supplemental type certificate (STC) for large non-structural glass items in the cabin area of the executive interior occupied by passengers and crew in a Boeing Model 747–400 airplane. The Boeing Model 747–400 airplane is approved under Type Certificate No. A20WE, and is a large transport category airplane with upper and main passenger decks. The airplane is limited to 660 passengers or less, depending on the interior configuration. This specific Model 747–400 configuration includes seating provisions for 105 passengers.

Type Certification Basis

Under the provisions of § 21.101, Lufthansa Technik must show that the Boeing Model 747–400 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A20WE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A20WE are as follows: Amendments 25–1 through 25–59 with exceptions for the Boeing Model 747–400. In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these proposed special conditions. The U.S. type certification basis for the Model 747–400 is established in accordance with §§ 21.17 and 21.29 and the type certification application date.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Boeing Model 747–400 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 747–400 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Lufthansa Technik apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The Boeing Model 747–400 will incorporate the following novel or unusual design feature, the installation of large non-structural glass items, typically in the form of glass sheets in the cabin area of an executive interior occupied by passengers and crew.

These installations would be for aesthetic purposes, not for safety, in components other than windshields or windows. For these special conditions, a large glass item is 4 kg (approximately 10 pounds) and greater in mass. This limit was established as the mass at which a glass component could be expected to potentially cause widespread injury if it were to shatter or break free from its retention system.

The proposed special conditions address the novel and unusual design features for the use of large non-structural glass in the passenger cabin. These large glass items would be installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit. The proposed installations of large non-structural glass items may include, but are not limited to, the following items:

- Glass partitions.
- Glass attached to the ceiling.
- Wall/door mounted mirrors/glass panels.

Discussion

The existing part 25 regulations only address the use of glass in windshields, instrument or display transparencies, or window applications. The regulations treat glass as unique for special applications where no other material will serve and address the adverse properties of glass.

Section 25.775, ''Window and windshields,'' provides for the use of glass in airplanes, but limits glass to windshields and instrument or display transparencies. Furthermore, except for bolted-in windshields, there is limited experience with either adhesive or mechanical retention methods for large glass objects installed in an airplane subject to high loads supported by flexible restraints.

The regulations provide for the following use of glass in the passenger cabin:

1. Glass items installed in rooms or areas in the cabin that are not occupied during taxi, take off, and landing, and occupants do not have to enter or pass through the room or area to get to any emergency exit.

2. Glass items integrated into a functional device whose operation is dependent upon the characteristics of glass, such as instrument or indicator protective transparencies, or monitor screens such as liquid crystal display (LCD) or plasma displays. These glass items maybe installed in any area in the cabin regardless of occupancy during taxi, take-off, and landing. Acceptable means for these items may depend on the size and specific location of the device.

3. Small glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas

that occupants do have to enter or pass through to get to any emergency exit. For the purposes of these special conditions, a small glass item is less than 4 kg in mass, or a group of glass items weighing less than 4 kg in mass.

The glass items in numbers one, two, and three (above) have been restricted to applications where the potential for injury is either highly localized (such as instrument faces) or the location is such that injury due to failure of the glass is unlikely (*e.g.*, mirrors in lavatories). These glass items are subject to the inertia loads contained in § 25.561 and maximum positive differential pressure for items like monitors, but are not subject to these proposed special conditions. They have been found acceptable through project specific means of compliance requiring testing to meet the requirement § 25.785(d), and by adding a protective polycarbonate layer that covers the glass exposed to the cabin.

The use of glass in airplanes utilizes the one unique characteristic of glass, its capability for undistorted or controlled light transmittance, or transparency. Glass, in its basic form as annealed, untreated sheet, plate, or float glass, when compared to metals, is extremely notch-sensitive, has a low fracture resistance, has a low modulus of elasticity, and can be highly variable in its properties. While reasonably strong, it is not a desirable material for traditional aircraft applications because, as a solo component, it is heavy (about the same density as aluminum). In addition, when glass fails, it can break into extremely sharp fragments that have the potential for injury above and beyond simple impact, and have been known to be lethal.

The proposed special conditions address installing glass in much larger sizes than previously accepted and in a multitude of locations and applications, instead of using more traditional aircraft materials. In most, if not all cases, the glass will not be covered with a polycarbonate layer. Additionally, the retention of glass of this size and weight is not amenable to conventional techniques currently utilized in airplane cabins.

The proposed special conditions consider the unusual material properties of glass as an interior material that have limited or prevented its use in the past, and address the performance standards needed to ensure that those properties do not reduce the level of safety intended by the regulations. They address the use of large glass items installed in occupied rooms or areas during taxi, take off, and landing, or rooms or areas that occupants do have to enter or pass through to get to any emergency exit.

The proposed special conditions define a large glass component threshold of 4 kg, which is based on an assessment of the mass dislodged during a high ''g'' level (as defined in § 25.562) event. Groupings of glass components that total more than 4 kg would also need to be included. The applicable performance standards in the regulations for the installation of these components also apply and should not adversely affect the standards provided below. For example, heat release and smoke density testing should not result in fragmentation of the component.

For large glass components mounted in a cabin occupied by passengers or crew that are not otherwise protected from the injurious effects of failure of the glass component, the following apply:

Material. The glass used must be tempered or otherwise treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. This must be demonstrated by testing to failure. Tests similar to ANSI/SAE Z26.1 section 5.7, Test 7 would be acceptable.

Fragmentation. The glass component construction must control the fragmentation of the glass to minimize the danger from flying glass shards or pieces. Impact and puncture testing to failure must demonstrate this. Tests similar to ANSI/SAE Z26.1 section 5.9, Test 9 adjusted to ensure cracking the glass would be acceptable.

Strength. The glass component, as installed in the airplane, must be strong enough to meet the load requirements for all flight and landing loads and all of the emergency landing conditions in subparts C and D of part 25. In addition, glass components that are located such that they are not protected from contact with cabin occupants must be designed for abusive loading without failure, such as impact from service carts, or occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact. This must be demonstrated by static structural testing to ultimate load except that the critical loading condition must be tested to failure. The tested glass component must have all features that affect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth.

Retention. The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. Based on the characteristics of a large glass component, dynamic tests should be performed to demonstrate that the occupants would be protected up to the load levels required by the certification basis of the airplane. A single test for the most critical loading for the installed component would be sufficient. This may be accomplished by using already accepted methods for dynamic testing.

Analysis may be used in lieu of testing if the applicant has validated the strength models and dynamic simulation models used, against static tests to failure and dynamic testing to the above requirements, and can predict structural failure and dynamic response and inertial load. The glass material properties must meet § 25.613, ''Material strength properties and material design values.'' The effect of design details such as geometric discontinuities or surface finish must be accounted for in the test/analysis.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 747–400 airplane. Should Lufthansa Technik apply at a later date for a supplemental type certificate to modify any other model included on the same Type Certificate No. A20WE to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 747–400 modified by Lufthansa Technik AG. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the certification basis for the Boeing Model 747–400 airplane, modified by Lufthansa Technik AG. For these special conditions, a large glass component is 4 kg (approximately 10 pounds) and greater in mass, or a grouping of glass components that total more than 4 kg.

1. *Material Fragmentation.* The glass used to fabricate the component must be tempered or treated to ensure that when fractured, it breaks into small pieces with relatively dull edges. In addition, it must be shown that fragmentation of

the glass is controlled to reduce the danger from flying glass shards or pieces. This must be demonstrated by testing to failure.

2. *Component Strength.* The glass component must be strong enough to meet the load requirements for all flight and landing loads including any of the applicable emergency landing conditions in subparts C & D of part 25. Abuse loading without failure, such as impact from occupants stumbling into, leaning against, sitting on, or performing other intentional or unintentional forceful contact must also be demonstrated. This must be demonstrated by static structural testing to ultimate load, except that the critical loading condition must be tested to failure in the as-installed condition. The tested glass must have all features that effect component strength, such as etched surfaces, cut or engraved designs, holes, and so forth. Glass pieces must be non-hazardous.

3. *Component Retention.* The glass component, as installed in the airplane, must not come free of its restraint or mounting system in the event of an emergency landing. A test must be performed to demonstrate that the occupants would be protected from the effects of the component failing or becoming free of restraint under dynamic loading. The dynamic loading of § 25.562(b)(2) is considered an acceptable dynamic event. The applicant may propose an alternate pulse, however, the impulse and peak load may not be less than that of § 25.562(b)(2). As an alternative to a dynamic test, static testing may be used if the loading is assessed as equivalent or more critical than a dynamic test, based upon validated dynamic analysis. Both the primary directional loading and rebound conditions need to be assessed.

4. *Instruction for Continued Airworthiness.* The instruction for continued airworthiness will reflect the fastening method used and will ensure the reliability of the methods used (*e.g.*, life limit of adhesives, or clamp connection). Inspection methods and intervals will be defined based upon adhesion data from the manufacturer of the adhesive or actual adhesion test data if necessary.

Issued in Renton, Washington, on August 3, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15856 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20223; Directorate Identifier 2004–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

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

SUMMARY: The FAA is revising an earlier NPRM for an airworthiness directive (AD) that applies to certain EMBRAER Model EMB–135 and –145 series airplanes. The original NPRM would have required repetitive detailed inspections for surface bruising of the main landing gear (MLG) trailing arms and integrity of the MLG pivot axle sealant, and corrective actions if necessary; and would also have provided for optional terminating action for the repetitive inspections. The original NPRM was prompted by a report of a fractured axle of the trailing arm of the MLG due to corrosion of the axle. This action revises the original NPRM by expanding the applicability and by providing final terminating action for the repetitive detailed inspections. We are proposing this supplemental NPRM to prevent a broken trailing arm and consequent failure of the MLG, which could lead to loss of control and damage to the airplane during takeoff or landing.

DATES: We must receive comments on this supplemental NPRM by September 6, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

- 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.
- Fax: (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.

For service information identified in this proposed AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), PO Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20223; the directorate identifier for this docket is 2004–NM–193–AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–20223; Directorate Identifier 2004–NM–193–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

We will post all comments submitted, 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 supplemental NPRM. Using the search function of our docket Web site, anyone can find and read the comments in 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.). You can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in

person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level in the Nassif Building at the DOT street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an airworthiness directive (AD) (the ''original NPRM''). The original NPRM applies to certain EMBRAER Model EMB–135 and –145 series airplanes. The original NPRM was published in the **Federal Register** on February 1, 2005 (70 FR 5076). The original NPRM proposed to require repetitive detailed inspections for surface bruising of the main landing gear (MLG) trailing arms and integrity of the MLG pivot axle sealant, and corrective actions if necessary; and would also have provided for optional terminating action for the repetitive inspections.

Comments

We have considered the following comments on the original NPRM.

Request To Revise Applicability

One commenter, the manufacturer, notified us that the applicability as written would not ensure that the unsafe condition would be corrected on all airplanes. The commenter states that the airplanes listed by serial number in the service bulletin have a factory-delivered configuration; therefore, it could be possible to transfer an unsafe MLG from one of those airplanes to another airplane and propagate the unsafe condition. The commenter asserts that the unsafe condition will be corrected on all airplanes if the applicability refers to the MLG, not the actual airplane.

We agree that it is possible to transfer an unsafe MLG from an airplane not listed in the service bulletin. However, in such cases, it is our practice to identify the affected airplane model(s) in the applicability and require an inspection for affected part numbers. Accordingly, we have expanded the applicability of this supplemental NPRM to specify all Model EMB–135 and –145 airplanes and added an inspection of the MLGs of those airplanes to determine if a cardan having a certain part number is installed on the MLGs. In addition, we have added a new paragraph (j) to this supplemental NPRM to prohibit installation of the affected MLGs, unless certain actions required by this AD have been accomplished, which will preclude the transfer of unsafe MLGs from one airplane to another.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

The changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Costs of Compliance

This supplemental NPRM would affect about 488 airplanes of U.S. registry.

The proposed part number verification would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $31,720, or $65 per airplane.

The proposed inspection of the MLG trailing arm surface and pivot axle sealant would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed inspection for U.S. operators is $31,720, or $65 per airplane, per inspection cycle.

The proposed replacement of the MLG cardan and inspection of the internal surface of the MLG trailing arm pivot axle would take about 1 work hour per MLG (two MLGs per airplane), at an average labor rate of $65 per work hour. Required parts would cost about $3,500 per cardan. Based on these figures, the estimated cost of the proposed actions for U.S. operators is $3,479,440, or $7,130 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 regulatory evaluation of the estimated costs to comply with this supplemental NPRM. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2005–20223; Directorate Identifier 2004–NM–193–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by September 6, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135BJ, –135ER, –135KE, –135KL,

–135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of a fractured axle of the trailing arm of the main landing gear (MLG) due to corrosion of the axle. We are issuing this AD to prevent a broken trailing arm and consequent failure of the MLG, which could lead to loss of control and damage to the airplane during takeoff or landing.

Compliance

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

Part Number Verification

(f) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, inspect the left and right MLG to determine whether cardan assembly part number (P/N) 2309–2041–003 is installed. A review of airplane maintenance records is acceptable in lieu of this inspection if the P/N of the cardan assembly can be conclusively determined from that review. If cardan P/N 2309–2041–003 is not installed in the MLG, no further action is required for that MLG, except as provided by paragraph (i) of this AD. If cardan P/N 2309–2041–003 is installed in the MLG, continue with paragraph (g) of this AD.

Inspection

(g) Within 600 flight hours or 180 days after the effective date of this AD, whichever occurs first, perform a detailed inspection for surface bruising of the MLG trailing arms and integrity of the MLG pivot axle sealant; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0091, Change 01, dated July 1, 2004. If no sign of sealant failure or bruising of the trailing arm is found, repeat the inspection thereafter at intervals not to exceed 5,500 flight hours or 24 months, whichever occurs first, until paragraph (h) of this AD has been accomplished.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Corrective/Terminating Actions

(h) If any sign of sealant failure or bruising of either trailing arm surface is found, prior to further flight, do paragraphs (h)(1), (h)(2), and (h)(3) of this AD. Do the actions in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0091, Change 01, dated July 1, 2004. Accomplishment of paragraph (h) of this AD for any MLG ends the repetitive inspections required by paragraph (g) of this AD for that MLG.

(1) Repair any bruising of the trailing arm surface.

(2) Replace the MLG cardan with a new, improved cardan having P/N 2309–2041–401.

(3) Perform a detailed inspection for corrosion of the internal surface of the trailing arm pivot axle.

(i) If no corrosion is found, prior to further flight, apply protective paint and corrosion inhibitors.

(ii) If corrosion is found, prior to further flight, replace the pivot axle with a new pivot axle and apply corrosion inhibitors.

Note 2: EMBRAER Service Bulletin 145–32–0091, Change 01, dated July 1, 2004, refers to Embraer Liebherr Equipamentos do Brasil S.A. (ELEB) Service Bulletin 2309–2002–32–04, Revision 01, dated May 24, 2004, as an additional source of service information for the inspection and repair of the MLG components. The ELEB service bulletin is included within the EMBRAER service bulletin.

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD according to EMBRAER Service Bulletin 145–32–0091, dated February 19, 2004, are considered acceptable for compliance with the corresponding actions specified in this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install an MLG having a cardan assembly, part number 2309–2041–003, on any affected airplane, unless the requirements of paragraphs (f), (g), and (h) of this AD, as applicable, have been accomplished.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) Brazilian airworthiness directive 2004–08–02, dated September 3, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on August 3, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15880 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22062; Directorate Identifier 2003–NM–219–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 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 all McDonnell Douglas airplanes identified above. This proposed AD would require a one-time inspection of the aft attach fitting assembly of the spoiler link to determine the part number, and further investigative action and replacement of the assembly with a new or serviceable assembly, if necessary. This proposed AD results from a determination that the holes of certain aft attach fitting assemblies of the spoiler link were not cold-worked during production. We are proposing this AD to prevent fatigue cracking of the aft attach fitting of the spoiler link and consequent failure of the fitting. Failure of the fitting could result in an asymmetrical lift condition and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by September 26, 2005.

ADDRESSES: Use one of the following addresses 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.
- *By fax:* (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.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach,

California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); or Aerotech Engineering, Inc., 19655 Descartes, Foothill Ranch, California 92610; for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5233; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number ''FAA–2005–22062; Directorate Identifier 2003–NM–219–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://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 AD. Using the search function of that Web site, anyone can find and read the comments in 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.). You may review 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.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

We have received a report indicating that the holes of certain aft attach fitting assemblies of the spoiler link were not cold-worked during production. The subject assemblies were manufactured by Aerotech Manufacturing, Inc. (AMI), under the authority of a Parts Manufacturing Approval, before January 8, 2003, and may be installed on any McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, or MD–90–30 airplanes. Cold-working of the holes increases the resistance of the fitting to fatigue cracking originating at the hole. Fatigue cracking of the aft attach fitting of the spoiler link, if not corrected, could cause the fitting to fail. Failure of the fitting could result in an asymmetrical lift condition and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003. The service bulletin describes procedures for a one-time inspection of the aft attach fitting assembly of the spoiler link to determine if the assembly was manufactured by AMI. The service bulletin also describes procedures for replacement of any assembly manufactured by AMI with a new or serviceable assembly that has a lot number that is not subject to this proposed AD. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

The service information specifies that the inspection of the aft attach fitting assembly of the spoiler link must be accomplished ''at the heavy maintenance visit whereby inspection of the spoiler system can be accomplished or before 10,000 flight hours are accumulated * * *.'' We find that this compliance time is not sufficiently precise to ensure that all affected assemblies will be inspected, and replaced if necessary, in a timely manner. Therefore, this proposed AD specifies a compliance time of prior to the accumulation of 10,000 total flight hours on the aft attach fitting assembly of the spoiler link, or within 18 months after the effective date of this AD, whichever is later.

Section 1.D., ''Description,'' of the service information describes procedures for inspecting the aft attach fitting assembly of the spoiler link to determine if it is an AMI fitting assembly. This proposed AD would require an inspection to determine the part number and, if necessary, the lot number, of the aft attach fitting assembly. We find that determining the part number, and the lot number, if necessary, is the most conclusive way to determine whether an installed fitting assembly is affected by the requirements of this proposed AD.

Clarification of Date of Original Issue of Service Bulletin

Page 1 of Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' shows that the date of the original issue of that service bulletin is January 29, 2003. However, subsequent pages of Revision ''A'' of the service bulletin show that the date of the original issue of the service bulletin was March 26, 2002. We have determined that the correct date of the original issue of Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139 is January 29, 2003.

Costs of Compliance

There are about 1,296 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 738 airplanes of U.S. registry. The proposed inspection to determine the part number of the aft attach fitting assembly of the spoiler link would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this proposed inspection for U.S. operators is $47,970, or $65 per airplane.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations

for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

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 FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2005–22062; Directorate Identifier 2003–NM–219–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 26, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), MD–88, and MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a determination that the holes of certain aft attach fitting assemblies of the spoiler link were not cold-worked during production. We are issuing this AD to prevent fatigue cracking of the aft attach fitting of the spoiler link and consequent failure of the fitting. Failure of the fitting could result in an asymmetrical lift condition and consequent reduced controllability of the airplane.

Compliance

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

Inspection

(f) Prior to the accumulation of 10,000 total flight hours on the aft attach fitting assembly of the spoiler link, or within 18 months after the effective date of this AD, whichever is later: Inspect the aft attach fitting assembly of the spoiler link to determine the part number, in accordance with Item 1.a). of Section 1.D., ''Description,'' of Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003.

(1) If the part number is not AMI3954558–1 or AMI3954558–501: No further action is required by this AD, but the provisions of paragraph (h) of this AD continue to apply.

(2) If the part number is AMI3954558–1 or AMI3954558–501: Before further flight, inspect the aft attach fitting assembly of the spoiler link to determine the lot number, then determine if the lot number is identified in the ''Lot Number'' column of the table in Section 1.A.1. of the service bulletin. If the lot number is not identified in the service bulletin, no further action is required by this AD, but the provisions of paragraph (h) of this AD continue to apply.

Replacement

(g) If the part number of the aft attach fitting assembly of the spoiler link is AMI3954558–1 or AMI3954558–501, and the lot number is identified in the ''Lot Number'' column of the table in Section 1.A.1. of Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003: Before further flight, replace the assembly with a new or serviceable assembly having a lot number that is not identified in the ''Lot Number'' column of the table in Section 1.A.1. of the service bulletin, in accordance with Item 1.b). of Section 1.D., ''Description,'' of the service bulletin.

Parts Installation

(h) As of the effective date of this AD, no person may install, on any airplane, an aft attach fitting assembly of the spoiler link having part number AMI3954558–1 or AMI3954558–501, and having a lot number identified in the ''Lot Number'' column of the table in Section 1.A.1. of Aerotech Manufacturing, Inc., Service Bulletin DC9–27–01–AMI5139, Revision ''A,'' dated June 19, 2003.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 3, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–15881 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

RIN 0960–AD78

Revised Medical Criteria for Evaluating Endocrine Disorders

AGENCY: Social Security Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are planning to update and revise the rules we use to evaluate endocrine disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Social Security Act (the Act). The rules we plan on revising are sections 9.00 and 109.00 in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations (the listings). We invite you to send us comments and suggestions for updating and revising these rules.

After we have considered your comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating endocrine disorders, and our program experience, we intend to publish for public comment a Notice of Proposed Rulemaking (NPRM) that will propose specific revisions to the rules.

As part of our long-term planning for the disability programs, we are also interested in your ideas about how we may be able to improve our programs for people who have endocrine disorders, especially those who would like to work.

DATES: To be sure your comments are considered, we must receive them by October 11, 2005.

ADDRESSES: You may give us your comments by: using our Internet site

facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov*; e-mail to *regulations@ssa.gov*; telefax to (410) 966–2830, or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted in our Internet site at *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online) at: *http://policy.ssa.gov/pnpublic.nsf/LawsRegs*.

FOR FURTHER INFORMATION CONTACT: Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–0020 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of This Notice?

We are planning to update and revise the rules that we use to evaluate endocrine disorders of adults and children who apply for, or receive, disability benefits under title II and Supplemental Security Income (SSI) payments based on disability under title XVI of the Act. The purpose of this notice is to give you an opportunity to send us comments and suggestions for updating and revising those rules as we begin the rulemaking process. We are also asking for your comments and ideas about how we can improve our disability programs in the future for people with endocrine disorders.

Who Should Send Us Comments and Suggestions?

We invite comments and suggestions from anyone who has an interest in the rules we use to evaluate claims for benefits filed by people who have endocrine disorders. We are interested in getting comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who advocate for people who have endocrine disorders, experts in the evaluation of endocrine diseases, researchers, people who make disability determinations and decisions for us, and any other individuals who may have ideas for us to consider.

Will We Respond to Your Comments From This Notice?

We will not respond directly to comments you send us because of this notice. However, after we consider your comments in response to this notice, along with other information such as results of current medical research and our program experience, we will decide how to revise the rules we use to evaluate endocrine disorders. When we propose specific revisions to the rules, we will publish an NPRM in the **Federal Register**. In accordance with the usual rulemaking procedures we follow, you will have a chance to comment on the revisions we propose when we publish the NPRM, and we will summarize and respond to the significant comments on the NPRM in the preamble to any final rules.

Which Rules Are We Considering for Updating and Revision?

We are considering two sections of our listings for updating and revision, sections 9.00 and 109.00. These are the listings for endocrine disorders in adults (Part A, 9.00) and children (Part B, 109.00). They include, but are not limited to, such impairments as thyroid disorders, hyperparathyroidism, hypoparathyroidism, neurohypophyseal insufficiency (diabetes insipidus), hyperfunction of the adrenal cortex, adrenal cortical insufficiency, diabetes mellitus, iatrogenic hypercorticoid state, pituitary dwarfism, adrenogenital syndrome, hypoglycemia, and gonadal dysgenesis (Turner's syndrome).

Where Can You Find These Rules on the Internet?

You can find these rules on our Internet site at these locations:

- Sections 9.00 and 109.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm*.
- You can also look up sections 9.00 and 109.00 of the listings at *http://www.ssa.gov/disability/professionals/bluebook/*.
- If you do not have Internet access, you can find the Code of Federal Regulations in some public libraries, Federal depository libraries, and public law libraries.

Why Are We Updating and Revising Our Rules for Evaluating Endocrine Disorders?

On August 24, 1999, and April 24, 2002, we published final rules in the **Federal Register** that included revisions to some of the listings for endocrine disorders (64 FR 46122 and 67 FR 20018, respectively). Prior to that, we last published final rules making comprehensive revisions to the listings for endocrine disorders on December 6, 1985 (50 FR 50068).

The current listings for endocrine disorders for adults (9.00) and children (109.00) will no longer be effective on July 2, 2007, unless we extend them or revise and promulgate them again.

What Should You Comment About?

We are interested in any comments and suggestions you have about sections 9.00 and 109.00 of our listings. For example, with regard to our listings, we are interested in knowing if:

- You have concerns about any of the provisions in the current endocrine listings, including the provisions for diabetes mellitus in adults or children, such as whether you think we should change any of our criteria or whether you think a listing is difficult to use or understand.
- You would like to see our endocrine listings include something that they do not include now, such as conditions or new medical criteria that you believe should be added to the listings.
- You think these listings should include criteria for functional limitations and, if so, what those criteria should be.

In addition to your comments about our regulations, we are also interested in any ideas you have about how the disability requirements of the Act and our regulations affect people who have endocrine disorders, especially those who would like to work, full-time or part-time with supports. Your ideas can address our existing rules and regulations or suggest changes to the law. For example, we know that many people who have endocrine disorders might not need benefits from us if they could get treatment before their disorders make them unable to work. Others may be unable to work but may not need to stay out of work indefinitely if they could get treatment or other interventions. Many people with permanent impairments can work if they have a supporting safety net (including title II disability benefits and SSI payments). Work can also be

therapeutic for some people. Although the Act and our regulations include some access to health care through Medicare and Medicaid, some provisions for vocational rehabilitation, and a number of work incentives, these provisions are generally for people who already qualify for benefits under our disability programs.

We will consider your ideas as we develop the NPRM we intend to publish for public comment, and, where applicable, as part of our long-term planning for the disability program.

What Other Information Will We Consider?

We will also be considering information from other sources for relevance to our policy for evaluating endocrine disorders, including the following recent documents:

- American Diabetes Association: Standards of Medical Care in Diabetes (Position Statement). *Diabetes Care* 28 (Suppl. 1):S4–S36, 2005. This report is available at *http://care.diabetesjournals.org/cgi/content/full/28/suppl_1/s4.*
- Behrman, R.E., Kliegman, R.M., and Jenson, H.B. (Eds.) (2004). Nelson Textbook of Pediatrics. Philadelphia, PA: Elsevier Science (USA).
- Goldman L. and D. Ausiello (eds). Cecil Textbook of Medicine (22nd edition). Saunders, Philadelphia, 2004.
- Silverstein J, Klingensmith G, Copeland K, Plotnick L, Kaufman F, Laffel L, Deeb L, Grey M, Anderson B, Holzmeister LA, Clark N: Care of Children and Adolescents With Type 1 Diabetes: A Statement of the American Diabetes Association. *Diabetes Care* 28:186–212, 2005. This report is available at *http://care.diabetesjournals.org/cgi/content/full/28/1/186?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&andorexactfulltext=and&searchid=1112384792902_7205&stored_search=&FIRSTINDEX=0&sortspec=relevance&volume=28&firstpage=186&resourcetype=1&journalcode=diacare.*

Other Information

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see § 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	and you are . . .	disability means you have a medically determinable impairment(s) as described above and that results in . . .
title II	an adult or child	the inability to do any substantial gainful activity (SGA).
title XVI	a person age 18 or older	the inability to do any SGA.
title XVI	a person under age 18	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

If you are seeking benefits under title II of the Act, or if you are an adult seeking benefits under title XVI of the Act, we use a five-step ''sequential evaluation process'' to decide whether you are disabled. We describe this five-step process in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a ''severe'' impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or medically equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Do you have the residual functional capacity to do your past relevant work? If you do, we will find that you are not disabled. If you do not, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work that exists in significant numbers in the national economy, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use a different sequential evaluation process for children who apply for payments based on disability under title XVI of the Act. We describe that sequential evaluation process in § 416.924 of our regulations. If you are already receiving benefits, we also use a different sequential evaluation process when we decide whether your disability continues. See §§ 404.1594, 416.994, and 416.994a of our regulations. However, all of these sequential evaluation processes include a step at which we consider whether your impairment(s) meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI payments based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our regulations, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are a person age 18 or over, we apply the listings in part

A when we assess your claim, and we never use the listings in part B.

If you are a person under age 18, we first use the criteria in part B of the listings. If the listings in part B do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What if You Do Not Have an Impairment(s) That Meets or Medically Equals a Listing?

We use the listings only to decide that you are disabled or that you are still disabled. We will never deny your claim or decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing. If you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the ''sequential evaluation process'' described above. Likewise, we will not decide that your disability has ended only because your impairment(s) does not meet or medically equal a listing.

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: June 30, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 05–15905 Filed 8–10–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AT98

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2006–2007 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods and means related to taking of wildlife for subsistence uses during the 2006–2007 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife taking regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2005–2006 Subsistence Taking of Fish and Wildlife Regulations,'' which expire on June 30, 2006. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of wildlife.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 21, 2005. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule on several dates starting from September 20, 2005, through October 21, 2005. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings including dates.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following locations and on the following dates in Alaska:

Region 1—Southeast Regional Council, Wrangell, October 11, 2005.

Region 2—Southcentral Regional Council, Seldovia, October 19, 2005.

Region 3—Kodiak/Aleutians Regional Council, Cold Bay, September 20, 2005.

Region 4—Bristol Bay Regional Council, Dillingham, October 6, 2005.

Region 5—Yukon-Kuskokwim Delta Regional Council, Bethel, October 13, 2005.

Region 6—Western Interior Regional Council, McGrath, October 4, 2005.

Region 7—Seward Peninsula Regional Council, Nome, October 13, 2005.

Region 8—Northwest Arctic Regional Council, Kotzebue, October 7, 2005.

Region 9—Eastern Interior Regional Council, Tanana, October 10, 2005.

Region 10—North Slope Regional Council, Kaktovik, October 20, 2005.

Specific times and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings. The agenda of each Regional Council meeting will include a review of wildlife issues in the Region, discussion and development of recommendations on fishery proposals for the Region, and staff briefings on matters of interest to the Council.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov.* Please submit as MS Word files, avoiding the use of any special characters and any form of encryption.

During November 2005, we will compile the written proposals to change Subpart D hunting and trapping

regulations and customary and traditional use determinations in Subpart C and distribute them for additional public review. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 6, 2006.

A second series of Regional Council meetings will be held in February and March 2006, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 16–18, 2006. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

Please Note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2006.

The Board's review of your comments and wildlife proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which you are suggesting changes; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in __.24, Subpart C and §§ __.25 or __.26, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA.

However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised February 18, 2003 (68 FR 7703), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition consists of a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A and B and the annual Subpart C and D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2004) and 50 CFR 100.11 (2004), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2006.

Proposed Changes from 2004–2005 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§__.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2005–2006 Subparts C and D final rule published June 22, 2005 (70 FR 36268), serves as the foundation for the 2006–2007 Subparts C and D proposed rule. The regulations contained in this proposed rule would take effect on July 1, 2006, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act: A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940; May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and has therefore signed a Finding of No Significant Impact.

Section 810 of ANILCA: A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act: This proposed rule does not contain any information collections for which OMB approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal Agencies 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.

Economic Effects: This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide.

Regulatory Flexibility Act: The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Executive Order 12630: Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act: The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988: The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132: In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife

resources on Federal lands unless it meets certain requirements.

Government-to-Government Relations with Native American Tribal Governments: 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 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Energy Effects: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information: Bill Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, Alaska Regional Office, USDA—Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2006–07 regulatory year. The text of the amendments would be the same as the final rule for the 2005–06 regulatory year published in the **Federal Register** of 70 FR 36268, June 22, 2005.

Dated: July 25, 2005.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: July 27, 2005.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 05–15884 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–316–0484b; FRL–7948–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) portions of the California State Implementation Plan (SIP). These revisions concern visible emissions of a variety of pollutants and sources. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 12, 2005.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the locations listed below.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, at either (415) 947–4111, or *wamsley.jerry@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal concerns the following local rules: SJVUAPCD Rule 4101—Visible Emissions and MBUAPCD Rule 400—Visible Emissions. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 25, 2005.

Laura K. Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 05–15832 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[RO3–OAR–2005–MD–0007; FRL–7951–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Maryland; Control of Emissions From Small Municipal Waste Combustor (SMWC) Units; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Maryland Department of the Environment's (MDE) request for delegation of authority to implement

and enforce the Federal plan (68 FR 5144, January 31, 2003) for small municipal waste combustor (MWC) units under sections 111(d) and 129 of the Clean Air Act (the ''Act''). The request for delegation was submitted as a means to fulfill requirements of the Clean Air Act (the Act). In the Final Rules section of this **Federal Register**, EPA is approving Maryland's delegation request as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 12, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number RO3–OAR–2005–MD–0007 by one of the following methods:

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

B. *Agency Web site: http://www.docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. *E-mail: http://wilkie.walter@epa.gov*.

D. *Mail:* RO3–OAR–2005–MD–0007, Walter Wilkie, Chief, Air Quality Analysis Branch, Mailcode 3 AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

E. *Hand Delivery:* At the previously listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to RME ID No. RO3–OAR–2005–MD–0007. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov or e-mail. The EPA RME and the Federal regulations.gov Web sites are an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://www.docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, P.E., at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: August 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–15921 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7951–2]

Ohio: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Ohio has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is proposing to authorize the State's changes through this proposed final action.

DATES: Written comments must be received on or before September 12, 2005.

ADDRESSES: Send written comments to Gary Westefer, Ohio Regulatory Specialist, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please refer to Docket Number OH ARA 6. We must receive your comments by September 12, 2005. You can view and copy Ohio's application from 9 a.m. to 4 p.m. at the following addresses: Ohio Environmental Protection Agency, Lazarus Government Center, 122 South Front Street, Columbus, Ohio, (mailing address P.O. Box 1049, Columbus, Ohio 43216) contact Kit Arthur (614) 644–2932; and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Ohio Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the

changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Ohio's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Ohio Final authorization to operate its hazardous waste program with the changes described in the authorization application. Ohio has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Ohio, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Ohio subject to RCRA will now have to comply with the authorized State requirements (listed in section F of this action) instead of the equivalent Federal requirements in order to comply with RCRA. Ohio has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Ohio is being authorized by today's action are already effective, and are not changed by today's action.

D. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Ohio Previously Been Authorized for?

Ohio initially received Final authorization on June 28, 1989, effective June 30, 1989 (54 FR 27170) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on April 8, 1991, effective June 7, 1991 (56 FR 14203) as corrected June 19, 1991, effective August 19, 1991 (56 FR 28088); July 27, 1995, effective September 25, 1995 (60 FR 38502); October 23, 1996, effective December 23, 1996 (61 FR 54950); and January 24, 2003, effective January 24, 2003 (68 FR 3429).

F. What Changes Are We Authorizing With Today's Action?

On October 18, 2004, Ohio submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision, subject to receipt of written comments that oppose this action, that Ohio's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we propose to grant Ohio Final authorization for the following program changes:

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Listing of Spent Pickle Liquor (K062) Correction 2. Checklist 26.2.	August 3, 1987, 52 FR 28697.	Ohio Administrative Code (OAC) 3745–51–32; Effective December 28, 1987.
Standards For Generators; Waste Minimization Certifications. Checklist 32.	October 1, 1986, 51 FR 35190.	OAC 3745–52–20; Effective December 30, 1989.
HSWA Codification Rule 2; Permit Modification. Checklist 44D.	December 1, 1987, 52 FR 45788.	OAC 3745–50–51; Effective June 15, 1992.
HSWA Codification Rule 2; Post-Closure Permits. Checklist 44G.	December 1, 1987, 52 FR 45788.	OAC 3745–50–45; Effective September 2, 1997.
Land Disposal Restriction Amendments to First Third Scheduled Wastes (Technical Correction to Checklist 50). Checklist 62.	May 2, 1989, 54 FR 18836	OAC 3745–270–40; Effective February 11, 1992 Renumbered from OAC 3745–59–40 on December 7, 2000.
Wood Preserving Listings. Checklist 82	December 6, 1990, 55 FR 50450.	OAC 3745–50–44; 3745–51–04; 3745–51–11; 3745–51–20; 3745–51–30; 3745–51–31; 3745–51–35; 3745–52–34; 3745–55–90; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–57–84; 3745–57–85; 3745–66–90; 3745–69–40; 3745–69–41; 3745–69–42; 3745–69–43; 3745–69–44; 3745–69–45; Effective September 2, 1997.
Wood Preserving Listing; Technical Correction. Checklist 92.	July 1, 1991, 56 FR 30192	OAC 3745–50–44; 3745–51–04; 3745–51–35; 3745–52–34; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–57–84; 3745–57–85; 3745–69–40; 3745–69–43; Effective September 2, 1997.
Land Disposal Restrictions for Electric Arc Furnace Dust (K061). Checklist 95.	June 8, 2000, 56 FR 41164	OAC 3745–51–03; 3745–51–04; 3745–270–40; 3745–270–42; Effective February 14, 1995 and September 2, 1997.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Second Correction to the Third Third Land Disposal Restrictions. Checklist 102 as amended Checklist 102.1.	March 6, 1992, 57 FR 8086 March 17, 1993, 58 FR 14317.	OAC 3745–54–13; 3745–65–13; 3745–270–03; 3745–270–40; 3745–270–42; Effective December 7, 2000.
Hazardous Debris Case-by-Case Capacity Variance. Checklist 103.	May 15, 1992, 57 FR 20766.	OAC 3745–270–35; Effective December 7, 2000.
Lead Bearing Hazardous Materials Case-by-Case Capacity Variance. Checklist 106.	June 26, 1992, 57 FR 28628.	OAC 3745–270–35; Effective December 7, 2000.
Toxicity Characteristics Revision; Technical Corrections. Checklist 108.	July 10, 1992, 57 FR 30657	OAC 3745–51–04; 3745–68–011; Effective February 14, 1995, and September 2, 1997.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris. Checklist 109.	August 18, 1992, 57 FR 37194.	OAC 3745–50–10; 3745–50–43; 3745–50–44; 3745–50–51; 3745–51–03; 3745–52–34; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–40; 3745–55–42; 3745–66–10; 3745–66–11; 3745–66–12; 3745–66–40; 3745–66–42; 3745–67–21; 3745–218–01; 3745–218–011; 3745–218–02; 3745–248–01; 3745–248–011; 3745–248–02; 3745–270–02; 3745–270–05; 3745–270–07; 3745–270–09; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–50; Effective December 7, 2000.
Recycled Used Oil Management Standards. Checklist 112.	September 10, 1992, 57 FR 41566.	OAC 3745–50–10; 3745–51–03; 3745–51–05; 3745–51–06; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–20; 3745–279–21; 3745–279–22; 3745–279–23; 3745–279–24; 3745–279–30; 3745–279–31; 3745–279–32; 3745–279–40; 3745–279–41; 3745–279–42; 3745–279–43; 3745–279–44; 3745–279–45; 3745–279–46; 3745–279–47; 3745–279–50; 3745–279–51; 3745–279–52; 3745–279–53; 3745–279–54; 3745–279–55; 3745–279–56; 3745–279–57; 3745–279–58; 3745–279–59; 3745–279–60; 3745–279–61; 3745–279–62; 3745–279–63; 3745–279–64; 3745–279–65; 3745–279–66; 3745–279–67; 3745–279–70; 3745–279–71; 3745–279–72; 3745–279–73; 3745–279–74; 3745–279–75; 3745–279–80; 3745–279–81; 3745–279–82; Effective October 20, 1998.
Hazardous Soil Case–by–Case Capacity Variance. Checklist 116.	October 20, 1992, 57 FR 47772.	OAC 3745–270–35; Effective December 7, 2000.
Mixture and Derived From Rules; Response to Court Remand. Checklist 117A.	March 3, 1992, 57 FR 7628	OAC 3745–51–03; Effective December 7, 2000.
Mixture and Derived From rules; Technical Correction. Checklist 117A.1.	June 1, 1992, 57 FR 23062	OAC 3745–51–03; Effective December 7, 2000.
Mixture and Derived From Rules; Final Rule. Checklist 117A.2.	October 20, 1992, 57 FR 49278.	OAC 3745–51–03; Effective December 7, 2000.
Wood Preserving: Amendments to Listings and Technical Requirements. Checklist 120.	December 24, 1992, 57 FR 61492.	OAC 3745–51–31; 3745–57–80; 3745–57–81; 3745–57–82; 3745–57–83; 3745–69–40; 3745–69–41; 3745–69–42; 3745–69–43; Effective September 2, 1997.
Recycled Used Oil Management Standards; Technical Amendments and Corrections. Checklist 122 as Amended checklist 122.1.	May 3, 1993, 58 FR 26420 June 17, 1993, 58 FR 33341.	
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case–by–Case Capacity Variance Checklist 123.	May 14, 1993, 58 FR 28506.	OAC 3745–270–35; Effective December 7, 2000.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated. Checklist 124.	May 24, 1993, 58 FR 29860.	OAC 3745–50–51; 3745–54–01; 3745–65–01; 3745–270–01; 3745–270–02; 3745–270–07; 3745–270–09; 3745–270–37; 3745–270–40; 3745–270–42; Effective December 7, 2000.
Hazardous Waste Identification and Listing of Hazardous Waste; Recycled Used Oil Management Standards. Checklist 130.	March 4, 1994, 59 FR 10550.	OAC 3745–279–01; 3745–279–10; 3745–279–20; 3745–279–41; 3745–279–44; 3745–279–46; 3745–279–53; 3745–279–63; Effective October 20, 1998.
Hazardous Waste Management System; Correction of Listing of P015–Berylium Powder. Checklist 134.	June 20, 1994, 59 FR 31551.	OAC 3745–51–11; 3745–51–33; 3745–270–42; Effective September 2, 1997.
Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Final Rule. Checklist 136.	August 24, 1994, 59 FR 43496.	OAC 3745–266–20; 3745–270–40; Effective December 7, 2000.
Land Disposal Restrictions Phase II—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristics Wastes and Newly Listed Waste. Checklist 137 as amended Checklist 137.1.	September 19, 1994, 59 FR 47982. January 3, 1995, 60 FR 242.	OAC 3745–50–23; 3745–50–24; 3745–50–26; 3745–51–02; 3745–54–01; 3745–65–01; 3745–266–20; 3745–266–23; 3745–270–01; 3745–270–02; 3745–270–07; 3745–270–09; 3745–270–38; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–48; 3745–270–49; Effective December 7, 2000.
Universal Waste Rule; Administrative Requirements (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule. Checklist 142A.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–05; 3745–51–09; 3745–52–10; 3745–52–11; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–03; 3745–273–05; 3745–273–06; 3745–273–10; 3745–273–11; 3745–273–12; 3745–273–14; 3745–273–15; 3745–273–16; 3745–273–17; 3745–273–18; 3745–273–19; 3745–273–20; 3745–273–30; 3745–273–31; 3745–273–32; 3745–273–34; 3745–273–35; 3745–273–36; 3745–273–37; 3745–273–38; 3745–273–39; 3745–273–40; 3745–273–50; 3745–273–51; 3745–273–52; 3745–273–53; 3745–273–54; 3745–273–55; 3745–273–56; 3745–273–60; 3745–273–61; 3745–273–62; 3745–273–70; Effective September 2, 1997 and October 20, 1998.
Universal Waste Rule; Covered Batteries (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule. Checklist 142B.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–06; 3745–51–09; 3745–54–01; 3745–65–01; 3745–266–80; 3745–270–01; 3745–273–01; 3745–273–02; 3745–273–06; 3745–273–13; 3745–273–14; 3745–273–33; 3745–273–34; Effective September 2, 1997.
Universal Waste Rule; Covered Pesticides (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule. Checklist 142C.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–03; 3745–273–06; 3745–273–13; 3745–273–14; 3745–273–32; 3745–273–33; 3745–273–34; Effective September 2, 1997.
Universal Waste Rule; Covered Thermostats (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule. Checklist 142D.	May 11, 1995, 60 FR 25492.	OAC 3745–50–10; 3745–50–45; 3745–51–09; 3745–54–01; 3745–65–01; 3745–270–01; 3745–273–01; 3745–273–04; 3745–273–06; 3745– 273–13; 3745–273–14; 3745–273–33; 3745–273–34; Effective September 2, 1997.
Universal Waste Rule; Petitions to Include Other Wastes (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Final Rule. Checklist 142E.	May 11, 1995, 60 FR 25492.	OAC 3745–50–20; 3745–273–80; 3745–273–81; Effective September 2, 1997.
Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners. Checklist 151 as Amended; Checklist 151.1 as Amended; Checklist 151.2 as Amended; Checklist 151.3 as Amended; Checklist 151.4 as Amended; Checklist 151.5 as Amended; and Checklist 151.6.	April 8, 1996, 61 FR 15566 April 8, 1996, 61 FR 15660; April 30, 1996, 61 FR 19117; June 28, 1996, 61 FR 33680; July 10, 1996, 61 FR 36419; August 26, 1996, 61 FR 43924; and February 19, 1997, 62 FR 7502.	OAC 3745–270–01; 3745–270–02; 3745–270–03; 3745–270–07; 3745–270–09; 3745–270–39; 3745–270–40; 3745–270–42; 3745–270–44; 3745–270–48; Effective December 7, 2000.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs. Checklist 153.	July 1, 1996, 61 FR 34252	OAC 3745–51–05; Effective December 7, 2000.
Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance. Checklist 155.	January 14, 1997, 62 FR 1992.	OAC 3745–270–39; Effective December 7, 2000.

TABLE 1.—OHIO'S ANALOGS TO THE FEDERAL REQUIREMENTS—Continued

Description of federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous state authority
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions from RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions. Checklist 157.	May 12, 1997, 62 FR 25998.	OAC 3745–51–01; 3745–51–02; 3745–51–04; 3745–51–06; 3745–270–01; 3745–270–04; 3745–270–07; 3745–270–09; 3745–270–30; 3745–270–40; 3745–270–42; 3745–270–44; Effective December 7, 2000.
Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions. Checklist 159.	June 17, 1997, 62 FR 32974.	OAC 3745–51–11; 3745–51–30; 3745–51–32; 3745–51–33; 3745–270–39; 3745–270–40; Effective December 7, 2000.
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance. Checklist 160.	July 14, 1997, 62 FR 37694	OAC 3745–270–39; Effective December 7, 2000.
Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production. Checklist 161.	August 28, 1997, 62 FR 45568.	OAC 3745–270–40; 3745–270–48; Effective December 7, 2000.
Clarification of Standards for Hazardous Waste LDR Treatment and Clarification. Checklist 162.	December 5, 1997, 62 FR 64504.	OAC 3745–270–44; Effective December 7, 2000.
Recycled Used Oil Management Standards; Technical Correction and Clarification Checklist 166 as Amended. Checklist 166.1.	May 6, 1998, 63 FR 24963 July 14, 1998, 63 FR 37780	OAC 3745–51–05; 3745–51–06; 3745–270–10; 3745–270–22; 3745–270–45; 3745–270–54; 3745–270–64; 3745–270–74; Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes. Checklist 167A.	May 26, 1998, 63 FR 28556.	OAC 3745–270–02; 3745–270–03; 3745–270–34; 3745–270–40; 3745–270–48; Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions. Checklist 167B.	May 26, 1998, 63 FR 28556.	OAC 3745–270–02; 3745–270–07; 3745–270–44; 3745–270–49; Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Corrections Checklist 167C as amended. Checklist 167C.1.	May 26, 1998, 63 FR 28556. June 8, 1998, 63 FR 31266	OAC 3745–270–04; 3745–270–07; 3745–270–40; 3745–270–42; 3745–270–45; 3745–270–48; Effective December 7, 2000.
Mineral Processing Secondary Materials Exclusion. Checklist 167D.	May 26, 1998, 63 FR 28556.	OAC 3745–51–02; 3745–51–04; Effective December 7, 2000.
Bevill Exclusion Revisions and Clarification. Checklist 167E.	May 26, 1998, 63 FR 28556.	OAC 3745–51–03; 3745–51–04; Effective December 7, 2000.
Exclusion of Recycled Wood Preserving Wastewaters. Checklist 167F.	May 26, 1998, 63 FR 28556.	OAC 3745–51–04; Effective December 7, 2000.
Petroleum Refining Process Wastes. Checklist 169	August 6, 1998, 63 FR 42110.	OAC 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–30; 3745–51–31; 3745–51–32; 3745–270–35; 3745–270–40; Effective December 7, 2000.
Land Disposal Restrictions Phase IV; Zinc Micronutrient Fertilizers, Administrative Stay. Checklist 170.	August 31, 1998, 63 FR 46332.	OAC 3745–270–40; Effective December 7, 2000.
Emergency Revisions of LDR Treatment Standards for Listed Hazardous Wastes from Carbamate Production. Checklist 171.	September 4, 1998, 63 FR47409.	OAC 3745–270–40; 3745–270–48; Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Extension of Compliance Date. Checklist 172.	September 9, 1998, 63 FR 48124.	OAC 3745–270–34; Effective December 7, 2000.
Land Disposal Restrictions Treatment Standards for Spent Potliners from Primary Aluminum Production (K088). Checklist 173.	September 24, 1998, 63 FR 51254.	OAC 3745–270–39; 3745–270–40; Effective December 7, 2000.
Petroleum Refining Process Wastes; Exemption for Leachate from Non-Hazardous Waste Landfilld. Checklist 178.	February 11, 1999, 64 FR 6806.	OAC 3745–51–04; Effective December 7, 2000.
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards. Checklist 179.	May 11, 1999, 64 FR 25408.	OAC 3745–51–02; 3745–51–04; 3745–52–34; 3745–270–02; 3745–270–07; Corrections and 3745–270–09; 3745–270–40; 3745–270–48; 3745–270–49; Effective December 7, 2000.
Land Disposal Restrictions; Wood Preserving Wastes, Metal Wastes, Zinc Micronutrients Fertilizer, etc.; Correction. Checklist 183.	October 20, 1999, 64 FR 56469.	OAC 3745–51–32; 3745–52–34; 3745–270–07; 3745–270–40; 3745–270–49; Effective December 7, 2000.
Organobromine Production Wastes. Checklist 185	March 17, 2000, 65 FR 14472.	OAC 3745–51–11; 3745–51–30; 3745–51–32; 3745–51–33; 3745–270–40; 3745–270–48; Effective December 7, 2000.
Organobromine Production Wastes; Petroleum Refining Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Final Rule and Correcting Amendments. Checklist 187.	June 8, 2000, 65 FR 36365	OAC 3745–51–31; Effective December 7, 2000.
Sharing of Information with the Agency for Toxic Substances and Disease Registry. Checklist SI.	July 15, 1985	OAC 3745–49–031; 3745–50–30; Effective February 23, 1989 and December 30, 1989.

TABLE 2.—EQUIVALENT STATE-INITIATED CHANGES

Ohio Amendment	Description of Change	Sections Affected and Effective Date
HB435	HB435: permitting system, signed May 20, 1996.	OAC 3745–50–21; 3745–50–40; 3745–50–41; 3745–50–43; 3745–50–46; 3745–50–51; 3745–50–52; Effective July 14, 1997.
CL–UW	Housekeeping: universal waste set	OAC 3745–50–10; 3745–50–11; 3745–50–221; 3745–50–33 (broader in scope, see section G); 3745–50–44; 3745–50–45; 3745–50–62; 3745–51–03; 3745–51–04; 3745–51–06; 3745–51–11; 3745–51–21; 3745–51–22; 3745–51–23; 3745–51–24; 3745–51–30; 3745–51–31; 3745–51–35; 3745–52–11; 3745–52–34; 3745–52–41; 3745–52–54; 3745–54–01; 3745–54–13; 3745–54–73; 3745–54–97; 3745–54–98; 3745–55–41; 3745–55–43; 3745–55–45; 3745–55–47; 3745–55–51; 3745–55–92; 3745–55–97; 3745–55–98; 3745–57–14; 3745–57–16; 3745–58–70; 3745–65–01; 3745–65–73; 3745–65–90; 3745–65–91; 3745–66–14; 3745–66–43; 3745–66–45; 3745–66–47; 3745–66–94; 3745–66–98; 3745–67–73; 3745–68–14; 3745–68–16; 3745–69–06; Effective September 2, 1997.
HB647	HB647: hazardous waste transporter registration change, rule canges.	OAC 3745–53–11; Effective September 2, 1997.
CL–UO	Housekeeping: Used Oil Set	OAC 3745–50–10; 3745–50–34 (broader in scope, see section G); 3745–50–44; 3745- 50–45; 3745–50–51; 3745–50–57; 3745–50–58; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–10; 3745–52–10; 3745–52–11; 3745–52–32; 3745–52–34; 3745–52–41; 3745–54–01; 3745–54–13; 3745–54–90; 3745–54–91; 3745–54–99; 3745–55–01; 3745–55–12; 3745–55–42; 3745–55–75; 3745–56–50; 3745–56–80; 3745–59–07; 3745–59–09; 3745–65–01; 3745–65–15; 3745–65–33; 3745–68–83; Effective October 20, 1998.
CT–Batteries	DC Circuit Court of Appeals decision on battery recyclers v. U.S. EPA (April 21, 2000); supercedes part of May 26, 1998 amendments to 40 CFR Part 261.2(c)(3) and Table 1, column 3 heading.	OAC 3745–51–02; Effective December 7, 2000.
CL–LDR–1	Housekeeping: LDRs plus set	OAC 3745–49–031; 3745–50–10; 3745–50–11; 3745–50–311; 3745–50–40; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–48; 3745–50–50; 3745–50–51; 3745–50–57; 3745–50–314; 3745–51–01; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–51–06; 3745–51–07; 3745–51–08; 3745–51–09; 3745–51–20; 3745–52–10; 3745–52–11; 3745–52–34; 3745–52–41; 3745–52–54; 3745–52–70; 3745–53–12; 3745–54–01; 3745–54–03; 3745–54–11; 3745–54–12; 3745–54–13; 3745–54–14; 3745–54–16; 3745–54–17; 3745–54–18; 3745–54–73; 3745–54–74; 3745–54–77; 3745–55–011; 3745–55–10; 3745–55–11; 3745–55–12; 3745–55–40; 3745–55–42; 3745–55–43; 3745–55–45; 3745–55–51; 3745–55–71; 3745–55–75; 3745–55–93; 3745–55–98; 3745–56–29; 3745–56–30; 3745–56–56; 3745–56–81; 3745–57–12; 3745–57–14; 3745–57–16; 3745–57–83; 3745–58–30; 3745–58–32; 3745–58–33; 3745–58–40; 3745–58–45; 3745–58–46; 3745–58–60; 3745–58–70; 3745–65–01; 3745–65–12; 3745–65–13; 3745–65–14; 3745–65–16; 3745–65–17; 3745–65–52; 3745–65–56; 3745–65–73; 3745–65–74; 3745–65–76; 3745–66–10; 3745–66–11; 3745–66–12; 3745–66–13; 3745–66–18; 3745–66–19; 3745–66–40; 3745–66–41; 3745–66–43; 3745–66–45; 3745–66–71; 3745–66–91; 3745–66–93; 3745–66–98; 3745–66–992; 3745–67–21; 3745–67–29; 3745–67–56; 3745–67–81; 3745–68–12; 3745–68–16; 3745–68–52; 3745–273–01; 3745–273–03; 3745–273–13; 3745–273–17; 3745–273–33; 3745–273–37; 3745–273–54; 3745–273–60; 3745–279–01; 3745–279–10; 3745–279–11; 3745–279–12; 3745–279–22; 3745–279–40; 3745–279–44; 3745–279–45; 3745–279–52; 3745–279–53; 3745–279–54; 3745–279–56; 3745–279–57; 3745–279–59; 3745–279–63; 3745–279–64; 3745–279–65; 3745–279–74; 3745–279–81; Effective December 7, 2000.

TABLE 2.—EQUIVALENT STATE-INITIATED CHANGES—Continued

Ohio Amendment	Description of Change	Sections Affected and Effective Date
J 5	Consolidated rule review per 119.032–review date was October 30, 2001 (Year 5/All).	OAC 3745–50–10; 3745–50–40; 3745–50–43; 3745–50–44; 3745–50–45; 3745–50–46; 3745–50–51; 3745–50–52; 3745–50–57; 3745–50–58; 3745–50–62; 3745–51–02; 3745–51–03; 3745–51–04; 3745–51–05; 3745–52–11; 3745–52–20; 3745–52–34; 3745–52–41; 3745–54–01; 3745–54–10; 3745–54–13; 3745–54–56; 3745–54–70; 3745–54–73; 3745–54–75; 3745–54–76; 3745–54–77; 3745–54–90; 3745–54–91; 3745–54–97; 3745–54–98; 3745–54–99; 3745–55–01; 3745–55–12; 3745–55–17; 3745–55–18; 3745–55–42; 3745–55–44; 3745–55–75; 3745–56–28; 3745–56–50; 3745–56–80; 3745–56–81; 3745–57–02; 3745–58–33; 3745–58–45; 3745–65–01; 3745–65–15; 3745–65–33; 3745–65–54; 3745–65–56; 3745–65–75; 3745–65–92; 3745–65–93; 3745–66–12; 3745–66–20; 3745–66–42; 3745–66–44; 3745–66–74; 3745–67–76; 3745–68–10; 3745–270–04; 3745–270–06; 3745–270–42; 3745–279–01; 3745–279–42; 3745–279–51; 3745–279–62; 3745–279–73; Effective March 13, 2002.
Ohio Checklist 78.1	Housekeeping: LDR Third Third	OAC 3745–57–16; 3745–68–16; 3745–270–07; Effective February 11, 1992 and December 7, 2000.

In CL–LDR–2, a state initiated change, Ohio has renumbered their Land Disposal Restrictions Regulations, effective December 7, 2000. These regulations were moved from OAC 3745–59 to OAC 3745–270 and are equivalent to 40 CFR part 268.

TABLE 3.—RENUMBERING OF CHAPTER 3745–59

Former Ohio rule (rescinded)	Current Ohio rule	Federal equivalent
OAC 3745–59–01	OAC 3745–270–01	40 CFR 268.1
OAC 3745–59–02	OAC 3745–270–02	40 CFR 268.2
OAC 3745–59–03	OAC 3745–270–03	40 CFR 268.3
OAC–3745–59–04	OAC 3745–270–04	40 CFR 268.4
OAC–3745–59–05	OAC 3745–270–05	40 CFR 268.5
OAC–3745–59–06	OAC 3745–270–06	40 CFR 268.6
OAC–3745–59–07	OAC 3745–270–07	40 CFR 268.7
OAC–3745–59–09	OAC 3745–270–09	40 CFR 268.9
OAC–3745–59–30	OAC 3745–270–30	40 CFR 268.30
OAC–3745–59–31	OAC 3745–270–31	40 CFR 268.31
OAC–3745–59–32	Rescinded	40 CFR 268.32*
OAC–3745–59–33	Rescinded	40 CFR 268.33*
OAC–3745–59–34	OAC 3745–270–34	40 CFR 268.34
OAC–3745–59–35	OAC 3745–270–35	40 CFR 268.35
OAC–3745–59–40	OAC 3745–270–40	40 CFR 268.40
OAC–3745–59–41	Rescinded	None
OAC–3745–59–42	OAC 3745–270–42	40 CFR 268.42
OAC–3745–59–43	Rescinded	None
OAC–3745–59–44	OAC 3745–270–44	40 CFR 268.44
OAC–3745–59–50	OAC 3745–270–50	40 CFR 268.50

*These U.S. EPA rules have been rescinded and replaced by totally different rules.

U.S. EPA promulgated a new 268.33 on November 8, 2000; Ohio has an effective rule for this new rule at OAC 3745–270–33 effective December 7, 2004. It will not be authorized in this action.

The tables that were Federal sections 268.41 and 268.43 were moved into 268.40. The rescission of OAC 3745–59–41 and 3745–59–43 maintains Ohio's consistency with the Federal rule.

G. Where Are the Revised State Rules Different From the Federal Rules?

Ohio has excluded the non-delegable Federal requirements at 40 CFR 268.5, 268.6, 268.42(b), 268.44, and 270.3. EPA will continue to implement those requirements.

In this package, Ohio has also amended Broader in Scope provisions in State initiated changes HB 147 (OAC 3745–50–34), HB 215 biennium budget bill (OAC 3745–50–33, 3745–50–35), CL–UW (OAC 3745–50–33) and CL–UO (see State initiated changes above) (OAC 3745–50–34).

In Checklists 112, 137 and 169, Ohio is not requesting authorization for that portion covering 266.100 because they are not authorized for Boilers and Industrial Furnaces. This section will be added in ARA 7.

H. Who Handles Permits After the Authorization Takes Effect?

Ohio will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA

requirements for which Ohio is not yet authorized.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Ohio?

Ohio is not authorized to carry out its hazardous waste program in ''Indian Country,'' as defined in 18 U.S.C. 1151. Indian Country includes:

1. All lands within the exterior boundaries of Indian reservations within the State of Ohio;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the RCRA program in Indian Country. However, at this time, there is no Indian Country within the State of Ohio.

J. What Is Codification and Is EPA Codifying Ohio's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. Ohio's rules, up to and including those revised January 4, 2001, have previously been codified through the incorporation-by-reference effective December 24, 2001 (66 FR 53728, October 24, 2001). We reserve the amendment of 40 CFR part 272, subpart KK for the codification of Ohio's program changes until a later date.

K. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA section 3006 and imposes requirements other than those imposed by State law (see Supplementary Information, Section A. Why are Revisions to State Programs Necessary?). Therefore this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 18266: Regulatory Planning Review

The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (58 FR 51735, October 4, 1993).

2. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

3. Regulatory Flexibility Act

After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

5. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects 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).

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

Executive Order 13175 (65 FR 67249, November 9, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian Tribes, or on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it is not based on environmental health or safety risks.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action as defined in Executive Order 12866.

9. National Technology Transfer Advancement Act

EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this rule.

10. Executive Order 12988

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

11. Executive Order 12630: Evaluation of Risk and Avoidance of Unanticipated Takings

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order.

12. Congressional Review Act

EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) To the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 22, 2005.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 05–15922 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 235, and 252

[DFARS Case 2004–D010]

Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule; extension of comment period.

SUMMARY: DoD is extending the comment period for the proposed rule published at 70 FR 39976 on July 12, 2005. The proposed rule contains requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts. The comment period is extended to accommodate significant interest expressed with regard to the proposed rule.

DATES: The ending date for submission of comments is extended to October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D010.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05–15930 Filed 8–10–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[U.S. DOT Docket Number NHTSA–2005–21971]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking to amend the definition of frontal air bag system in Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection.'' NHTSA has addressed this issue in a recent final rule dated November 19, 2003, and in an interpretation letter dated July 19, 2004.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Christopher Wiacek, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4801. Fax: (202) 366–7002.

For legal issues: Christopher Calamita, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On May 12, 2000, NHTSA amended FMVSS No. 208 to require that future air bags be designed to create less risk of serious air bag induced injuries than current air bags, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (65 FR 30680; advanced air bag rule). The advanced air bag rule adopted a low risk deployment (LRD) test to address the risk air bags pose to out-of position occupants, particularly those of small stature. The test is performed by activating a frontal air bag system with a test dummy in ''worst case'' positions. For the driver position, this included placing a 5th percentile adult female test dummy's chin on the module and on the steering wheel. For the passenger position, this included placing a child dummy's head and chest in close proximity to the right front passenger air bag module.

In a November 19, 2003, final rule, the agency specifically addressed which air bag system components are fired in the LRD test in response to a request for a clarification from DaimlerChrysler. The agency stated, ''While neither ''air bag [system]'' or ''inflatable restraint [system]'' is defined in FMVSS No. 208 or any other place in 49 CFR part 571, the intent of the term ''air bag'' is to describe the components that make up the passenger-side dash-mounted and driver-side steering wheel hub-mounted, inflatable restraints used for occupant protection in a frontal impact. This does not refer to any other pyrotechnic system such as a belt pretensioner or inflatable knee bolster (69 FR 65179, 65186).''

On May 26, 2004, Toyota requested NHTSA's official interpretation of the definition of ''air bag system'' as applicable to FMVSS No. 208. NHTSA responded on July 19, 2004, by stating ''the intent of the term air bag is to describe the components that make up the passenger-side dash mounted and driver-side steering wheel hub-mounted, inflatable restraint used for occupant protection in a frontal impact. This does not refer to any other pyrotechnic system such as a belt pretensioner or inflatable knee bolster.''

II. The Petition

On January 27, 2005, the Toyota Motor North America, Inc. (Toyota), petitioned NHTSA to amend FMVSS No. 208 Section 16.3.1 *General provisions and definitions* by adding Section 16.3.1.14 as follows:

> 16.3.1.14 The term ''frontal air bag system'' describes the components that make up the driver- and front passenger inflatable restraints used for occupant protection in a frontal impact.

Toyota believes the current definition of ''air bag'' is restrictive and believes this constraint limits alternative passive restraint technologies in order to provide appropriate levels of occupant protection. They also opined that the current definition is limiting in that it suggests that manufacturers will always design passive restraints systems that will deploy from the steering wheel hub or dash.

III. Discussion and Analysis

Toyota requested that the definition of ''air bag'' be expanded to include all frontal inflatable restraints, specifically as it applies to S26, *Procedure for low risk deployment tests of driver air bag.* As explained in the July 19, 2004 interpretation letter, the agency does not have data available on the effect that deploying devices, other than the frontal passenger-side dash mounted and driver-side steering wheel hub-mounted air bags, will have on the advanced air bag rule low risk deployment test procedure. Nor does the agency have any data on the performance of any other pyrotechnic devices for out-of-position occupants in the field. Furthermore, there is concern that deploying other pyrotechnic devices could negatively impact the repeatability of the low risk deployment test even though they might deploy in real world crashes. For these reasons, the agency is denying the Toyota petition. In accordance with 49 CFR part 552, this completes the agency's review of the petition for rulemaking.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: August 4, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–15957 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register
Vol. 70, No. 154
Thursday, August 11, 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

Food Safety and Inspection Service

[Docket No. 05–006N]

Codex Alimentarius Commission: Meeting of the Codex Committee on Nutrition and Foods for Special Dietary Uses

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on October 18, 2005. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions that will be discussed at the 27th Session of the Codex Committee on Nutrition and Foods for Special Dietary Uses (CCNFSDU) of the Codex Alimentarius Commission (Codex), which will be held in Bonn, Germany, November 21–25, 2005. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 27th Session of CCNFSDU and to address items on the agenda.

DATES: The public meeting is scheduled for Tuesday, October 18, 2005, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in the Auditorium (1A003), Food and Drug Administration, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. Parking is adjacent to this building, and the College Park metro station is across the street. Documents related to the 27th Session of the CCNFSDU will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp.*

FSIS invites interested persons to submit comments on this notice. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROMs, and hand-or courier-delivered items: Send to the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102, Cotton Annex, Washington, DC 20250. All comments received must include the Agency name and docket number 05–006N. All comments submitted in response to this notice, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

In addition to submitting comments by mail to the above address, the U.S. Delegate to the CCNFSDU, Dr. Barbara Schneeman of the Food and Drug Administration, invites U.S. interested parties to submit their comments electronically to the following e-mail address (*nancy.crane@cfsan.fda.gov*).

Pre-Registration: To gain admittance to this meeting, individuals must present a photo ID for identification and also *are required to pre-register.* In addition, no cameras or videotaping equipment will be permitted in the meeting room. To pre-register, please send the following information to this e-mail address *nancy.crane@cfsan.fda.gov* by *October 11, 2005:*

—Your Name.
—Organization.
—Mailing Address.
—Phone number.
—E-mail address.

FOR FURTHER INFORMATION CONTACT: *About the 27th session of the CCNFSDU:* Nancy Crane, Assistant to the U.S. Delegate to the CCNFSDU, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition, FDA, 5100 Paint Branch Parkway (HFS–800), College Park, MD 20740, phone: (301) 436–1450, Fax: (301) 436–2636. E-mail: *nancy.crane@cfsan.fda.gov. About the public meeting:* Ellen Matten, International Issues Analyst, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

CCNFSDU was established to study specific nutritional problems assigned to it by the Commission and advise the Commission on general nutritional issues; to draft general provisions as appropriate, concerning the nutritional aspects of all foods; to develop standards, guidelines or related texts for foods for special dietary uses, in cooperation with other committees when necessary; and to consider, amend if necessary, and endorse provisions on nutritional aspects proposed for inclusion in Codex standards, guidelines and related texts. The CCNFSDU is hosted by the Federal Republic of Germany.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 27th Session of the Committee will be discussed during the public meeting:

- Matters referred to the Committee from other Codex bodies.
- Guidelines for Use of Nutrition Claims: Draft Table of Conditions for Nutrient Contents: (Part B, containing provisions on Dietary Fibre).
- Discussion Paper on the Proposals for Additional or Revised Nutrient Reference Values for Labelling Purposes.
- Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children.

- Draft Revised Standard for Infant Formula and Formulas for Special Medical Purposes Intended for Infants:
  - Section A: Draft Revised Standard for Infant Formula Proposals of the Working Group for the Section on Food Additives;
  - Section B: Formulas for Special Medical Purposes Intended for Infants.
- Advisory List of Nutrient Compounds for Use in Foods for Special Dietary Uses Intended for the Use by Infants and Young Children.
- Proposed Draft Recommendations on the Scientific Basis of Health Claims.
- Discussion Paper on the Application of Risk Analysis to the Work of the CCNFSDU.

Each issue listed will be fully described in documents distributed, or to be distributed, by the German Secretariat prior to the meeting. Members of the public may access or request copies of these documents at: *http://www.codexalimentarious.net/current.asp.*

Public Meeting

At the October 18th public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 27th Session of CCNFSDU, Dr. Barbara Schneeman (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 27th Session of the CCNFSDU.

Additional Public Information

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public, and in particular minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free electronic mail subscription service for industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an electronic mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives, and notices.

Customers can add or delete subscriptions themselves and have the option to protect their accounts with passwords.

Done at Washington, DC on August 8, 2005.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 05–15913 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Rocky Mountain Region, Grand Mesa, Uncompahgre and Gunnison National Forest, Mesa County, CO; Supplemental Environmental Impact Statement for Sheep Flats Diversity Unit Timber Sales

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an environmental impact statement.

SUMMARY: The Forest Service will prepare a supplemental environmental impact statement for the Sheep Flats Diversity Unit Timber Sale to present additional information concerning Management Indicator Species (MIS), and Threatened, Endangered and Sensitive Species (TES).

DATES: Comments concerning the scope of the analysis must be received by 45 days after publication of the draft supplemental environmental impact statement. The draft supplemental environmental impact statement is expected August 2005 and the final supplemental environmental impact statement is expected October 2005.

ADDRESSES: Send written comments to Connie Clementson, District Ranger, Grand Valley Ranger District, 2777 Crossroads Blvd, Unit 1, Grand Junction, Colorado 81506.

FOR FURTHER INFORMATION CONTACT: Carol McKenzie, Team Leader at *cmckenzie@fed.us* or (208) 634–0761; or Ken Anderson, Timber Group Leader, Forest Supervisor's Office, 2250 Highway 50, Delta, CO 81416.

SUPPLEMENTARY INFORMATION: The Forest Service is proposing to prepare a supplement to the final environmental impact statement for the Sheep Flats Diversity Unit Timber Sales. In accordance with FSH 1909.15, the 1998 final environmental impact statements and 2001 final supplemental environmental impact statement has been reviewed. New information have been discovered in the form of court decisions and regulations at 26 CFR 219 concerning the analysis and use of Management Indicator Species (MIS). In addition, species lists for Threatened, Endangered and Sensitive Species have changed since the final environmental impact statement and final supplemental environmental impact statement were issued. The forest Service will supplement the final environmental impact statement by analyzing and presenting additional information concerning wildlife resources. The scope and analysis of the proposed supplement to the final environmental impact statement will be limited to the Management Indicator Species Assessment, Amended Biological Assessment and Amended Biological Evaluation.

The original Notice of Intent for this project was published in the **Federal Register** Vol. 57, No. 31, February 14, 1992. A revised Notice of Intent was published in the **Federal Register** Vol. 61, No. 177, September 11, 1996. In June 1998, a Record of Decision was issued. This decision was appealed on August 17, 1998. On October 1, 1998, the Appeal Deciding Officer recommended that the June 1998 decision be reversed because of the deficiencies in the water quality and soils analyses. A Notice of Intent to supplement the final environmental impact statement with additional information regarding water quality and soils was published in the **Federal Register** Vol. 63, No. 222, November 18, 1998. A new Record of Decision and final supplemental environmental impact statement were approved on October 1, 2001 by then Forest Supervisor Robert L. Storch. The approved decision was to implement Alternative 4 and associated mitigation measures as detailed on pages 2 through 8 of the Record of Decision. This decision was appealed on November 19, 2001. The Appeal Deciding Officer upheld the decision on December 20, 2001.

Purpose and Need for Action

The draft supplemental environmental impact statement will not change the purpose and need for the Sheep Flats Diversity Unit Timber Sales as described on pages 1–1 through 1–3 of the final environmental impact statement. The scope of the draft supplemental environmental impact statement is only to provide additional analysis regarding wildlife resources.

Proposed Action

The draft supplemental environmental impact statement will not change the proposed action for the Sheep Flats Diversity Unit Timber Sales as described on pages 1–1 through 1–3 of the final environmental impact statement. The scope of the draft supplemental environmental impact statement is only to provide additional analysis regarding wildlife resources.

Responsible Official

The Responsible Official is Connie Clementson, District Ranger, Grand Valley Ranger District, 2777 Crossroads Blvd. Unit 1, Grand Junction, CO 81506.

Nature of Decision To Be Made

The Responsible Official will review the supplemental information and determine if the 2001 Record of Decision should be modified or if the original decision is to remain in effect and unchanged.

Scoping Process

Extensive public involvement has occurred on this project over the last 13 years in the form of news releases, field tours and public meetings. No additional scoping is planned for this supplement.

Comment Requested

A legal notice will be published in the newspaper of record and a Notice of Availability will be published in the **Federal Register** to inform the public that supplemental information is available for review and comment. The draft supplemental environmental impact statement will be distributed to all parties that received the 2001 final supplemental environmental impact statement and record of decision and to those parties that filed an appeal of the 2001 decision.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft supplemental environmental impact statement will be prepared for comment. The comment period on the draft supplemental environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear *Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: August 5, 2005.

Connie Clementson,

District Ranger.

[FR Doc. 05–15886 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resource Conservation Service

Canon City C–4 Dam Repair Project; Fremont County, CO

AGENCY: Natural Resource Conservation Service, USDA.

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 Resource Conservation Service Regulations (7 CFR Part 650); the Natural Resource Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Canon City C–4 Dam Repair Project, Fremont County, Colorado.

FOR FURTHER INFORMATION CONTACT: Allen Green, Colorado State Conservationist, Natural Resource Conservation Service, 655 Parfet St., Lakewood, Colorado, 80215–5517, telephone (720) 544–2810.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action documents that the project will not cause significant local, regional, or national impacts on the human environment. The findings of Allen Green, State Conservationist, indicate that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is to restore the integrity of the C–4 Canon City watershed protection dam to the safety provided by the originally installed condition. The planned work consists of removing a portion of the upstream embankment slope to permit installation of a sloping filter consisting of imported aggregates and geotextile. Existing cracks and voids will be filled with fine aggregate to the extent feasible, and the embankment will be restored to its original line and grade using the soil removed from the upstream slope. These repairs meet current standards & specifications for dam safety and design.

This Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and Local agencies and interested parties. Copies of the FONSI and Plan/Environmental Assessment are available by request from Allen Green, Colorado State Conservationist. Basic data developed during the environmental evaluation are on file

and may be reviewed by contacting Allen Green, State Conservationist.

No administrative action on implementation of this project will be taken until 30 days after the date this Notice is published in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10904 Watershed Protection and Flood Prevention.)

Leroy Hall,

Acting State Conservationist.

[FR Doc. 05–15928 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Chiwapa Creek Watershed, Pontotoc, Lee and Monroe Counties, MS

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 Chiwapa Creek Watershed, Pontotoc, Lee, and Monroe Counties, Mississippi.

FOR FURTHER INFORMATION CONTACT: Homer L. Wilkes, State Conservationist, Natural Resources Conservation Service, Suite 1321, A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269, Telephone: 601–965–5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Homer L. Wilkes, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a watershed plan to provide supplemental flood protection and reduce threat to loss of life from sudden dam failure to the residents of the Chiwapa Creek Watershed and others. The planned works of improvement consists of rehabilitating Floodwater Retarding Structure (FWRS) Nos. 3, 29, and 65. The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies 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 Homer L. Wilkes. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: August 1, 2005.

Al Garner,

Asst. State Conservationist (PROG).

[FR Doc. 05–15929 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: The Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Rural Housing Site Loans Policies, Procedures and Authorizations.

DATES: Comments on this notice must be received by October 11, 2005, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Nica Mathes, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, Stop 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, telephone (202) 205–3656.

SUPPLEMENTARY INFORMATION: *Title:* 7 CFR part 1822–G, Rural Housing Site Loans, Polices, Procedures and Authorizations.

OMB Number: 0575–0071.

Expiration Date of Approval: March 31, 2006.

Type of Request: Extension of currently approved information collection.

Abstract: Section 523 of the Housing Act of 1949 as amended (Pub. L. 90–448) authorizes the Secretary of Agriculture to establish the Self-Help Land Development Fund to be used by the Secretary as a revolving fund for making loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of the land as building sites to be subdivided and sold to families, nonprofit organizations and cooperatives eligible for assistance.

Section 524 authorizes the Secretary to make loans on such terms and conditions and in such amounts as deemed necessary to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, public agencies and cooperatives eligible for assistance under any section of this title, or under any other law which provides financial assistance for housing low and moderate income families.

RHS will be collecting information from participating organizations to insure they are program eligible entities. This information will be collected at the RHS field office. If not collected, RHS would be unable to determine if the organization would qualify for loan assistance.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 6 hours per response.

Respondents: Public or private nonprofit organizations, State, local or tribal governments.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 6.

Estimated Total Annual Burden on Respondents: 36.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 1, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. 05–15842 Filed 8–10–05; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–823–812)

Changed Circumstances Review of the Antidumping Duty Order on Carbon and Certain Alloy Steel Wire Rod from Ukraine.

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

DATE: August 11, 2005.

ACTION: Extension of Rebuttal Comment Period

SUMMARY: On April 26, 2005, in response to a request from the Government of Ukraine, the Department of Commerce published a notice in the **Federal Register** initiating a changed circumstances review in order to determine whether Ukraine should continue to be treated as a non–market economy country for purposes of the U.S. antidumping duty law (70 FR 21396). The Department has decided to extend the rebuttal comment period by twenty–one days, pursuant to 19 CFR 351.302(b), making the new deadline for the submission of public comment August 31, 2005. Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street and Constitution Avenue NW, Washington, DC 20230. All parties submitting comments must comply with the Department's regulations regarding the filing of documents. *See* 19 CFR 351.303.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton or Shauna Lee–Alaia, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–1579 or 202–482–2793, respectively.

SUPPLEMENTARY INFORMATION:

Comments--Deadline, Format, and Number of Copies

The Department is extending the deadline for submission of rebuttal comments by twenty–one days, making the new deadline August 31, 2005. Each person submitting comments should include his or her name and address, and give reasons for all rebuttals. To facilitate their consideration by the Department, comments should be submitted in the following format: (1) begin each comment on a separate page; (2) concisely state the issue identified and discussed in the comment and include any supporting documentation in exhibits or appendices; (3) provide a brief summary of the comment (a maximum of three sentences) and label this section ''summary of comment''; (4) provide an index or table of contents; and (5) include the case number, A–823–812, in the top right hand corner of the submission.

Persons wishing to comment should file a signed original and six copies of each set of comments by the dates specified above. All comments responding to this notice will be a matter of public record and will be available for public inspection and copying at Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic media, preferably in Portable Document Format (PDF), to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public on the Internet at the Import Administration Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email: *webmaster–support@ita.doc.gov*.

Dated: August 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4355 Filed 8–10–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–506

Porcelain–on-Steel Cooking Ware from the People's Republic of China: Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review

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

EFFECTIVE DATE: August 11, 2005.

FOR FURTHER INFORMATION CONTACT: P. Lee Smith, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1655.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2004, the Department published an opportunity to request a review for porcelain–on-steel cooking ware from the People's Republic of China (''PRC'') for the period of December 1, 2003, to November 30, 2004. *See Antidumping or Countervailing Duty Order, Filing, or Suspended Investigation; Opportunity to Request an Administrative Review*, 69 FR 69889 (December 1, 2004). On December 28, 2005, respondent Shanghai Watex Metal Products Co., Ltd., an exporter of the subject merchandise, requested a review. No other interested parties requested a review. On January 31, 2005, the Department published its notice of initiation of an antidumping administrative review on porcelain–on-steel cooking ware from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005). The preliminary results of this administrative review are currently due no later than September 2, 2005.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the specified time periods, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

The Department finds that it is not practicable to complete the preliminary results in the administrative review of porcelain–on-steel cooking ware from the PRC within the originally anticipated time limit, September 2, 2005, because we are currently analyzing factors of production information that has required numerous supplemental questionnaires. Therefore, the Department is extending the time limit for completion of the preliminary results by 90 days to December 1, 2005, in accordance with Section 751(a)(3)(A) of the Act. The deadline for the final results of this administrative review continues to be 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with Section 751(a)(1) and 777(i)(1) of the Act.

Dated: August 4, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4354 Filed 8–11–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–507–501]

Certain In-Shell Pistachios From the Islamic Republic of Iran: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

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

EFFECTIVE DATE: August 11, 2005.

FOR FURTHER INFORMATION CONTACT: Darla Brown or Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

Background

The Department of Commerce (the Department) published a countervailing duty order on certain in-shell pistachios from the Islamic Republic of Iran (Iran) on March 11, 1986. *See Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: In-shell Pistachios from Iran,* 51 FR 8344. On April 28, 2004, the Department initiated an administrative review of the countervailing duty order on certain in-shell pistachios from Iran. *See* 69 FR 23170. The administrative review covers the period January 1, 2003, through December 31, 2003. The respondent in this administrative review is the Tehran Negah Nima Trading Company (Nima). On April 7, 2005, the Department published in the **Federal Register** its preliminary results. *See Certain In-shell Pistachios from the Islamic Republic of Iran: Preliminary Results of Countervailing Duty Administrative Review,* 70 FR 17653 (*Preliminary Results*). The final results are currently due no later than August 5, 2005.

Extension of Time Limit for Final Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue final results in an administrative review within 120 days after the date on which the preliminary results were published. However, if it is not practicable to complete the final results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days.

In order to accommodate the scheduling of the public hearing, which was requested by petitioners [1] on May 9, 2005, we find that it is not practicable for the Department to complete the final results of the administrative review within the 120-day statutory time frame. Therefore, the Department is extending the time limits for completion of the final results until September 6, 2005.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act.

[1] Petitioners include the California Pistachios Commission (CPC) and its members and a domestic interested party, Cal Pure Pistachios, Inc (Cal Pure).

Dated: August 4, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–4356 Filed 8–10–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Secretarial Business Development Mission to Guatemala, El Salvador and Honduras

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to announce Secretary of Commerce Carlos M. Gutierrez business development mission to Guatemala, El Salvador and Honduras, October 16–22, 2005.

SUMMARY: Secretary of Commerce Carlos M. Gutierrez will lead a senior-level business development trade mission to Guatemala, El Salvador and Honduras, October 16–22, 2005. The overall focus of the trip will be commercial opportunities for U.S. companies, including joint ventures and export opportunities. In Guatemala City, Guatemala, the participants will have a market briefing followed by two days of one-on-one appointments with potential buyers/partners. There is also a possible meeting with the President of Guatemala and other high level government Officials. In San Salvador, El Salvador the participants will have a market briefing and two days of one-on-one appointments with potential buyers partners. There is also a possible meeting with the President of El Salvador and other high level government officials. The final stop is San Pedro Sula, Honduras where participants will have a market briefing, one-on-one appointments, and a possible meeting with the President and top government officials all rolled into one day.

DATES: Applications should be submitted to the Office of Business Liaison by September 16, 2005. Applications received after that date will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062, Department of Commerce, Washington, DC 20230, tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION: Secretarial Business Development Mission to Central America, October 16–22, 2005.

Mission Description

Secretary of Commerce Carlos M. Gutierrez will lead a senior-level U.S. business delegation to Guatemala, El Salvador and Honduras, October 16–22, 2005, to highlight new regional opportunities for U.S. businesses in promising sectors in Central America.

The Business Development Mission will target, but not be limited to, the following industry sectors: Aerospace; Automotive Parts and Services Equipment; Building Supplies; Chemicals; Construction Equipment; Electrical Power Generation and Distribution Equipment; Environmental Technologies; Food Processing and Packaging; Information Technology; Medical Equipment; Paper and Paperboard; Pharmaceuticals; Plastics (Resins and Raw Materials); Printing and Graphics; and Textiles. The mission will include meetings with key government officials, American and local chambers of commerce, industry and trade associations, and business-to-business matchmaking appointments with local companies.

Representatives of the Overseas Private Investment Corporation (OPIC), U.S. Trade Development Agency (USTDA), the U.S. Export-Import Bank (Ex-Im), the U.S. Small Business Administration (SBA), and U.S. Agency for International Development (USAID) will participate, as appropriate, in order to provide information and counseling on their programs. Additionally, the Mission will be open to participation by representatives of U.S. trade associations in the targeted industry sectors.

Commercial Setting

The region created by the Central American and Dominican Republic Free Trade Agreement, commonly referred to as CAFTA, is the second-largest export market in Latin America and the 10th largest market in the world for U.S. exports. The United States exports more to this region than it exports to India, Russia and Indonesia combined. Last year, U.S. exports to the region surpassed $15 billion and nearly half of the region's imports are from the United States. CAFTA provides substantial new market access for U.S. companies and solidifies the United States as the leading supplier of goods and services to Central America by eliminating the vast majority of tariffs on U.S. goods exported to the region. More than eighty percent of U.S. exports of industrial, consumer, and agricultural products to Central America will become duty-free immediately upon entry into force of the Agreement, with remaining tariffs phased out over 10 years. Small and medium-sized enterprises in particular should benefit from the significant tariff cuts provided under CAFTA.

Mission Goals

The Mission to Central America will demonstrate U.S. commitment to the markets of Central America, maintain the momentum following the recent ratification of CAFTA, address implementation of the Agreement, and showcase next steps. The Mission will also highlight new regional opportunities for U.S. business, particularly in best prospects sectors in Central America. U.S. participants will gain first-hand market information, access to government decision makers, and one-on-one meetings with business contacts, so they can position themselves to enter or expand their presence in Central America. An additional benefit will be to provide information on U.S. government trade financing programs, through the inclusion of representatives from OPIC, USTDA, Ex-Im and SBA. Finally, the Mission will assist our CAFTA partners in attracting additional foreign direct investment.

Mission Scenario

The Mission to Central America will include three stops: Guatemala City, Guatemala; San Salvador, El Salvador; and San Pedro Sula, Honduras. In each city, participants will meet with key government officials, including where possible, the President. In addition, the mission participants will meet with representatives of the Chambers of Commerce and industry, trade associations, and potential business partners. Receptions and other business events will be organized to provide Mission participants with opportunities to meet local business and government representatives, as well as, U.S. business executives living and working in the region.

Timetable

The full program includes Guatemala, El Salvador and Honduras. Outside of the official Mission program, participants may choose to add stops in San Jose, Costa Rica, and/or Managua, Nicaragua—additional payments will apply to cover Gold Key Service appointments fees.

Guatemala City, Guatemala

Sunday, October 16:
- Arrive Guatemala.
- Briefing on Market Conditions by U.S. Government Officials.

Monday, October 17:
- Possible Meetings with the President and Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Reception Hosted by U.S. Ambassador.

Tuesday, October 18:
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Depart Guatemala for Honduras.

San Pedro Sula, Honduras

Tuesday, October 18:
- Arrive in Honduras.
- Briefing on Market Conditions by U.S. Government Officials.

Wednesday, October 19:
- Possible Meetings with the President and Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Reception Hosted by U.S. Ambassador.

Thursday, October 20:
- Depart Honduras for El Salvador.

San Salvador, El Salvador

Thursday, October 20:
- Arrive in El Salvador.
- Briefing on Market Conditions by U.S. Government Officials.
- Business Event/Briefing with Local Industry Representatives.
- Individual Company Appointments.
- Reception Hosted by the U.S. Ambassador.

Friday, October 21:
- Possible Meetings with the President and Government Officials.
- Individual Company Appointments.
- Business Event/Briefing by Local Industry Representatives.

Saturday, October 22:
- Depart El Salvador for the United States.

Criteria For Participants' Selection

- Relevance of a company's business line to mission goals.
- Timeliness of the company's signed application and participation agreement (including the participation fees).
- Minimum of 10 and a maximum of 15 participating companies on the mission.
- Potential for business in Central America for the company.
- Provision of adequate information on the company's products and/or services, and the company's primary market objectives, in order to facilitate appropriate matching with potential business partners.
- Certification that the company meets Departmental guidelines for participation. A company's products or services must be either produced in the

United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

The participation fee is $7,700.00 per firm, which includes one representative. The fee for each additional firm representative is $2,000.00. The option to participate in the trade mission is also being offered to U.S.-based firms in Central America; the same fee structure applies. Expenses for travel, lodging, and incidentals will be the responsibility of each mission participant.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The Commercial Service will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Applications for the Mission will be made available August 1, 2005, through September 15, 2005. Applications can be obtained from the U.S. Department of Commerce Office of Business Liaison (202) 482–1360 or from the mission Web site at *http://www.buyusa.gov/centralamerica/en/*. The application deadline is September 16, 2005. Completed applications should be submitted to the Office of Business Liaison. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

Applications

Jennifer Andberg, Deputy Director, Office of Business Liaison, Office of the Secretary, Washington, DC. Tel: (202) 482–1360. *Jandberg@doc.gov*.

Country Information

Daniel Thompson, Regional Senior Commercial Officer for Central America. Tel: (503) 2501–2060; Fax: (503) 2501–2073. *Daniel.Thompson@mail.doc.gov*.

Mary Boscia, Commercial Attache, El Salvador. Tel: (503) 2501–2064; Fax: (503) 2501–2073. *Mary.Boscia@mail.doc.gov*.

Mitch Larsen, Senior Commercial Officer, Guatemala. Tel: (502) 2326–4261; Fax: (502) 2331–7373. *Mitch.Larsen@mail.doc.gov*.

Rossana Lobo, Senior Commercial Specialist, Honduras. Tel: (504) 236–9320; Fax: (504) 238–2888. *Rossana.Lobo@mail.doc.gov*.

Program Information

Wake Margo, Project Officer, Global Trade Programs (GTP), Washington, DC. Tel: (202) 482–2026; Fax: (202) 428–2718. *Wake.Margo@mail.doc.gov*.

Dated: August 5, 2005.

Timothy Thompson,

Executive Director, Global Trade Programs.

[FR Doc. E5–4347 Filed 8–10–05; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Market Economy Inputs Practice in Antidumping Proceedings involving Non–Market Economy Countries

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

ACTION: Request for Comments

SUMMARY: In antidumping proceedings involving non–market economy (''NME'') countries, the Department of Commerce (''the Department'') calculates normal value by valuing the NME producers' factors of production, to the extent possible, using prices from a market economy that is at a comparable level of economic development and that is also a significant producer of comparable merchandise. The goal of this surrogate factor valuation is to use the ''best available information.'' *See* section 773(c)(1) of the Tariff Act of 1930; *Shangdong Huraong General Corp. v. United States*, 159 F. Supp.2d 714, 719 (CIT 2001). Normally, if a respondent or producer of subject merchandise sources an input from a market economy supplier, the Department will use the average input price paid by the respondent to market economy suppliers (in market economy currency) to value all of the given input (both imported and domestically–sourced) used by respondents (or the producers of the subject merchandise), provided certain conditions are met.

The Department announced that is was considering options to change certain aspects of its policy and practice regarding market economy input prices and solicited public comment in a May 26, 2005 notice published in the **Federal Register** (70 FR 30418). In response to this first notice, the Department received 21 submissions from interested parties. After considering these comments, the Department is requesting comments regarding a proposed change to the Department's market economy inputs practice, which is detailed below.

DATES: Comments must be submitted by September 6, 2005.

ADDRESSES: Written comments (original and six copies) should be sent to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, Pennsylvania Avenue and 14th Street NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lawrence Norton, Economist, or Anthony Hill, Senior International Economist, Office of Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230, 202–482–1579 or 202–482–1843, respectively.

SUPPLEMENTARY INFORMATION:

Background

In an NME antidumping proceeding, the Department bases its calculation of normal value on the NME producers' factors of production, valued, to the extent possible, using prices from a market economy that is at a comparable level of economic development to the NME country and that is also a significant producer of comparable merchandise. *See* section 773(c)(1) of the Tariff Act of 1930. Where an NME producer purchases inputs from market economy suppliers and pays in a market economy currency, however, the Department normally uses the actual price paid for these inputs to value the input in question, where possible. *See* 19 CFR 351.408(c)(1); *See also Final Determination of Sales at Less Than Fair Value: Oscillating Fans and Ceiling Fans from the People's Republic of China*, 56 FR 55271 (October 25, 1991). Where a portion of the input is purchased from a market economy supplier and the remainder from a non–market economy supplier, the Department will normally us the average price paid for the inputs sourced from market economy suppliers to value all of the input[1], provided four conditions are met. First, the volume of the imported input as a share of total purchases from all sources must be

[1] *See* 19 CFR 351.408(c)(1)

''meaningful,'' a term used in the Preamble to the Regulations but which is interpreted by the Department on a case–by-case basis. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27366 (May 19, 1997) (*Preamble*). *See*, *also*, *Shakeproof v. United States*, 268 F.3d 1376, 1382 (Fed. Cir. 2001) (*Shakeproof*). Second, this average import price must reflect arms–length, *bona fide* sales. See *Shakeproof* at 14. Third, the Department has disregarded all input values it has reason to believe or suspect might be dumped or subsidized. *See China National Machinery Import & Export Corporation v, United States, 293 F. Supp 2d 1334 (CIT 2003)*, as affirmed by *Federal Circuit, 104 Fed. Appx. 183 (Fed. Cir. 2004)*. Fourth, the Department has disregarded the prices of inputs that could not possibly have been used in the production of subject merchandise during the period of investigation or review. *See*, *e.g.*, *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, 69 FR 71005 (December 8, 2004).

In comments submitted in response to the Department's May 26 **Federal Register** notice requesting comment on our current practice, seventeen interested parties argued that the prices paid for that portion of an input that was purchased from market economy countries often constitutes the ''best information available'' required by the statute for valuing domestically sourced inputs. In particular, these parties contended that using surrogate values in place of actual market economy purchase prices to value an entire input would result in less accurate calculation of normal value. These parties also stressed that the Department already requires that the quantity purchased from market economy suppliers be significant and that the transactions be *bona fide* and conducted in market economy currency. According to these parties, the aforementioned requirements already ensure that the market economy purchase prices the Department accepts constitute the ''best available information''.

Other interested parties responding to the request for comment, however, submitted arguments that the Department's current case–by-case assessment of what constitutes a ''meaningful'' quantity does not ensure that the prices paid by respondents for the portion of the input sourced from market economy countries are an accurate valuation of the entire input. In particular, these parties have alleged that it may be possible, under the Department's current practice, for respondents to source a small amount of an input on favorable terms with the goal of manipulating the Department's margin calculations. Alternatively, these parties claim, market economy suppliers may sometimes offer limited quantities of an input at prices that are much lower than the price at which respondents could acquire the total amount of the input in question. Where situations such as these occur, these parties claim that it would be distortive to use the prices paid for a portion of an input sourced from market economy suppliers to value the entire input.

Upon consideration of these comments, the Department proposes to continue to value respondents' entire input with the prices paid by them to market economy suppliers of the input, as long as the purchases reflect *bona fide* sales, were made in market economy currency, constitute a ''meaningful'' quantity, and could have been used in the production of the subject merchandise. However, the Department's goal is to better ensure that the market economy input purchase prices it accepts are as free as possible from distortions and constitute the best available information. Accordingly, we are now proposing a change in the Department's practice that is intended to reduce potential distortions in the Department's current market economy inputs practice while continuing to use the average price paid for the inputs sourced from market economy suppliers to value an entire input.

The Department is now proposing to use respondents' market economy purchase prices to value all of the input (provided the Department's four other requirements described above are met) when the *majority* of each input by volume is sourced from market economy countries. Where respondents source less than a majority of the total volume of an input from market economy countries in transactions meeting the Department's other requirements, the Department will weight–average the portion that was purchased from market economy countries, using the actual price paid, with the portion sourced domestically, using a surrogate value. The Department welcomes comments on whether this proposal would appropriately address distortions that have been identified in the Department's market economy inputs practice and whether this proposal would be consistent with the Department's regulations.

Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received before the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of any changes to its practice. The Department requires that comments be submitted in written form. The Department recommends submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e–mail to the webmaster below, or on CD–ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster–support@ita.doc.gov*.

Dated: August 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–4357 Filed 8–10–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Post Registration (Trademark Processing).

Form Number(s): PTO Form 1583, 1963, 4.16, PTO/TM/1593, 4.16.

Agency Approval Number: 0651–00xx.

Type of Request: New collection.

Burden: 19,748 hours.

Number of Respondents: 129,787 responses.

Avg. Hours Per Response: 3 to 30 minutes. This includes time to gather the necessary information, create the documents, and mail the completed request. The time estimates shown for the electronic forms in this collection are based on the average amount of time needed to complete and electronically file the associated form.

Needs and Uses: The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. At this time, the USPTO is proposing to split collection 0651–0009, Trademark Processing, into four separate collections based upon the structure of the Trademark business processes. The USPTO believes that dividing this extensive collection into smaller, more manageable, information collection requests will result in a more efficient updating and renewal process. This new collection is one of the newly created, or ''split'' groups.

The USPTO has split the amendments/corrections/surrenders category to include amendments and corrections as one category. Surrenders are treated as a separate category. The remaining eight items in this collection were part of the existing approved 0651–0009 collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

• E-mail: *Susan.Brown@uspto.gov.* Include ''0651–0031 copy request'' in the subject line of the message.

• Fax: 571–273–0112, marked to the attention of Susan Brown.

• Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before September 12, 2005 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: August 3, 2005.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 05–15887 Filed 8–10–05; 8:45 am]

BILLING CODE 3510–16–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting (Arlington, VA)

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting to Make the Base Closure and Realignment Recommendations the Commission Will Forward to the President (Arlington, VA).

SUMMARY: Notice is hereby given that the Defense Base Closure and Realignment Commission will hold an open meeting on August 24, 25, 26 and 27, 2005 from 8 a.m. to 12 p.m., 1 p.m. to 5:30 p.m. and 7 p.m. to 10 p.m. on each day indicated at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington VA 22202. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov,* for updates. The Commission will make the base closure and realignment recommendations the Commission will forward to the President. This deliberative meeting will be open to the public, subject to the availability of space. Sign language *interpretation* will be provided.

DATES: August 24, 25, 26 and 27, 2005 from 8 a.m. to 12 p.m., 1 p.m. to 5:30 p.m. and 7 p.m. to 10 p.m. on each day indicated.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov.* The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in *The Defense Base Closure and Realignment Act of 1990,* as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: August 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15907 Filed 8–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

Notice of the Defense Base Closure and Realignment Commission—Open Meeting

AGENCY: Defense Base Closure and Realignment Commission.

ACTION: Notice; Defense Base Closure and Realignment Commission—Open Meeting To Receive Department of Defense Comment on Various Base Closure and Realignment Recommendations (Washington, DC).

SUMMARY: Notice is hereby given that the Defense Base Closure and Realignment Commission will hold an open meeting on August 20, 2005 from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 4:30 p.m. at Senate Hart Hearing Room 216, Constitution Avenue, Washington DC 20510. The delay of this notice resulted from the short time-frame established by statute for the operations of the Defense Base Closure and Realignment Commission and the necessity of coordinating this meeting with a variety of Federal government officials. The Commission requests that the public consult the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*, for updates. The Commission will meet to receive Department of Defense comment on various recommendations for closure or realignment of installations. This meeting will be open to the public, subject to the availability of space.

DATES: August 20, 2005 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: Senate Hart Hearing Room 216, Constitution Avenue, Washington, DC 20510

FOR FURTHER INFORMATION CONTACT: Please see the 2005 Defense Base Closure and Realignment Commission Web site, *http://www.brac.gov*. The Commission invites the public to provide direct comment by sending an electronic message through the portal provided on the Commission's Web site or by mailing comments and supporting documents to the 2005 Defense Base Closure and Realignment Commission, 2521 South Clark Street Suite 600, Arlington, Virginia 22202–3920. The Commission requests that public comments be directed toward matters bearing on the decision criteria described in The Defense Base Closure and Realignment Act of 1990, as amended, available on the Commission Web site. Sections 2912 through 2914 of that Act describe the criteria and many of the essential elements of the 2005 BRAC process. For questions regarding this announcement, contact Mr. Dan Cowhig, Deputy General Counsel and Designated Federal Officer, at the Commission's mailing address or by telephone at 703–699–2950 or 2708.

Dated: August 5, 2005.

Jeannette Owings-Ballard,

Administrative Support Officer.

[FR Doc. 05–15908 Filed 8–10–05; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 11, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense Education Activity (DoDEA), 4040 N. Fairfax Drive, 9th Floor, Arlington, VA 22203, Attn: Dr. Judith L. Williams.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 588–3143.

Title and OMB Control Number: ''Department of Defense Activity (DoDEA) Evaluation and Program Surveys—Generic,' OMB Control Number 0704–TBD.

Needs and Uses: The Department of Defense Education Activity (DoDEA) is a DoD field activity operating under the direction, authority, and control of the Deputy Under Secretary of Defense, Military Community and Family Policy. The DoDEA operates 223 schools in 16 districts located in 13 foreign countries, seven states, Guam, and Puerto Rico. The DoDEA has a need to do one-time evaluations of students and sponsors in the areas of educational program implementation, education school based decisions (i.e. school calendar), and general school functions. Collection of this data will be conducted through paper-pencil surveys, interviews, focus groups, and online surveys.

Affected Public: Individuals or households.

Annual Burden Hours: 3,667 hours.

Number of Respondents: 22,000.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DoDEA will conduct a variety of activities, to include, but not necessarily limited to paper-pencil surveys, interviews, focus groups, and online surveys in the area of curriculum implementation, school calendars, school facilities, course offerings, technology access, enrollment procedures, transition procedures, counseling procedures, and other general school functions. Respondents will be DoDEA students in grades Pre-K–12 and their sponsors who are not included in 10 USC 1782, Survey of Military Families. Survey instruments, to include burden hours and supporting documentation, will be submitted to the DoD Clearance Officer and OMB for final approval as they become available.

Dated: July 29, 2005.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–15847 Filed 8–10–05; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 05–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 05–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

4 AUG 2005

In reply refer to:
I-05/007928

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 05-38, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Kuwait for defense articles and services estimated to cost $19 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 05-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Kuwait

(ii) Total Estimated Value:

Major Defense Equipment*	$18 million
Other	$ 1 million
TOTAL	$19 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: The Government of Kuwait has requested a possible sale of:

Major Defense Equipment (MDE)

Anti-armor guided missiles	Fly-to-buy missiles
288 TOW-2A	4 TOW-2A
140 TOW-2B	4 TOW-2B

Also included are spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $19 million.

(iv) Military Department: Army (ULA)

(v) Prior Related Cases, if any: FMS Case UJW - $28 million - 21Aug95

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: see attached Annex

(viii) Date Report Delivered to Congress: 4 AUG 2005

as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION (U)

Kuwait - TOW-2A/B Anti-armor Guided Missiles

The Government of Kuwait has requested a possible sale of

Major Defense Equipment (MDE)

Anti-armor guided missiles	Fly-to-buy missiles
288 TOW-2A	4 TOW-2A
140 TOW-2B	4 TOW-2B

Also included are spare and repair parts, supply support, publications and technical data, engineering change proposals, U.S. Government and contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $19 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a major non-NATO ally which has been, and continues to be, an important force for political stability and economic progress in the Middle East. Additionally, the proposed sale will provide a signal of the U.S. Government commitment to our bilateral relationship.

Kuwait will use these TOW-2 missiles to upgrade its air-to-surface day/night anti-armor defense capability and provide close air support for the military ground forces. Kuwait will augment its land forces with these TOW-2B anti-armor guided missiles. This weapon sale will greatly enhance the coalition efforts within the region. Kuwait, which already has TOW-2 missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be the Raytheon Corporation of Mesa, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Kuwait.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 05-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW-2 Weapon System hardware and documentation provided with this proposed sale are Unclassified, however, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs, which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development.

2. The Radio Frequency (RF) TOW-2A configuration is the direct attack version of the TOW family of missiles capable of defeating modern threat targets. It consists of a single main warhead and a standoff probe. The probe contains a precursor charge that detonates upon contact with the target for pre-emptive removal of reactive armor. The main charge is detonated by a subsequent timed interval or by contact with the target.

3. The RF TOW-2B configuration is the top attack version of the TOW family of missiles capable of defeating modern threat targets. The TOW-2B warhead consists of dual Explosively Formed Penetrators (EFP) designed to fire downward over the top of the target thus penetrating the target with catastrophic results.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 05–15848 Filed 8–10–05; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Contract Closeout

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Acting Director of Defense Procurement and Acquisition Policy (DPAP) is sponsoring a public meeting to discuss potential opportunities to streamline the contract closeout process for DoD contracts. The Acting Director of DPAP would like to hear the views of interested parties as to potential areas for facilitating the contract closeout process.

DATES: The public meeting will be held on September 21, 2005, from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at Marriott Crystal Gateway, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Directions to the Marriot Crystal Gateway can be found on the Internet at *http://www.acq.osd.mil/dpaptest/specificpolicy/contract_closeout.htm*.

FOR FURTHER INFORMATION CONTACT: Mr. David Capitano, Senior Procurement Analyst, DPAP/Policy, by telephone at (703) 847–7486, by FAX at (703) 614–1254, or by e-mail at *david.capitano@osd.mil*.

SUPPLEMENTARY INFORMATION: A listing of some areas of discussion for the public meeting can be found on the Internet at *http://www.acq.osd.mil/dpaptest/specificpolicy/contract_closeout.htm*. The public meeting discussion is not limited to this listing; interested parties are encouraged to provide their views on all aspects of the contract closeout process.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. 05–15933 Filed 8–10–05; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by August 12, 2005. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before October 11, 2005.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 5, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Reinstatement.

Title: Federal Direct Consolidation Loan Program Application Documents.

Abstract: These forms are the means by which an applicant applies for and promises to repay a Federal Direct Consolidation Loan and a lender verifies that a loan is eligible to be consolidated.

Additional Information: Failure to certify this collection would prohibit students and alumni from saving scarce financial resources by consolidating their loans with a beneficial interest rate.

Frequency: On occasion.

Affected Public: Individuals or household; businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses: 920,714.

Burden Hours: 680,480.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2837. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–15872 Filed 8–10–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education, ED.

SUMMARY: The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 11, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 8, 2005.

Angela C. Arrington,

Leader Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Application for Approval To Participate in Federal Student Financial Aid Programs.

Frequency: On occasion; prior to expiration of eligibility.

Affected Public: Businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,970

Burden Hours: 20,830

Abstract: The Higher Education Act of 1965, as amended requires postsecondary institutions to complete and submit this application as a condition of eligibility for any of the Title IV student financial assistance programs and for the other postsecondary programs authorize by the HEA. The institution must submit the form (1) initially when it first seeks to become eligible for the Title IV programs; (2) when its program participation agreement expires (recertification); (3) when it changes ownership, merges, or changes from structure, (4) to be reinstated to participate in the Title IV programs, (5) to notify the Department when it makes certain changes, *e.g.,* name or address; and (6) if it wishes to have a new program (outside its current scope) or new location approved for Title IV purposes.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2839. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to (202) 245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 05–15912 Filed 8–10–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Orlando Gasification Project, Orlando, FL

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), and the DOE NEPA regulations (10 CFR Part 1021), to assess the potential environmental impacts associated with the construction and operation of a project proposed by Southern Company in partnership with Orlando Utilities Commission (OUC), which has been selected by DOE under the Clean Coal Power Initiative (CCPI) program. The proposed project would demonstrate advanced power generation systems using Integrated Gasification Combined Cycle (IGCC) technology at OUC's Stanton Energy Center near Orlando, Florida. The facilities would convert coal into synthesis gas for generating between 285 and 330 MW (megawatts) of electricity while substantially reducing emissions of sulfur dioxide, oxides of nitrogen, and mercury, as compared to conventional coal-fired power plants.

The EIS will help DOE decide whether to provide approximately $235 million in cost-shared funding (about 42% of the total cost of approximately $557 million) for the proposed project. Accordingly, the EIS will evaluate the potential impacts of the proposed project and reasonable alternatives. The purpose of this Notice of Intent is to inform the public about the proposed project; invite public participation in the EIS process; announce the plans for a public scoping meeting; and solicit public comments for consideration in establishing the scope and content of the EIS.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be

received by September 16, 2005, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone, DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of alternatives and environmental impacts to be considered in the EIS. The scoping meeting will be held at Timber Creek High School, 1001 Avalon Park Boulevard, Orlando, Florida, on Tuesday, August 30, 2005, at 7 p.m. The public is also invited to an informal session at this location beginning at 5 p.m. to learn more about the proposed project. Displays and other forms of information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present at the informal session to discuss the proposed project and the EIS process.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to: Mr. Richard A. Hargis, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940. Individuals who want to provide comments orally or electronically should contact Mr. Hargis directly by telephone: 412–386–6065; toll-free number: 1–888–322–7436; fax: 412–386–4775; or electronic mail: *Richard.Hargis@NETL.DOE.GOV*.

FOR FURTHER INFORMATION, CONTACT: For information about this project or to receive a copy of the draft EIS when it is issued, contact Mr. Richard A. Hargis as described in **ADDRESSES** above. For general information on the DOE NEPA process, contact Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119; telephone: 202–586–4600; fax: 202–586–7031; or leave a toll-free message at: 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include long-term, technically complex activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure its continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated at a sufficient scale to prove its reliability and to show economically competitive performance. The financial risk associated with such large-scale demonstration is, in general, too high for the private sector to assume in the absence of strong incentives.

The CCPI program was established in 2002 as a government/industry partnership to implement the President's National Energy Policy recommendation to increase investment in clean coal technology. The goal of the CCPI program is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy. Through cooperative agreements established with industry, including an agreement with Southern Company for the proposed project, the CCPI program plans to advance selected coal technologies to commercialization.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with Southern Company, cost-shared financial assistance for the proposed Orlando Gasification Project. Southern Company is leading a project team that includes OUC and Kellogg, Brown, and Root (KBR), the company responsible for engineering and procurement of the gasification equipment. The Orlando Gasification Project would be designed for long-term commercial operation following completion of a 4.5-year demonstration period under a 9.5-year cooperative agreement with DOE, and would cost a total of approximately $557 million; DOE's share would be approximately $235 million (42%). The proposed project would be located at OUC's existing Stanton Energy Center near Orlando, Florida, which currently generates electricity using two coal-fired units, each rated at approximately 465 MW, burning low-sulfur bituminous coal, and a natural gas-fired combined-cycle unit rated at approximately 633 MW.

The Stanton Energy Center is located approximately 3 miles east of the eastern city limits of Orlando and about 13 miles east-southeast of the downtown area. The overall site encompasses 3,280 acres, of which approximately 1,100 acres have been licensed by the state of Florida and have been developed for power generation and supporting facilities. Most of the remaining 2,180 acres are undisturbed, providing a natural buffer between the facilities and the surrounding offsite area. The topography of the area is relatively flat. The Orlando Gasification Project would be constructed on approximately 35 of the 1,100 acres of land that were previously cleared, leveled, and licensed for power plant use. The project equipment would be located between the existing coal-fired units and the existing natural gas-fired combined-cycle unit. An existing temporary warehouse may be dismantled to accommodate the ancillary facilities required by the proposed project.

The proposed facilities would demonstrate IGCC technology, which uses synthesis gas derived from coal to drive a gas combustion turbine and hot exhaust gas from the gas turbine to generate steam from water to drive a steam turbine; both turbines generate electricity. At full capacity, the new coal gasifier would use up to 3,700 tons of coal per day to produce synthesis gas. Up to three trains per week would deliver subbituminous coal from the Powder River Basin in Wyoming. Combined, the two turbines would generate between 285 and 330 MW (net) of electricity. This combined-cycle approach of using a gas turbine and steam turbine in tandem increases the amount of electricity that can be generated from a given amount of coal.

The overall objective of the project is to demonstrate the feasibility of this selected IGCC technology at a size that would be attractive to utilities for commercial operation. The coal gasifier is based on a KBR technology that Southern Company and DOE have been developing since 1996 at a research facility near Wilsonville, Alabama. The technology is unique among coal gasification technologies in that it is cost-effective when using low-quality coal, as well as coals with high moisture or high ash content. These coals comprise half the proven U.S. and worldwide reserves. The project is expected to provide OUC customers with a generating resource that is reliable, low-cost, environmentally-sound, and efficient (approximately 40% net efficiency compared to about 33% for a conventional coal-fired power plant).

Construction and installation of the combined-cycle facilities would be completed approximately 6 months prior to gasifier completion and integration of the facilities. The gas turbine would be capable of operating on either natural gas or synthesis gas. While the proposed project consists of

the gasifier, synthesis gas cleanup systems, and supporting infrastructure only, the EIS will address the construction and operation of the gas turbine and steam turbine as a related action and include the combined facilities in the analyses of environmental impacts because the facilities are so intertwined.

The proposed project would minimize sulfur dioxide, oxides of nitrogen, mercury, and particulate emissions. The project is expected to remove up to 95% of the sulfur dioxide produced in the IGCC process using coal that contains up to 0.4% sulfur. The removal of nearly all of the fuel-bound nitrogen from the synthesis gas prior to combustion in the gas turbine would result in appreciably lower oxides of nitrogen emissions compared to conventional coal-fired power plants. Over 90% of the mercury would be removed. Over 99.9% of particulate emissions would be removed using high-temperature, high-pressure filtration (rigid filters housed in metal cylinders). Approximately 25% less carbon dioxide would be produced compared to typical emission rates at conventional coal-fired power plants. The proposed project would discharge no liquid effluent from the site. Ash generated by the gasifier would be combusted in the existing coal-fired units, marketed for use as activated carbon, or trucked to the existing onsite landfill for permitted disposal. A key performance target for the proposed technology would be achieving an availability of 80% without the use of a spare gasifier.

In addition to the gasifier and turbines, new equipment for the project would include a stack, mechanical-draft cooling towers, synthesis gas cleanup facilities, and particulate filtration systems. The height of the proposed stack is expected to be approximately 200 feet. The project would also require modifications to existing systems such as the coal conveyance and storage system. Wherever possible, existing facilities and infrastructure located at the Stanton Energy Center would be used for the proposed project. These include plant roads, administration buildings, coal delivery and handling facilities, water and wastewater treatment systems, and electric transmission lines and towers. However, a short, new transmission line (approximately 3,500 feet in length), including several new structures, would be required from the new turbines to the existing onsite substation to serve as an electrical interconnection.

Project activities would include engineering and design, permitting, equipment procurement, construction, startup, and demonstration of the commercial feasibility of the technology. Upon completing the EIS and issuing a Record of Decision, if DOE decides to implement the proposed action, the 2.5-year construction period would commence in early 2008 and demonstration of the technology would begin in early 2011. If the 4.5-year demonstration is successful, the facility would continue in commercial operation immediately afterward.

Alternatives

NEPA requires that agencies evaluate the range of reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives. The CCPI program was established to help implement the President's National Energy Policy recommendation to increase investment in clean coal technology, thus ensuring the reliability and affordability of domestic energy supplies while simultaneously protecting the environment. The CCPI program was structured to achieve National Energy Policy goals by promoting private sector initiatives to invest in demonstrations of advanced coal technologies that could be widely deployed commercially. Private sector investments and deployment of demonstration facilities places DOE in a much more limited role than if the Federal Government were the owner and operator of the facilities. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives. However, in dealing with applicants under the CCPI program, the scope of alternatives is necessarily more restricted. In such cases, DOE must give substantial consideration to the applicant's needs in establishing a project's reasonable alternatives.

The range of reasonable options to be considered in the EIS for the proposed Orlando Gasification Project is determined in accordance with overall NEPA strategy. Because of DOE's limited role of providing cost-shared funding for the project, DOE currently plans to give primary emphasis to the proposed action and the no-action alternative. Under no action, DOE would not provide partial funding for the design, construction, and operation of the project.

In the absence of DOE funding, Southern Company and/or OUC could reasonably pursue at least one option. This option will be analyzed under the no-action alternative. The combined-cycle facilities could be built at the Stanton Energy Center without the gasifier, synthesis gas cleanup systems, and supporting infrastructure. The combined-cycle facilities would operate using natural gas as fuel without the availability of synthesis gas. This scenario would not provide a low-cost fuel source for the combined-cycle facilities and would not contribute to the goal of the CCPI program, which is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy.

Alternatives considered by Southern Company in developing the proposal for the Orlando Gasification Project, including alternative sites and technologies for the proposed project, also will be presented in the EIS. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Preliminary Identification of Environmental Issues

The following environmental issues have been tentatively identified for analysis in the EIS. This list, which was developed from preliminary scoping of the proposed technology, the proposed project at Stanton Energy Center, and similar projects, is neither intended to be all-inclusive nor a predetermined set of potential impacts, but is presented to facilitate public comment on the planned scope of the EIS. Additions to or deletions from this list may occur as a result of the public scoping process. The environmental issues include:

(1) Atmospheric Resources: Potential air quality impacts resulting from air emissions during construction and operation of the proposed Orlando Gasification Project (*e.g.*, effects of ground-level concentrations of criteria pollutants, and trace metals including mercury, on surrounding residential areas and resource areas of special concern, such as Prevention of Significant Deterioration Class I areas); potential effects of greenhouse gas emissions.

(2) Water Resources: Potential effects from withdrawal of groundwater (the proposed project would discharge no liquid effluent from the site).

(3) Infrastructure and Land Use: Potential effects on infrastructure and land (including wetlands) resulting from the proposed facilities; potential traffic effects resulting from trains required to transport coal for the proposed project; potential impacts from a new electrical interconnection consisting of a short, onsite transmission line and several associated structures.

(4) Solid Waste: Pollution prevention and waste management, including potential solid waste impacts caused by

the generation, treatment, transport, storage, and disposal of ash and other solid wastes.

(5) Visual: Potential aesthetic impacts associated with a new stack, mechanical-draft cooling tower, and other plant structures.

(6) Floodplain: Potential impacts (*e.g.*, impeding floodwaters, re-directing floodwaters, onsite property damage) of siting new structures and infrastructure within a floodplain (*e.g.*, onsite transmission line for electrical interconnection from the combined-cycle facilities to the existing onsite substation).

(7) Wetlands: Potential reduction of wetlands due to new construction (*e.g.*, onsite transmission line for electrical interconnection).

(8) Ecological: Potential onsite and offsite impacts to vegetation, terrestrial wildlife, aquatic wildlife, threatened and endangered species, and ecologically sensitive habitats.

(9) Safety and Health: Construction-related safety, process safety, and management of chemicals and catalysts.

(10) Construction: Potential impacts associated with noise, traffic patterns, and construction-related emissions.

(11) Community Impacts: Potential congestion and other impacts to local traffic patterns; socioeconomic impacts; noise associated with project operation; and environmental justice with respect to the surrounding community.

(12) Cumulative effects that result from the incremental impacts of the proposed project (*e.g.*, incremental air emissions affecting ambient air quality) when added to other past, present, and reasonably foreseeable future actions, including the existing Stanton Energy Center and the related action of the combined-cycle turbines.

Issues will be analyzed in the EIS in accordance with their level of importance. The most detailed analyses are tentatively expected to focus on issues associated with air quality, traffic, aesthetics, and ecological resources.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will end on September 16, 2005. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered.

Scoping comments should clearly describe specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, faxed, or telephoned comments should be communicated by September 16, 2005 (see **ADDRESSES**).

In addition, DOE will conduct a public scoping meeting at Timber Creek High School, 1001 Avalon Park Boulevard, Orlando, Florida, on Tuesday, August 30, 2005, at 7 p.m. The public is also invited to an informal session at this location beginning at 5 p.m. to learn more about the proposed project. DOE requests that anyone who wishes to speak at this public scoping meeting contact Mr. Richard A. Hargis, either by phone, fax, computer, or in writing (see **ADDRESSES**).

Individuals who do not make advance arrangements to speak may register at the meeting and will be given the opportunity to speak following previously scheduled speakers. Speakers who need more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five-minute presentations initially, but will provide additional opportunities as time permits. Speakers can also provide written material to supplement their presentations. Oral and written comments will be given equal weight.

DOE will begin the meeting with an overview of the proposed Orlando Gasification Project. DOE will designate a presiding officer to chair the meeting. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to ensure that DOE fully understands their comments or suggestions.

The presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, this 5th day of August, 2005.

John Spitaleri Shaw,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 05–15906 Filed 8–10–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[IC05–600–001, FERC–600]

Commission Information Collection Activities, Proposed Collection; Comment Request; Extension

August 4, 2005.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of May 25, 2005 (70 FR 30092–94), and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 6, 2005.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at 202–395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–33, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC05–600–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To

file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-Filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's home page using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–600 ''Rules of Practice and Procedure: Complaint Procedures''.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0180.

The Commission is now requesting that OMB approve and extend the expiration date for an additional three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary for the Commission to carry out its responsibilities in implementing the statutory provisions of the Federal Power Act (FPA), 16 U.S.C. 791a–825r; the Natural Gas Act (NGA), 15 U.S.C. 717–717w; the Natural Gas Policy Act (NGPA), 15 U.S.C. 3301–3432; the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601–2645; the Interstate Commerce Act, 49 U.S.C. App. § 1 *et seq.* and the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356.

With respect to the natural gas industry, section 14(a) of the NGA provides:

> The Commission may permit any person to file with it a statement in writing, under oath or otherwise, as it shall determine, as to any or all facts and circumstances concerning a matter which may be the subject of an investigation.

For public utilities, section 205(e) of the FPA provides:

> Whenever any such new schedule is filed, the Commission shall have the authority, either upon complaint or upon its own initiative without complaint at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice to enter upon hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision of the Commission * * *

Concerning hydroelectric projects, section 19 of the FPA provides:

> * * * it is agreed as a condition of such license that jurisdiction is hereby conferred upon the Commission, upon complaint of any person aggrieved or upon its own initiative, to exercise such regulation and control until such time as the State shall have provided a commission or other authority for such regulation and control* * *

For qualifying facilities, section 210(h)(2)(B) of PURPA provides:

> Any electric utility, qualifying cogenerator, or qualifying small power producer may petition the Commission to enforce the requirements of subsection (f) as provided in subparagraph (A) of this paragraph.

Likewise for oil pipelines, Part 1 of the Interstate Commerce Act (ICA), sections 1, 6 and 15 (recodified by Pub. L. 95–473 and found as an appendix to title 49 U.S.C.) the Commission is authorized to investigate the rates charged by oil pipeline companies subject to its jurisdiction. If a proposed oil rate has been filed and allowed by the Commission to go into effect without suspension and hearing, the Commission can investigate the effective rate on its own motion or by complaint filed with the Commission. Section 13 of the ICA provided that:

> Any person, firm, corporation, company or association, or any mercantile, agricultural, or manufacturing society or other organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to the Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission * * *

In Order No. 602, 64 FR 17087 (April 8, 1999), the Commission revised its regulations governing complaints filed with the Commission under the above statutes. Order No. 602 was designed to encourage and support consensual resolution of complaints, and to organize the complaint procedures so that all complaints are handled in a timely and fair manner. In order to achieve the latter, the Commission revised Rule 206 of its Rules of Practice and Procedure (18 CFR ''385.206) to require that a complaint satisfy certain informational requirements, that answers be filed in a shorter, 20-day time frame, and that parties may employ various types of alternative dispute resolution procedures to resolve complaints.

The information contained in complaints filed by interested/affected parties regarding oil and natural gas pipeline operations, electric and hydropower facilities in their applications for rate changes, service, and/or licensing are used by the Commission in establishing a basis for various investigations and to make an initial determination regarding the merits of the complaint. Investigations may range from whether there is undue discrimination in rates or service to questions regarding market power of regulated entities to environmental concerns. In order to make a better determination, it is important to know the specifics of any oil, gas, electric, hydropower complaint ''up front'' in a timely manner and in sufficient detail to allow the Commission to act swiftly. In addition, such complaint data will help the Commission and interested parties to monitor the market for exercises of market power or undue discrimination. The information filed with the Commission is voluntary but submitted with prescribed information.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 385, sections 385.206 and 385.213.

5. *Respondent Description:* The respondent universe currently comprises 76 companies (on average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 1,064 total hours, 76 respondents (average), 1 response per respondent, and 14 hours per response (average).

7. *Estimated Cost Burden to respondents:* 1,064 hours/2080 hours per years x $108,558 per year = $55,532. The cost per respondent is equal to $731.

Statutory Authority: Sections 19 and 205(e) of the Federal Power Act, 16 U.S.C. 797(e), 799; Section 14(a) of the Natural Gas Act, 15 U.S.C. 717m; Section 210(h) (2) (B) of the Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645; Part 1 of the Interstate Commerce Act (recodified by Pub. L. 95–473 as an appendix to Title 49 U.S.C. App. § 1 *et*

seq.) and the Outer Continental Shelf Lands Act, 43 U.S.C. 1301–1356.9.

Linda Mitry,

Deputy Secretary.

[FR Doc. 05–15871 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–531–000

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 2, 2005, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 6A, to become effective October 1, 2005.

Canyon states that the purpose of this filing is to implement the Annual Charges Adjustment surcharge necessary for Canyon to recover from its customers the fiscal year 2005 annual charges billed to Canyon by the Commission pursuant to Part 382 of the Commission's Regulations.

Canyon states that copies of the filing are being mailed to its customers and interested 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. E5–4333 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–528–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 2, 2005, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective September 1, 2005:

Third Revised Sheet No. 92
Second Revised Sheet No. 113

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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4341 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–17–000]

Duke Energy Guadalupe Pipeline, Inc.; Notice of Petition for Rate Approval

August 4, 2005.

Take notice that on August 1, 2005, Duke Energy Guadalupe Pipeline, Inc. (Guadalupe) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's Regulations. Guadalupe requests the Commission to approve a maximum rate of $0.1906 per MMBtu for firm and interruptible transportation and parking and lending services plus a 1.85 percent fuel charge for all services. Guadalupe states that these services will be performed under section 311(a)(2) of the Natural Gas Policy Act.

Any person desiring to participate in this rate 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). 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.

Comment Date: 5 pm Eastern Time August 25, 2005.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4335 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–523–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 1, 2005, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 1, 2005.

ESNG states that copies of the filing have been served upon its affected customers and interested 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. E5–4336 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–526–000]

Horizon Pipeline Company, L.L.C.; Notice of Proposed Changes In FERC Gas Tariff

August 4, 2005.

Take notice that on August 1, 2005, Horizon Pipeline Company, L.L.C. (Horizon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective August 1, 2005.
Revised Sheet No. 2

First Revised Sheet No.7C
Original Sheet No. 239
Sheet Nos. 240—299

Horizon states that the purpose of this filing is to implement a successor agreement and a continuation to the current negotiated rate transaction. Horizon further states that it tenders for filing copies of the Interruptible Transportation Negotiated Rate Agreement between Horizon and Natural Gas Pipeline Company of America.

Horizon states that copies of the filing are being mailed to its customers and interested 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. E5–4339 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–530–000]

Horizon Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 2, 2005, Horizon Pipeline Company, L.L.C., (Horizon) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 5, to become effective October 1, 2005.

Horizon states that the purpose of this filing is to implement the Annual Charges Adjustment surcharge necessary for Horizon to recover from its customers the fiscal year 2005 annual charges billed to Horizon by the Commission pursuant to Part 382 of the Commission's Regulations.

Horizon states that copies of the filing are being mailed to its customers and interested 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4344 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–527–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculation

August 4, 2005.

Take notice that on July 29, 2005, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing schedules which reflect calculations supporting the Measurement Variance/Fuel Use Factors utilized by Iroquois during the period January 1, 2005 through June 30, 2005.

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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4340 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–529–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 2, 2005, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Twelfth Revised Sheet No. 26, to become effective October 1, 2005.

Natural states that the purpose of this filing is to implement the Annual Charges Adjustment surcharge necessary for Natural to recover from its customers the fiscal year 2005 annual charges billed to Natural by the Commission pursuant to Part 382 of the Commission's Regulations.

Natural states that copies of the filing are being mailed to its customers and interested 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. E5–4342 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–525–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on July 29, 2005, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective July 1, 2005.

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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4338 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–524–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 1, 2005, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 1, 2005.

Texas Eastern states that copies of its filing have been served upon all affected customers of Texas Eastern and interested 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. E5–4337 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–530–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 4, 2005.

Take notice that on August 2, 2005, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective October 1, 2005:

Thirteenth Revised Sheet No. 5
Sixth Revised Sheet No. 7

Trailblazer states that the purpose of this filing is to implement the Annual Charges Adjustment surcharge necessary for Trailblazer to recover from

its customers the fiscal year 2005 annual charges billed to Trailblazer by the Commission pursuant to Part 382 of the Commission's Regulations.

Trailblazer states that copies of the filing are being mailed to its customers and interested 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 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4343 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

August 4, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: *ER01–1758–003.*
Applicants: Altorfer, Inc.
Description: *Altorfer, Inc. submits revisions to its market-based FERC Electric Rate Schedule No. 1 to include the reporting requirement for changes in status adopted by the Commission in Order No. 652.*
Filed Date: 07/28/2005.
Accession Number: *20050803–0068.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: *ER04–127–002.*
Applicants: Green Power Partners I LLC.
Description: *Green Power Partners I LLC submits a notice of change of status.*
Filed Date: 05/17/2005.
Accession Number: *20050519–0109.*
Comment Date: 5 p.m. eastern time on Thursday, August 25, 2005.

Docket Numbers: *ER04–449–009.*
Applicants: New York Independent System Operator, Inc.
Description: *New York Independent System Operator, Inc. and New York Transmission Owners submit a Status Report on Deliverability Analysis.*
Filed Date: 07/01/2005.
Accession Number: *20050705–0208.*
Comment Date: 5 p.m. eastern time on Friday, August 15, 2005.

Docket Numbers: *ER05–1193–001.*
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: *Midwest Independent Transmission System Operator, Inc. submits proposed revisions to Attachment H–1 (Index of Interconnection Agreement Customers) of it's open access transmission and energy markets tariff, FERC Electric Tariff, Third Revised Volume No. 1.*
Filed Date: 07/29/2005.
Accession Number: *20050804–0022.*
Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

Docket Numbers: *ER05–1259–000.*
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits an Interconnection Agreement among the City of Lebanon, Ohio, the Midwest ISO and the Cincinnati Gas & Electric Company, by its agent Cinergy Services, Inc.
Filed Date: 07/28/2005.
Accession Number: *20050803–0072.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: *ER05–1260–000.*
Applicants: *Midwest Independent Transmission System Operator, Inc.*
Description: *Midwest Independent Transmission System Operator, Inc. submits an Interconnection Agreement among Hoosier Energy Rural Electric Cooperation, Inc., the Midwest ISO and PSI Energy, Inc.*
Filed Date: 07/28/2005.
Accession Number: *20050803–0073.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: *ER05–1261–000.*
Applicants: Carolina Power & Light Company.
Description: *Carolina Power & Light Company submits an executed Network Integration Transmission Service Agreement & Network Operating Agreement with the Town of Waynesville, NC.*
Filed Date: 07/28/2005.
Accession Number: *20050803–0069.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: ER05–1274–000.
Applicants: Perryville Energy Partners, L.L.C.
Description: *Perryville Energy Partners, L.L.C. submits a Notice of Termination of its FERC Electric Tariff, Original Volume 1, to become effective 7/1/05.*
Filed Date: 07/28/2005.
Accession Number: *20050803–0054.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: *ER05–1275–000.*
Applicants: Ramco Generating One, Inc.
Description: *Ramco Generating One, Inc. submits a notice of cancellation of its FERC Electric Tariff, Original Volume No. 1, to become effective July 27, 2005.*
Filed Date: 07/27/2005.
Accession Number: *20050803–0053.*
Comment Date: 5 p.m. eastern time on Wednesday, August 17, 2005.

Docket Numbers: *ER05–1280–000.*
Applicants: Strategic Energy L.L.C.
Description: *Strategic Energy LLC submits a notice of succession and revisions to its FERC Electric Tariff, First Revised Rate Schedule 1.*
Filed Date: 07/28/2005.
Accession Number: *20050803–0060.*
Comment Date: 5 p.m. eastern time on Thursday, August 18, 2005.

Docket Numbers: *ER05–1013–001.*
Applicants: California Independent System Operator Corporation.

Description: *California Independent System Operator Corporation's amendment to filing and response to FERC's 7/13/05 deficiency letter in Docket No. ER05–1013–000.*

Filed Date: 08/02/2005.

Accession Number: *20050804–0094.*

Comment Date: 5 p.m. eastern time on Friday, August 12, 2005.

Docket Numbers: *ER95–1374–018; ER96–1122–015.*

Applicants: National Fuel Gas Resources, Inc.; NFR Power Inc.

Description: *National Fuel Resources Inc. and NFR Power Inc. submit their Triennial Market Power Reviews and Revisions to their Market-Based Rate Tariffs.*

Filed Date: 07/27/2005.

Accession Number: *20050729–0047.*

Comment Date: 5 p.m. eastern time on Wednesday, August 17, 2005.

Docket Numbers: *ER97–3428–008.*

Applicants: Tri Valley Corporation.

Description: *Tri-Valley Corporation submits its Triennial Updated Market Power Analysis.*

Filed Date: 07/29/2005.

Accession Number: *20050729–5052.*

Comment Date: 5 p.m. eastern time on Friday, August 19, 2005.

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. 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 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 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 *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4346 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2984–042]

S.D. Warren Company; Notice of Public Meeting on Draft Environmental Assessment

August 4, 2005.

The Commission hereby gives notice that members of its staff will conduct a public meeting on August 18, 2005, from 7 to 10 p.m. (EST) at the Windham High School Auditorium, located at 406 Gray Road, Windham, Maine.

The purpose of the meeting is to request additional comments on the draft environmental assessment (EA) prepared for the relicensing of the Eel Weir Project, FERC No. 2984. The draft EA was issued and publicly noticed on July 11, 2005, and is available for review on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. The project is located on the Presumpscot River at the outlet of Sebago Lake, in Cumberland County, Maine.

This meeting is open to the public. All local, state, and Federal agencies, Indian tribes, and other interested parties are invited to participate. A transcript of the meeting will be prepared.

Please contact Allan Creamer at (202) 502–8365, or via e-mail at *allan.creamer@ferc.gov,* with questions or for additional information.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4334 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2174–012–California]

Southern California Edison; Notice of Availability of Draft Environmental Assessment

August 4, 2005.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations (18 CFR part 380), Commission staff has reviewed the application for license for the Portal Hydroelectric Project (FERC No. 2174–012) and has prepared a draft environmental assessment (DEA). The project is located on Camp 61 Creek and Rancheria Creek in Fresno County, California.

The DEA contains the staff's analysis of the potential environmental effects of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The DEA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's Web site using the eLibrary link.

Any comments on the DEA should be filed within 30 days of the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please reference ''Portal Hydroelectric Project, FERC Project No. 2174–012'' on all comments. Comments 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4345 Filed 8–10–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0500, FRL–7950–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Activities Associated With EPA's ENERGY STAR for Homes Program, EPA ICR Number 2193.01

AGENCY: Environmental Protection Agency (EPA).

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 October 11, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0500, to EPA online using EDOCKET (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Brian Ng, ENERGY STAR Program, Mailcode: 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9162; fax number: (202) 343–2200; e-mail address: *ng.brian@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OAR–2004–0500, which is available for public viewing at the Air and Radiation 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 Air and Radiation Docket is (202) 566–1742. 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 home builders, home energy verification organizations, lenders, regional energy efficiency programs, home improvement contractors, and national, regional, state, or local government entities and other organizations that serve the home building or home improvement industries.

Title: Information Collection Activities Associated With EPA'S ENERGY STAR Program In The Residential Sector—ICR Number 2193.01.

Abstract: The Environmental Protection Agency (EPA) introduced ENERGY STAR in 1992 to label energy efficient computers. Since then, EPA and the Department of Energy (DOE) have expanded the ENERGY STAR Program to promote energy efficiency in over 40 product categories and in commercial and residential buildings. Increased energy efficiency through ENERGY STAR provides cost savings to businesses and homeowners, reduces greenhouse gas emissions from power plants, and increases U.S. energy security and reliability.

EPA announced ENERGY STAR for New Homes in 1995 as part of its effort to promote energy efficient construction in the new homes market. EPA rolled out its existing homes effort in 2000 to promote cost-effective upgrades to the existing homes market. These two efforts promote home envelope improvements such as the proper installation of adequate insulation, sealing of holes and gaps that allow air into the home, and installation of energy efficient windows. In addition to the home envelope, EPA promotes energy efficient heating and cooling equipment, including sealing leaky ducts that distribute conditioned air.

Currently, partners to these two ENERGY STAR efforts are not required to report information to EPA, and information received to date has been submitted voluntarily to EPA. However, EPA believes that partner feedback is essential for EPA to ensure that the current programs are meeting both partners' and EPA's expectations. EPA has developed this ICR to obtain authorization to collect information from the public, including businesses, for the following activities:

ENERGY STAR Partnership: An organization interested in joining ENERGY STAR as a partner is asked to submit a partnership agreement establishing their commitment to promoting ENERGY STAR. Partners agree to undertake efforts such as educating staff and the public about their partnership with ENERGY STAR, developing and implementing a plan to improve energy performance in homes, and highlighting achievements utilizing the ENERGY STAR logos. Partners are encouraged to undertake related activities for added benefit and/or public recognition, such as committing to build 100% ENERGY STAR qualified new homes or offering homebuyers ENERGY STAR's Advanced Lighting Package. Information collected is used to inform the public of organizations that build and promote ENERGY STAR qualified homes and make energy-efficient improvements to existing homes. Partnership is voluntary and can be terminated by partners or EPA at any time. EPA does not expect organizations to join the program unless they expect participation to be cost-effective and otherwise beneficial for them.

Outreach Partnership: Partners have the opportunity to participate in an

outreach partnership with EPA to develop public education campaigns featuring the benefits of ENERGY STAR qualified homes. Partners interested in participating in the outreach program are asked to submit a form detailing their level of participation.

ENERGY STAR Awards: Each year partners are eligible for an ENERGY STAR award, which recognizes organizations demonstrating outstanding support in promoting ENERGY STAR. This award program provides partners with public recognition and market differentiation. There is an application form that is submitted to EPA by partners interested in being eligible for an award.

Quarterly Reporting: Partners are asked to submit information each calendar quarter to assist EPA in tracking and measuring progress and program implementation. This includes submitting quarterly updates on partners' level of activity in qualifying new homes for the ENERGY STAR label and activity in improving the energy efficiency of existing homes. This information is used by EPA to determine ENERGY STAR's impact on the market for energy efficient new and existing homes, its impact on residential energy demand and air pollution, and to recognize partners for promoting energy efficient homes.

Evaluation: Partners and other program participants are asked to periodically submit information to EPA as needed to assist in evaluating ENERGY STAR's effectiveness in helping organizations promote energy efficiency in homes, to assess partners' level of interest and ability in promoting ENERGY STAR in the residential sector, and to determine the impact that ENERGY STAR has on the supply and demand for energy-efficient homes and home improvement products and services. For example, EPA periodically contacts a subset of partners about their participation in the ENERGY STAR Program to determine how it has impacted their organization and areas for improvement. This information is used by EPA to make changes to ENERGY STAR's outreach efforts to better serve the needs of partners.

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: In terms of hours, the total annual respondent burden for this three (3) year collection of information is estimated to be 5,092 hours. The average hours per year per respondent varies depending on the type of respondent, the specific collection activity, and other factors. The following is the estimated annual burden for each activity:

ENERGY STAR Partnership: The total annual burden for joining ENERGY STAR as a partner and related activities is estimated to be 2,761 hours for all respondents. The annual burden for joining as a partner is estimated to range from 1 to 2.5 hours per respondent. An additional annual burden of 40 hours per respondent is estimated for a manufactured housing partner to certify their plant as ready to produce homes eligible for ENERGY STAR qualification. The additional annual burden of 86 hours per respondent is estimated for each Home Performance with ENERGY STAR partner for implementation and reporting activities.

Outreach Partnership: The total annual burden for the outreach partnership is estimated to be 782 hours for all respondents. The annual burden is estimated to be 43 hours per respondent, which includes time for completing and submitting the commitment form as well as coordinating with other participants and EPA to develop and distribute the outreach campaign.

ENERGY STAR Awards: The total annual burden for applying for an ENERGY STAR award is estimated to be 410 hours for all respondents. The annual burden is estimated to be 10.5 hours per respondent, which includes time for preparing and submitting the awards application and supporting materials to EPA.

Quarterly Reporting: The total annual burden for providing quarterly updates on the number of ENERGY STAR qualified homes built and on market indicators for energy-efficient home improvement projects is estimated to be 321 hours for all respondents. The annual burden is estimated to be about 3.5 hours per respondent, which includes time for logging into EPA's Web-based reporting form (HOST) or using other electronic means to provide the specified information. It also includes the manual submittal of information (in 2006 only) on the number of new homes built with EPA's new Indoor Air Package.

Evaluation: The total annual burden for providing information that evaluates ENERGY STAR's value in the marketplace and its impact on residential energy use is estimated to be 818 hours for all respondents. The annual burden is estimated to range from 45 minutes to 4 hours per respondent, which includes time providing feedback on ENERGY STAR's outreach programs and materials, ENERGY STAR's impact on the supply and demand for energy efficient homes, home improvement market metrics such as the number of verified HVAC system installations and home sealing jobs performed, and time spent on the phone with ENERGY STAR account managers or responding to requests in writing.

In terms of costs, the total annual cost to respondents collectively is estimated to be $361,390. This includes an estimated total annual operation and maintenance cost of $281 for all respondents, which includes postage costs (*i.e.*, $0.37) for each submittal of a partnership agreement to EPA by postal mail and a cost for a long distance call (*i.e.*, $0.10) for each submittal of a partnership agreement to EPA by fax. This also includes costs for a long distance call for each submittal of an application for the outreach partnership via fax and costs of distributing print materials for the outreach campaign.

This ICR also includes an estimated annual capital cost of $35,000 for all respondents. This includes an estimated one-time cost of $3,500 per manufactured housing plant to modify its production and quality control processes to produce homes that are ready for ENERGY STAR qualification.

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.

Respondents/Affected Entities: Home Builders, Home Energy Verification Organizations, Lenders, Regional Energy Efficiency Programs/Utilities, Home Improvement Contractors, Product Retailers, Manufactured Home Retailers, Realtors, Architects.

Estimated Annual Number of Respondents: 2,782.

Frequency of Response: One-time, annually, quarterly, and/or as-needed, depending on respondent type and collection activity.

Estimated Total Annual Hour Burden: 5,092 hours.

Estimated Total Annual Capital, Operation/Maintenance Cost Burden: $35,281.

Estimated Total Annual Cost Burden: $361,390.

Dated: August 3, 2005.

Kathleen Hogan,

Director, Climate Protection Partnerships Division.

[FR Doc. 05–15919 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7950–5]

Public Water System Supervision Program Revision for the State of Texas

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Texas is revising its approved Public Water System Supervision Program. Texas has adopted the Arsenic Rule and the Radionuclides Rule. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these program revisions.

All interested parties may request a public hearing. A request for a public hearing must be submitted by September 12, 2005, to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 12, 2005, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 12, 2005. Any request for a public hearing shall include the following information: the name, address, and telephone number of the individual organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Texas Commission on Environmental Quality, Water Supply Division, Public Drinking Water Section (MC–155), Building F, 12100 Park 35 Circle, Austin, TX 78753; and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ-SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Tom Poeton, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–2757.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 3, 2005.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 05–15829 Filed 8–10–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, August 9, 2005, Meeting closed to the public, this meeting was cancelled.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 11, 2005, 10 a.m. Meeting open to the public. This meeting was cancelled.

DATE AND TIME: Tuesday, August 16, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE AND TIME: Tuesday, August 18, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Revised Advisory Opinion 2005–07: Andy Mayberry and Andy Mayberry for Congress Committee.
Advisory Opinion 2005–09: Friends of Chris Dodd 2004 by counsel, Marc E. Elias.
Advisory Opinion 2005–10: Representative Howard l. Berman and Representative John T. Doolittle by counsel, Judith L. Corley and Brian G. Svoboda.
Notice of Proposed Rulemaking on Electioneering Communications.
Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: 202–694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–16029 Filed 8–9–05; 12:00 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may obtain copies of agreements by contacting the Commission's Office of Agreements at (202) 523–5793 or via e-mail at *tradeanalysis@fmc.gov.* Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010168–020.

Title: New Caribbean Service Rate Agreement.

Parties: CMA CGM, S.A.; P&O Nedlloyd B.V./P&O Nedlloyd Limited (acting as a single party); Hapag-Lloyd Container Linie GmbH; Hamburg-S-damerikanische Dampfschifffahrts-Gesellschaft KG; and Compania Sud Americana de Vapores, S.A.

Filing Party: Wayne R. Rohde, Esq., Sher & Blackwell, 1850 M Street, NW., Suite 900, Washington, DC 20036.

Synopsis: The amendment clarifies that any two or more parties may meet but that any agreements reached are not actions of the agreement unless approved by a majority vote. It also adds a new Article XVI dealing with responsibility for civil penalties and restates the agreement.

Agreement No.: 011852–021.

Title: Maritime Security Discussion Agreement.

Parties: China Shipping Container Lines, Co., Ltd.; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha, Ltd.; Nippon Yusen Kaisha; Yang Ming Marine Transport Corp.; Zim Integrated Shipping Services, Ltd.; Alabama State Port Authority; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Maher Terminals, Inc.; Marine Terminals Corp.; Massachusetts Port Authority; P&O Ports North America, Inc.; Port of Tacoma; South Carolina State Ports Authority; Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc.; TraPac Terminals; Virginia International Terminals; and Yusen Terminals, Inc.

Filing Parties: Carol N. Lambos, The Lambos Firm, 29 Broadway, 9th Floor, New York, NY 10006 and Charles T. Carroll, Jr., Carroll & Froelich, PLLC, 2011 Pennsylvania Avenue, NW., Suite 301, Washington, DC 20006.

Synopsis: The amendment removes CMA CGM, S.A. as a party to the agreement.

Agreement No.: 011919.

Title: Maersk Sealand/P&O Nedlloyd Agreement.

Parties: A.P. Moller-Maersk A/S and P&O Nedlloyd Limited/P&O Nedlloyd B.V.

Filing Parties: Mark J. Fink, Esq.; Sher & Blackwell LLP; 1850 M Street NW., Suite 900, Washington, DC 20036; and Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Ave. NW., Suite 400, Washington, DC 20036.

Synopsis: The proposed agreement would authorize the parties to discuss and agree on rates, terms, and conditions in all U.S. trades; share space on each other's vessels; and engage in other cooperative activities. The parties request expedited review.

Agreement No.: 200866–005.

Title: Lease and Operating Agreement.

Parties: Broward County, King Ocean Service de Venezuela, S.A., and King Ocean Services, Ltd.

Filing Party: Candace J. McCann, Broward County Board of County Commissioners, Office of the County Attorney, 1850 Eller Drive, Suite 502, Fort Lauderdale, FL 33316.

Synopsis: The agreement revises payments under the agreement.

Agreement No.: 201165.

Title: Marine Terminal Lease and Operating Agreement. Parties: Broward County and Saw Grass Transport, Inc.

Filing Party: Candace J. McCann, Broward County Board of County Commissioners, Office of the County Attorney, 1850 Eller Drive Suite 502, Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease and operation of terminal facilities at Port Everglades, Florida.

Agreement No.: 201166.

Title: Marine Terminal Lease and Operating Agreement.

Parties: Broward County, Florida International Terminal, LLC, and Compania Sud Americana de Vapores, S.A. (as guarantor).

Filing Party: Candace J. McCann; Broward County Board of County Commissioners, Office of the County Attorney, 1850 Eller Drive Suite 502, Fort Lauderdale, FL 33316.

Synopsis: The agreement provides for the lease and operation of terminal facilities at Port Everglades, Florida.

Dated: August 5, 2005.

By Order of the Federal Maritime Commission.

Bryant VanBrakle,

Secretary.

[FR Doc. 05–15843 Filed 8–10–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

ANDA Pacific, Inc., 1516 South Baldwin Avenue, #B, Arcadia, CA 91007. Officer: Weizhen Ding, CEO (Qualifying Individual).

Carmen Cargo Express, Inc., 5841 SW 21 Street, Hollywood, FL 33023. Officers: Eddy Ricardo, President (Qualifying Individual), Dayli Ricardo, Vice President.

S Cargo International, Inc., 14916 Lamoli Avenue, #16, Gardena, CA 90249. Officers: Edward H. Lee, President (Qualifying Individual); Kwang Bok Kim, Director.

BBC Freight Line Inc., 2966 E. Victoria Street, Suite #C, Rancho Dominguez, CA 90221. Officers: Douglas Edgardo Garcia, Secretary (Qualifying Individual); Fred Chen, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

ELFS Management, Inc., 3340–D Greens Road, Suite 300, Houston, TX 77032. Officers: Dian A. Mazzei, International Director (Qualifying Individual); Frederick J. Lalumandier, Partner.

Darpex Import & Export Corp., 5543 NW 72nd Avenue, Miami, FL 33166. Officer: Dario Pereyra, President (Qualifying Individual).

Cargo Link Air Freight, Inc., Bldg. 67, Suite 3150, JFK Airport, Jamaica, NY 11430. Officers: Raymond Leung, Secretary (Qualifying Individual); Lalit Trehan, President.

ATC Logistic, Inc., 2132–A E. Dominguez Street, Long Beach, CA 90810. Officer: Paul Kang, President (Qualifying Individual).

Newskin Express, Inc., 4902 Louise Avenue, Torrance, CA 90505. Officer: Soo Jin Rho, President (Qualifying Individual).

Airways Freight Corporation dba AFC Oceancarriers, 3849 W. Wedington Drive, Fayetteville, AR 72704. Officers: Michael J. Beckers, Vice President (Qualifying Individual); Ken L. Center, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Dorotime Services Limited, 598 Charles Street, Providence, RI 02904. Officers: Olurotimi Olugbode, President (Qualifying Individual); Edith Olugbode, Director.

Dated: August 5, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–15844 Filed 8–10–05; 8:45 am]

BILLING CODE 6730–01–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 August 25, 2005.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Roger L. Gott, individually, Dennis W. Gott, individually, and Roger L. Gott, Dennis W. Gott, and Carl E. Eichenberger, all of Salem, Missouri; acting as a group in concert, to acquire voting shares of Town & County Bancshares, Inc., Salem, Missouri, and thereby indirectly acquire voting shares of Town & County Bank, Salem, Missouri.

Board of Governors of the Federal Reserve System, August 5, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–15870 Filed 8–10–05; 8:45 am]

BILLING CODE 6210–01–S

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 *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 September 6, 2005.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Interchange Financial Services, Corporation, Saddle Brook, New Jersey; to acquire 100 percent of the voting shares of Franklin Bank, Nutley, New Jersey.

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. FSB Bancshares, Inc., Church Point, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers State Bank & Trust, Church Point, Louisiana.

Board of Governors of the Federal Reserve System, August 5, 2005.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 05–15869 Filed 8–10–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations—Working Group on Quality.

Time and Date: 1 p.m.–5 p.m., September 7, 2005.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Working Group on Quality will identify short and long term future work plans.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Anna Poker, Lead Staff Person for the NCVHS Subcommittee on Special Populations, Working Group on Quality, Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, 540 Gaither Road, Room #3331, Rockville, MD 20850, Phone: (301) 427–1802; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 3, 2005.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 05–15925 Filed 8–10–05; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Capacity-Building Assistance for Global HIV/AIDS Microbiological Laboratory Program Development Through Technical Assistance Collaboration

Announcement Type: New.

Funding Opportunity Number: RFA# AA012.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241

and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Purpose: Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

The purpose of this funding announcement is to build progressively an indigenous, sustainable response to national HIV epidemics through the raped expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and to support laboratory capacity building assistance for HIV/AIDS program development through technical assistance (TA) as part of President Bush's Emergency Plan for AIDS Relief. The term ''capacity-building assistance'' means the provision of information, technical assistance, training, and technology transfer for individuals and organizations to improve the delivery and effectiveness of HIV prevention, care and treatment services and interventions. This includes the delivery of direct HIV prevention, care or treatment interventions. This program addresses the goals of the President's Emergency Plan as cited above.

The goals of this funding announcement are to address microbiological laboratory capacity-building needs in Emergency Plan countries in two focus areas: (1) Strengthening laboratory organizational and technical infrastructure, especially as it relates to clinical microbiology for HIV prevention, care and treatment programs; and (2) assuring the quality of laboratory testing and HIV test results by instituting systematic approaches to delivering clinical microbiology services to HIV/AIDS prevention, treatment and care programs.

Measurable outcomes of the program will be in alignment with the performance goals of the President's Emergency Plan and one (or more) of the following performance goal(s) for the National Center for HIV, STD and TB Prevention (NCHSTP) within the Centers for Disease Control and Prevention (CDC) within HHS: Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services; and strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions, and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS/CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan. Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the awardee will give priority to evidence-based, yet culturally adapted, innovative approaches.

Capacity-building TA activities covered under this cooperative agreement are limited to the following:

1. Strengthen microbiological laboratory organizational and technical infrastructure for HIV prevention, care and treatment programs in Emergency Plan countries.

a. Provide TA in the laboratory management of HIV prevention, care and treatment programs. Examples include, but are not limited to: organizational assessments to determine the needs, resources, readiness and gaps of organizational infrastructure systems (*e.g.*, governance, management, administration, personnel, and fiscal); development of public/private partnership strategies; management information systems (data management); strategic planning; leadership development; team-building; human resources management, including staff, management, retention and training; organizational quality assurance and monitoring; program marketing and public relations; and cross-cultural communications.

b. Plan and conduct site visits, conferences and/or meetings for country public health officials and microbiological laboratory personnel from countries covered by the President's Emergency Plan for AIDS Relief.

c. Provide TA and training, to include strategic planning, training of trainers and development and dissemination of manuals.

2. Assure the quality of laboratory testing and HIV test results by instituting systematic approaches to delivering clinical microbiology services to HIV/AIDS prevention, treatment and care programs.

a. Provide TA in the laboratory design of prevention, care and treatment programs, and in the establishment and/or improvement of laboratory monitoring and evaluation systems for such programs.

b. Develop and disseminate resource toolkits to National/Regional/District AIDS Programs in Emergency Plan countries to assist in the planning, implementation and evaluation of laboratory programs.

c. Modify and/or translate of existing resource materials for use in multiple GAP countries covered by the President's Emergency Plan.

d. Provide TA to support training activities in microbiological techniques and procedures covering bacteriology, including tuberculosis, mycology, parasitology, virology and molecular biology as it relates to HIV/AIDS prevention and care.

e. Assist in the procurement of equipment to improve microbiological testing for HIV/AIDS patients in Emergency Plan countries.

f. Develop a quality-assurance/quality-control program for microbiological testing for HIV/AIDS that is consistent with other HHS/CDC laboratory programs.

g. Provide TA through short- (up to three months), medium- (three months to nine months), and long-term (greater than nine months) assignment of experts to help train and mentor local counterparts to support HIV/AIDS program implementation in Emergency Plan countries.

h. Establish of peer-to-peer TA networks from U.S.-based microbiology laboratories to sister public and private microbiology laboratories to optimize similarities and common technical approaches to providing laboratory support to programs.

i. Develop a system that would allow GAP country laboratory personnel from Emergency Plan countries to participate in study tours of appropriate laboratories in the United States.

j. Provide assistance to educational institutions that offer in-service training of microbiologists in Emergency Plan countries to improve training programs for new microbiologists.

k. Update and share relevant technical, best practice documents and approaches (U.S. and international).

l. Support operations research into new microbiology techniques and services that would feed into HIV/AIDS prevention, treatment and care programs.

m. Procure and deliver necessary laboratory equipment and supplies in support of in-country programs.

Administration

Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Provide policy and program information that would guide the rapid dissemination and implementation of microbiology support to HIV/AIDS programs in targeted countries, in compliance with guidance established by the Office of the U.S. Global AIDS Coordinator.

2. Provide technical advice in the development of systems to implement HHS policies on microbiology for HIV/AIDS programs.

3. Provide consultation and scientific and technical assistance in planning, operating, analyzing and evaluating the microbiology components of HIV prevention, care and treatment laboratory and program evaluation activities.

4. Disseminate current information, including best practices and the guidelines established by the Office of the U.S. Global AIDS Coordinator, in all areas of HIV prevention, care and treatment.

5. Monitor progress in achieving the purpose of this program, as well as project objectives, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

6. Assist in assessing program operations and in evaluating overall effectiveness of programs.

7. Organize an orientation meeting with the awardee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

8. Review and approve the process used by the awardee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

9. Review and approve awardee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

10. Review and approve awardee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

11. Meet on a monthly basis with awardee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

12. Meet on a quarterly basis with awardee to assess quarterly technical and financial progress reports and modify plans as necessary.

13. Meet on an annual basis with awardee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

II. Award Information

Type of Award: Cooperative Agreement.

HHS/CDC involvement in this program, and the involvement of the Office of the U.S. Global AIDS Coordinator, is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $6,000,000 (Note: An estimated $100,000 will be awarded to support core activities each year. The remaining funding of up to $1,900,000 per year is for the projected country-specific activities. Country-specific activity requests must receive funding from country budget allocations and be included in the approved Country Operational Plans.

Approximate Number of Awards: One or more.

Approximate Average Award: $2,000,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $100,000.

Ceiling of Award Range: $2,000,000. (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- For profit organizations.
- Small, minority, women-owned businesses.
- Community-based organizations.
- Research institutions.
- Hospitals.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their Bona Fide Agents (this includes the

District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

• Political subdivisions of States (in consultation with States).

III.2. Cost Sharing or Matching

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements:

Applications that are incomplete or non-responsive to the special requirements listed in this section will not enter into the review process. We will notify you the application did not meet submission requirements.

• HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages the applicant to submit the application electronically by using the forms and instructions posted for this announcement on *http://www.Grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forgo paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If access to the Internet is not available, or if there is difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700 and we can mail the application forms to you.

IV.2. Content and Form of Submission

Application: A project narrative must be submitted with the application forms. You must submit the narrative in the following format:

• Maximum number of pages: 30. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
• Font size: 12 point unreduced.
• Double-spaced.
• Paper size: 8.5 by 11 inches.
• Page margin size: One inch.
• Printed only on one side of page.
• Held together only by rubber bands or metal clips; not bound in any other way.

The narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

• Program Plan. The program plan will include a description of your program and strategy, objectives, activities and timeline. It will also describe the program contribution to goals and objectives of the Emergency Plan for AIDS Relief.

• Program and Strategy.

Provide a description of your proposed program and the strategy for implementation. Include a description of the administrative, financial, accounting and human resource models used to build organizational infrastructure capacity of national AIDS programs (*e.g.*, grant writing, fiscal management, board development, staff and volunteer development and strategic planning).

• Objectives.

What are your objectives for addressing the general and focus area-specific activities?

• Activities.

What are your proposed activities? These activities must relate to each of the objectives listed above.

• Timeline.

Provide a timeline and list staff responsible for implementing activities in the first year.

• Program Experience.

Describe your organization's program experience as it relates to the proposed activities in this program announcement. Address the methods that you have used to provide similar services in the past. Also include an explanation of how funds used in this cooperative agreement will be used differently, or in ways that will expand upon programs that are supported with existing or future funds. Address your organization's experience and capacity to provide technical assistance that responds effectively to the cultural and linguistic characteristics of your recipients. In answering this question, describe the types of services provided and list any culturally and linguistically appropriate curricula and materials that your organization has adapted or developed.

• Management Plan and Organizational Structure.

Describe your management and staffing plan to conduct or support the essential components of this cooperative agreement. Include an organizational chart that reflects the current management structure and a description of the roles, responsibilities and relationships of all staff supported through this cooperative agreement. Provide resumes of all key staff to demonstrate their qualifications (include in the appendix).

• Measures of Effectiveness.

These must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome of this cooperative agreement.

• Budget and Budget Justification (not included in page limit).

Include a detailed and justified budget required to accomplish the objectives. If you are requesting indirect costs in your budget, you must include a copy of your approved indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement must have been negotiated within the last 12 months. Justify all operating expenses in relation to the planned activities and stated objectives. CDC may not fund or approve all proposed activities. Be precise about the program purpose of each budget item, and itemize calculations wherever appropriate.

The following information should be included in the application appendices, if relevant. The appendices will not be counted toward the narrative page limit. This additional information includes:

• Curriculum Vitaes/Resumes.
• Organizational Charts.
• A list of culturally and linguistically appropriate materials that are available and are currently being delivered.
• A description of funding from other sources (federal, state, local, private, *etc.*) to conduct similar activities. This should include a summary of current funds received with the name of the sponsoring organization/source of

income, level of funding, description of how funds have been used and budget period. Identify proposed personnel who will conduct and oversee the activities of this project and all funding sources supporting these individuals (include their roles and responsibilities).

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.* If the application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that could require submittal of additional documentation with the application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 6, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standards(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides. A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be

medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You can find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov,* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission : ''BACK–UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit your grant application by using Microsoft Office products (*e.g.,* Microsoft Word, Microsoft Excel, *etc.*). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov Web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management–AA012, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluation the application against the following criteria:

1. Program Plan (40 points).

a. Are the program and strategy based on sound reasoning or evidence, and do they match the five-year strategy and goals of the President's Emergency Plan for AIDS Relief? (10 points)

b. Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? (5 points)

c. Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan? (5 points)

d. Are the proposed program objectives specific, measurable, achievable, culturally appropriate and time-phased? (5 points)

e. What is the likelihood that the proposed program activities will accomplish the proposed program objectives and contribute to the achievement of the numerical goals of the President's Emergency Plan? (10 points)

f. Is the proposed timeline feasible? (5 points)

2. Program Experience (20 points).

Is the applicant's program experience relevant to the provision of the services it intends to provide? Does the applicant demonstrate the local experience and capability to achieve the goals of the project?

3. Organizational Capacity (20 points).

Does the applicant demonstrate current organizational capacity to provide the services that they intend to provide, including the ability to provide trainers fluent in the local languages of the targeted countries?

4. Evaluation Monitoring Plan (20 points).

Is the evaluation/monitoring plan feasible and does it address the required target goals, process and outcome data

collection, analysis and reporting activities consistent with the guidelines established by the Office of the U.S. Global AIDS Coordinator?

5. Budget and Justification (Reviewed, but not scored).

Is the budget itemized, well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in targeted countries?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

V.3. Anticipated Award Date

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–5 HIV Program Review Panel Requirements.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports (in English and French):

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Sherry Orloff, Project Officer, HHS/CDC/NCHSTP/GAP, 1600 Clifton Road, NE. (MS–E30), Atlanta, GA 30333, Telephone: (404) 639–8838, E-mail: *SOrloff@cdc.gov.*

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov.*

Dated: August 5, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15879 Filed 8–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Enhancement of a Continuum of HIV/AIDS Prevention, Care and Treatment Through the Network Model in the United Republic of Tanzania

Announcement Type: New.

Funding Opportunity Number: AA085.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Date:

Application Deadline: September 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 301 (a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601] and Section 104 of the Foreign Assistance Act of 1961 [22 U.S.C. 2151b].

Background: The President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS.

The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Purpose: The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic in Tanzania through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

This cooperative agreement will: (1) Enhance the continuum of HIV/AIDS prevention, treatment and care for people living with HIV/AIDS (PLWHA) through the network model; (2) improve Reproductive and Child Health Services (RCHS) for prevention of mother-to-child transmission (PMTCT) of HIV; (3) improve health laboratory services at point-of-service settings to support HIV prevention, treatment and care; and (4) rapidly scale up anti-retroviral therapy (ART) availability in the United Republic of Tanzania.

In Tanzania, Emergency Plan goals include: treating at least [150,000,000] HIV-infected individuals; caring for [750,000,000] HIV-affected individuals, including orphans.

Measurable outcomes of the program will be in alignment with the numerical performance goals of the President's Emergency Plan and with the following performance goal for the National Center of HIV, STD, and TB Prevention (NCHSTP) of the Centers for Disease Control and Prevention (CDC) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, the U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age, to reduce HIV transmission, and to improve care of PLWHAs.

This announcement is only for non-research activities supported by HHS, including the Centers for Disease Control and Prevention (CDC). If an applicant proposes research activities, HHS will not review the application. For the definition of ''research,'' please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in Tanzania. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The awardee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Tanzania will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The awardee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee Activities for this program are as follows:

1. Enhance the continuum of HIV/AIDS prevention,[1] treatment and care for PLWHA through the network model:

a. Establish centers of excellence for provision of optimal HIV/AIDS prevention, care and treatment in zonal referral hospitals.

b. Procure the necessary staff, equipment, and supplies to establish and coordinate services of the centers of excellence.

c. Provide capacity to zonal referral hospitals to teach other facilities to provide similar services.

d. Provide capacity to zonal referral hospitals to support and help monitor HIV/AIDS prevention, care and treatment.

e. Introduce new models for confidential counseling and testing (CT), including routine or diagnostic confidential CT in tuberculosis (TB) clinics, sexually transmitted infection (STI) clinics, specialist clinics, general outpatient department and inpatient care, for identifying and referring treatment to HIV-positive individuals.

[1] Prevention interventions directed toward behavior change should promote the ABC model. Methods and strategies should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those populations who are engaged in high-risk behaviors. Behaviors that increase risk for HIV transmission include: engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined above.

f. Develop annual plans for integrating HIV/AIDS prevention, care and treatment in district health plans.

g. In collaboration with HHS, plan, develop, conduct and evaluate HIV/AIDS training programs for physicians, nurses, and traditional birth attendants. Training must be based on national HIV/AIDS guidelines and training curriculum.

2. Improve RCHS care for PMTCT of HIV:

a. Procure the necessary staff, equipment and supplies to establish and coordinate PMTCT care at health facilities in each center catchment area.

b. Improve capacity of health facilities in the catchment area of the zonal referral hospital to deliver quality PMTCT care to pregnant women and their newborns.

c. Support integration of PMTCT care into routine reproductive and child health care.

d. Expand implementation of the PMTCT monitoring and evaluation system.

e. Provide training and human resources development for PMTCT care.

f. In collaboration with HHS and the Tanzanian Ministry of Health (MOH), plan, develop, conduct and evaluate PMTCT training programs for physicians, nurses, and traditional birth attendants. Training should be based on integration of PMTCT care into routine anti-natal clinic (ANC) care.

3. Improve health laboratory services at point-of-service settings to support HIV prevention, treatment and care:

a. Procure the necessary staff, equipment and supplies to establish and coordinate HIV/AIDS laboratory services.

b. Strengthen laboratory capacity for diagnosis of HIV infection in adults at all health facilities in the catchment area.

c. Provide access to facilities for diagnosis of HIV in infants; staging of disease to determine eligibility for initiation of anti-retroviral (ARV) therapy for PLWHA; monitoring treatment progress of patients on ARVs; and monitoring of adverse reactions to ARVs.

d. Develop and implement a plan for surveillance of drug resistance among patients on ARVs.

e. Develop a laboratory information system linked to the Tanzanian National Health Management Information System.

f. Undertake infrastructure improvements for provision of quality laboratory services.

g. Introduce a laboratory quality system approach at all regional hospitals in the catchment area.

h. Provide training and human resources development for health laboratory services.

4. Rapidly scale up ART availability:

a. Collaborate with HHS and the Tanzanian National AIDS Control Program (NACP) to assess the health facility network capacity in the catchment area for expansion of ARV therapy.

b. Assist selected health facilities to introduce and expand ARV therapy by building on established clinical programs.

c. Assist target health facilities with training, and mobilize health care personnel to provide treatment.

d. Support efforts to enhance the capacity of health facilities for supply chain management through the Tanzanian national Integrated Logistics System (ILS) to respond to rapid ARV therapy scale up.

e. Establish links with faith-based and community-based organizations for community mobilization to support ARV therapy and improve compliance among PLWHA on ARVs.

f. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.

g. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

h. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

i. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Collaborate with the Tanzania Ministry of Health and other in-country and international partners in the development of plans for program assistance based on the country needs, the Emergency Plan technical assistance portfolio, and HIV laboratory activities conducted by other partners.

2. Provide consultation, scientific and technical assistance based on the ''CDC Global AIDS Program (GAP) Technical Strategies'' document to promote the use of best practices.

3. Facilitate in-country planning and review meetings for the purpose of ensuring coordination of country-based program technical assistance activities. HHS will act as liaison and assist in coordinating activities as required between the applicant and other non-governmental organizations (NGOs), the Government of Tanzania, and other HHS partners.

4. Play an active role in development of curricula and training courses, including provision of technical assistance.

5. Provide technical assistance in clinical, counseling and laboratory issues, training, data management, and program monitoring and evaluation.

6. Provide technical assistance with prevention counseling and testing and data management issues. Such technical assistance may involve identification of problems and challenges and collaborative efforts to find practical solutions.

7. Work with other stakeholders to continuously evaluate curriculum and training needs; and adapt training, as necessary, to meet the program needs and cultural context in Tanzania.

8. HHS will participate in providing support and supervision to implementing partners.

9. Monitor project and budget performance to ensure satisfactory progress towards the goals of the project and the numerical goals of the President's Emergency Plan.

10. Organize an orientation meeting with the grantee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

11. Review and approve grantee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

12. Review and approve grantee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

13. Meet on a monthly basis with grantee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

14. Meet on a quarterly basis with grantee to assess quarterly technical and financial progress reports and modify plans as necessary.

15. Meet on an annual basis with grantee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

Either HHS staff or staff from organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

Administration: Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

II. Award Information

Type of Award: Cooperative Agreement.

HHS's involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $18 Million (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: Five.

Approximate Average Award: $900,000 (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $500,000.

Ceiling of Award Range: $1,500,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

This is a limited competition funding opportunity announcement. Applications will only be considered from public and faith-based hospitals or zonal referral hospitals as defined by the MOH in Tanzania mainland, or the MOH and social welfare in Zanzibar.

Eligible applicants: Must conduct a specific set of activities supportive of the HHS goals for enhancement of a continuum of HIV/AIDS prevention, care and treatment through the network model for PMTCT, introducing new models for CT, improving capacity of laboratory services and establishing centers of excellence at zonal referral hospitals in the United Republic of Tanzania; must have the legal authority, ability, and credibility among Tanzanian citizens to coordinate the implementation of zonal initiatives for HIV/AIDS prevention, treatment and care; must be able to become engaged immediately in the activities listed in this announcement; and must build upon the existing framework of health policy and programming that the MOH itself has initiated.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will not accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov,* the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 35. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Your application must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Executive Summary.

Provide a clear and concise summary of the proposed goals; major objectives and activities required for achievement of program goals; and amount of funding requested for budget year one of this cooperative agreement.

- Needs Assessment and Capacity.

Describe the documented need for the proposed activities; current activities that provide relevant experience and expertise to perform the proposed activities; and collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

• Four-Year Plan.

• Describe realistic four-year goals and measurable, time-phased objectives for each proposed project; the project's contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief; the major activities to achieve each objective; plans for collaboration with partners, including HHS; and the evaluation process that will be used to determine effectiveness and initiate modifications, as needed.

• Year One Operational and Evaluation Plan.

Provide specific, measurable, and time-phased year one objectives for each proposed project; the specific activities proposed to achieve the year one objectives; and a projected timetable for completion that displays dates for the accomplishment of tasks and identifies responsible parties. For each year one objective, specify how achievement will be measured and documented.

• Management and Staffing Plan.

Describe how the program will be effectively managed. Include the following:

a. Management structure, including the lines of authority and plans for fiscal control.

b. The staff positions responsible for implementation of the program.

c. Qualifications and experience of the designated staff.

• Budget and Justification.

Provide a detailed one-year budget request and line item justification that is consistent with the purpose of the program and the proposed objectives and activities. The budget and justification will not be included within the 35-page limit stated above.

You may include additional information in the application appendices. We will not count the appendices toward the narrative page limit. This additional information includes the following:

• Curricula Vitas.
• Resumes.
• Organizational Charts.
• Letters of Support.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section VI.2. ''Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 6, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. We consider applications completed online through *Grants.gov* formally submitted when the applicant organization's Authorizing Official electronically submits the applications to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit a hard copy application, CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

• Funds may not be used for research.

• Reimbursement of pre-award costs is not allowed.

• Funds may not be used for any new construction.

• Antiretroviral drugs—the purchase of ARVs, reagents, and laboratory equipment for antiretroviral treatment projects require pre-approval from CDC officials.

• Needle exchange—No funds appropriated under this solicitation shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

• Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by CDC officials must be requested in writing.

• All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

• The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

• The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and

operations, and delivery of prevention services for which funds are required).

• You must obtain an annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with international branches and current licensure/ authority in-country, and in accordance with International Accounting Standard(s) approved in writing by CDC.

• A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Prostitution and Related Activities.

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: Electronic Submission: HHS/CDC strongly encourages applicants to submit electronically at: *http://www.grants.gov*. You will be able to download a copy of the application package from *http://www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you can reach customer support by e-mail at *http://www.grants.gov/CustomerSupport*, or by phone at 1–800–518–4726 (1–800–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You can find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff; or

Paper Submission: Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—AA085, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures

of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Technical Approach (25 points).

Does the applicant's proposal include an overall design strategy, including measurable time lines? Does the proposal address regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting the objectives? Is the plan appropriate to the social, political and cultural context in Tanzania?

2. Understanding of the Problem (20 points).

Does the applicant demonstrate a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement? Does the proposal specifically include a description of the public health importance of the planned activities to be undertaken, and a realistic presentation of proposed objectives and projects? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and the National HIV/AIDS plan of the Government of the United Republic of Tanzania, and describe activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Tanzania?

3. Ability To Carry Out the Project (20 points).

Does the applicant document a demonstrated capability to achieve the purpose of the project?

4. Personnel (20 points).

Are the professional personnel involved in this project qualified, including evidence of experience in working with HIV/AIDS, opportunistic infections, and HIV/STD surveillance?

5. Plans for Administration and Management of Projects (15 points).

Is there a plan to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures? Are there adequate plans for administering the project?

6. Budget (not scored).

Is the itemized budget for conducting the project, along with justification, reasonable and consistent with the five-year strategy and goals of the President's Emergency Plan and Emergency Plan activities in Tanzania and the national Tanzanian HIV/AIDS strategy?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Award Date

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements—45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*.

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–6 Patient Care.
- AR–8 Public Health System Reporting Requirements.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.

Applicants can find additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

You need to include an additional Certifications form from the PHS 5161–1 application needs to be included in your Grants.gov electronic submission only. Refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf*. Once the form is filled out, attach it to your Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Tanzania.

f. Additional Requested Information.

2. Annual progress report and financial status report, due 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Tanzania.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140. Telephone: 255 22 212 1407. Cell: 255 744 222986. Fax: 255 22 212 1462. e-mail: *Cthreat@cdc.gov*.

For financial, grants management, or budget assistance, contact: Diane Flournoy, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2072. E-mail: *dflournoy@cdc.gov*.

VIII. Other Information

Applicants can find this and other CDC funding opportunity announcements on the CDC Web site, Internet address: *http://www.cdc.gov*. (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–15890 Filed 8–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthening Management Support Services for HHS Global AIDS Program in the Republic of India

Announcement Type: New.

Funding Opportunity Number: CDC–RFA–AA019.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 2421, as amended, and Under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003 [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm*.

The mission of the U.S. Department of Health and Human Services (HHS) Global AIDS Program (GAP) mission in India is to work with Indian and international partners to develop, evaluate and support effective implementation of interventions to prevent HIV and related illnesses, and to improve care and support of persons with HIV/AIDS. The program aims to build local capacity and promote in-country leadership and ownership of activities; focus on national and local priorities; share experiences and technical information, and coordinate activities with other programs; and use local expertise whenever possible.

Specifically, HHS/GAP's mission in India is to:

1. Provide support and training for HIV/AIDS prevention and care in health care facilities and in the community.

2. Establish training expertise for HIV/AIDS prevention and care and infrastructure development in Tamil Nadu, Andhra Pradesh and other states in India.

3. Strengthen the local and national responses to HIV/AIDS in India through support and collaboration with the Indian National AIDS Control Organization, State AIDS Control Societies, networks of HIV-positive people, the private sector and non-governmental organizations (NGOs), and others.

Purpose: The purpose of the program is to provide management, administrative and some technical support to the HHS/GAP India program.

Specific measurable outcomes of this program include, but are not limited to, routine reporting, which verifies responsible maintenance of program expenditures and program technical activities and confirms accountability of United States Government (USG) funds spent in India.

The measurable outcomes of the program will be in alignment with the goals of the National Center for HIV, Sexually Transmitted Diseases, and Tuberculosis Prevention (NCHSTP) within the Centers for Disease Control and Prevention within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, the U.S. Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age, reducing HIV transmission, and improving care of people living with HIV/AIDS (PLWHA). They will also contribute to the goals of the President's Emergency Plan for AIDS Relief (The Emergency Plan), which are to provide treatment to two million HIV-infected people, prevent seven million new HIV infections' and provide care for ten million people infected and affected by HIV/AIDS, including orphans and vulnerable children.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS focuses on two or three major program areas in each country. Goals and priorities include the following:

- Achieving primary prevention of HIV infection through activities such as expanding confidential counseling and testing programs, building programs to reduce mother-to-child transmission, and strengthening programs to reduce transmission via blood transfusion and medical injections.
- Improving the care and treatment of HIV/AIDS, sexually transmitted diseases (STDs) and related opportunistic infections by improving STD management; enhancing care and treatment of opportunistic infections, including tuberculosis (TB); and initiating programs to provide anti-retroviral therapy (ART).
- Strengthening the capacity of countries to collect and use surveillance data and manage national HIV/AIDS programs by expanding HIV/STD/TB surveillance programs and strengthening laboratory support for surveillance, diagnosis, treatment, disease-monitoring and HIV screening for blood safety.

This announcement is only for non-research activities supported by HHS, including the CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*.

Activities:

The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in India. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of

HHS/CDC and the strategic direction of the Office of the Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The grantee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in India will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The grantee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardees activities for this program are as follows:

1. Through this cooperative agreement, funds will go to one or more organizations that will serve as ''umbrella organizations,'' responsible for identifying and procuring the services of a number of sub-grantees based upon requirements and criteria developed by, and in close collaboration with, HHS/GAP in India, in conjunction with the Office of U.S. Global AIDS Coordinators. The purpose of awarding to subgrantees is to provide HHS/GAP in India, with the ability to have access to technical support that will cover a broad technical and geographic base, and which might not be found in any one single organization. Such technical areas can include (but are not limited to) laboratory services, clinical management of HIV, community medicine, etc. A secondary purpose is to develop and build the capacity of the subgrantees, which will be indigenous NGOs/Community-based organizations (CBOs), faith-based organizations, hospitals and/or other health-care organizations, universities, and other groups capable of designing, implementing and monitoring HIV-related public health initiatives in India, such as medical training programs and community-care programs.

2. Awardees will also be responsible for disbursing and managing U.S. Government funding in a transparent and competitive manner to the subgrantees, in accordance with U.S. Government laws and requirements.

3. Awardees will provide accurate reporting of all funds to HHS/GAP in India.

4. Using criteria developed in collaboration with HHS/GAP in India, awardees will identify subgrantees in a transparent and competitive process, and work closely with the subgrantees to develop their programs. Such programs will be training centers for local Indian medical personnel, and will develop a feasible and effective strategy that can be initiated within six months of funding.

5. Awardees will select, establish and monitor the activities of an effective network of subgrantees and technical consultants, according to criteria and standards developed in collaboration with HHS/GAP in India.

6. Awardees may focus on other parts of the country, including one or more northern Indian states in areas where the HIV epidemic is emerging.

7. At least one of the awardees will focus its attention and activities on the southern region of India, where the epidemic has been concentrated to date.

8. Awardees will identify project staffing needs, including administrative, management and technical staff; hire and train staff.

9. Awardees will identify furnishings, fittings, equipment and other fixed-asset procurement needs of the project and acquire them through a transparent and competitive process.

10. Within the first three months from the date of this award, awardees will develop a strategic plan to include: goals; objectives; a monitoring plan; and an implementation strategy to identify recipients of sub-grants, in a transparent and competitive process, select and review their implementation activities, and establish their reporting requirements.

11. Awardees will establish a suitable administrative and financial management structure, by utilizing less than 10 percent of grant funds in overhead (inclusive of salaries, rent, office supplies, and management fees), or five percent (exclusive of salaries, rent, office supplies, and management fees).

12. Awardees will establish an acceptable reporting structure in collaboration with HHS/GAP India and including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

13. Information on HIV prevention methods (or strategies) must include abstinence, faithfulness, and, for populations engaged in high-risk behaviors,[1] using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

14. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.

15. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

16. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

Through this program, HHS/GAP in India will broaden its ability to implement care programs by establishing an effective arrangement with one or more organizations, which in turn will identify qualified subgrantees in a transparent and competitive process. Through this program, HHS/GAP in India will further support the goals of the President's Emergency Plan by developing and further strengthening the capacity of local organizations to provide good quality HIV care to people living with AIDS (PLWA) in India. The awardees will, through this program, provide

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

technical support (through the subgrantees) to HHS/GAP in India.

Selected subgrantees will carry out the goals of GAP India through the following activities:

1. Strengthening the capacity of primary health care centers to address HIV care and prevention, initially in one or two districts in the State of Andhra Pradesh, with possible expansion into other districts in Andhra Pradesh or other Indian states, if successful.

2. Train private medical practitioners and village health nurses in local languages, and provide appropriate follow up to the training.

3. Develop centers of excellence in training of medical personnel in HIV/AIDS care.

4. Develop and sustain effective and cost-efficient community care and support interventions for PLWHAs.

5. Employ core team resource persons in various areas of expertise, such as training, counseling, management, behavior change communication, laboratory quality control, monitoring and evaluation.

6. Develop programs that enhance or complement existing HIV training programs.

7. Establish culturally and age-appropriate media advocacy programs in local languages.

8. Develop and administer public-private partnerships in close collaboration with HHS/GAP in India and with state AIDS control societies.

Based on its competitive advantage and proven field experience, the winning applicant will undertake a broad range of activities to meet the numerical Emergency Plan targets outlined above. For each of these activities, the grantee will give priority to evidence-based, yet culturally adapted, innovative approaches.

Administration: Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (See HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS activities for this program are as follows:

1. Provide input into the development of the overall program strategy, including collaboration in the selection of key personnel involved in the activities performed under this agreement.

2. Define, in collaboration with the awardees and other HHS partners, the specific geographic reach of the activities of the awardees.

3. Provide clearly defined goals and desired outcomes for subgrantee activities; and provide technical input and assistance in the selection of subgrantees.

4. Collaborate in the development of an information system for record-keeping and information access following the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

5. Collaborate in the development of a monitoring and evaluation system; and provide technical assistance, as needed, in the monitoring and evaluation of program activities, including all activities by subgrantees following the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

6. Assist, as needed, in appropriate analysis and interpretation of program evaluation data collected.

7. Provide support in all aspects of the implementation of the cooperative agreement. This will include, but will not be limited to, working with subgrantees to review existing materials available for PLWHA; developing culturally appropriate information and education resources for PLWHA; and supporting other activities that address stigma and discrimination, as required.

8. Promote coordination of activities, as required, between the awardees and other HHS/GAP in India programs.

9. Organize an orientation meeting with the awardee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

10. Review and approve the process used by the awardee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

11. Review and approve awardee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

12. Review and approve awardee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

13. Meet on a monthly basis with awardee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

14. Meet on a quarterly basis with awardee to assess quarterly technical and financial progress reports and modify plans as necessary.

15. Meet on an annual basis with awardee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

Either HHS staff or staff from other organizations that have successfully competed for funding under a separate HHS contract, cooperative agreement or grant will provide technical assistance and training.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $300,000–$1,000,000 (year one). $300,000–$1,200,000 (per year for years two–five). (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One–Three.

Approximate Average Award: $300,000 per award (This amount is for the first 12-month budget period, and includes direct costs.)

Floor of Award Range: $150,000.

Ceiling of Award Range: $1,000,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, as determined by the annual review of country operational plans for the President's Emergency Plan for AIDS Relief, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible applicants

Organizations that possess the experience and ability to identify, select and manage sub-grantees in a transparent and competitive process and report back to HHS may submit applications. Awardees must be based in India and may be public, non-profit organizations; private non-profit organizations; universities; community-based organizations; and faith-based organizations with experience in identifying appropriate subgrantees in a transparent and competitive process to design and carry out the goals and objectives of HHS/GAP in India. Awardees must also be capable of providing planning, management and monitoring support to subgrantees.

In addition, each eligible applicant will:

- Be a legal entity that has worked in India for over ten years.
- Have experience in working in the health sector (preferably in the area of HIV/AIDS care and support) for over five years.
- Possess at least ten years of experience in successfully managing efficient and sustainable programs.
- Possess experience and capability in efficiently awarding (in a transparent and competitive process) and monitoring subcontracts and/or subgrants in India.
- Have earned the recognition and respect of the Government of India at both the national and state levels.
- Have earned the recognition and respect of local NGOs in India.
- Possess contacts and proactive working relationships with networks of NGOs and faith-based organizations.
- Have an existing office in one or more of the following locations, which will serve as the headquarters for this cooperative agreement: Chennai; Hyderabad; or Bangalore, for grantees that will focus on the southern region of India. If additional applicants are selected to focus on other regions in India, applicants must have an office in at least one of the following locations: Bhopal; Patna; Lucknow; Jaipur; Ranchi; Bhubaneshwar; Calcutta; or Mumbai. The applicant must have had a fully functional office of its own in one of the above cities for a minimum of two years.

Competition for this cooperative agreement is limited to the types of organizations listed above because of the uniqueness of the specific activities for this project. Awardees must have specific knowledge and capability to identify locally based subgrantees in urban and rural locations in a transparent and competitive process and in multiple and diverse geographic locations throughout India. The types of organizations listed above would have direct experience and on the ground capacity and knowledge to perform this type of activity in India in local languages.

Furthermore, a guiding principle of the President's Emergency Plan for AIDS Relief, which implements assistance for HIV/AIDS in countries throughout the world, calls for the support and development of local expertise and capacity so national programs can achieve results and monitor and evaluate their activities for the long term. Through the President's Emergency Plan, HHS/GAP in India seeks to support and foster the development of indigenous leadership, which is critical to developing a sustainable and successful response to the AIDS epidemic in India.

In adherence to these guiding principles, competition for this cooperative agreement is therefore limited to the organizations listed above.

III.2. Cost-Sharing or Matching Funds

Matching funds are not required for this program. Although matching funds are not required, preference will go to organizations that can leverage additional funds to contribute to program goals.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission

HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement at *http://www.grants.gov*.

Paper Submission

Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 20. If the narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced.
- Double-spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- All pages must be numbered, and a complete index to the application and any appendices must be included.
- Application must be submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

1. A detailed summary of the applicant organization's past and current activities in India. This should include a description of the applicant's experience and expertise with: public health issues (including HIV); rural development; health care systems and infrastructure; training of medical personnel; managing large budgets; identifying, organizing and monitoring subgrantees and/or technical consultants; conducting or overseeing monitoring and evaluation activities;

working with community groups; etc. The applicant should additionally describe its efforts and successes in sustaining interventions beyond the initial funding period.

2. A description of the applicant's existing infrastructure (including its offices) in the required state capital cities listed earlier in this announcement, and what function these offices have served over the past few years. The applicant should also include any expansion plans for its offices, or establishment of new offices in that region of India. The applicant should also describe its existing formal, as well as informal, relationships with other local and state-level organizations and agencies.

3. A detailed plan for initiating the activities required in the request for assistance in the first three-six months. This should include:

a. A detailed analysis of which states, or areas within certain states, the applicant proposes to work in; and which states/areas the applicant feels most comfortable working in (and why).

b. A discussion of the applicant's ability to identify and organize region or state(s) of focus; a plan or structure for selecting subgrantees and consultants; and a plan for communicating with subgrantees, consultants, contractors, HHS/CDC and its partners, and other governmental agencies and NGOs (including faith-based organizations) working in the field of HIV in that particular geographical area.

c. A plan for assessing the technical, management and human capacity needs of the subgrantees, as well as the technical consultants, within the specific needs of the local communities in addressing HIV prevention and care and then responding to those needs; and a plan for developing a focused and efficient monitoring and evaluation system.

d. A description of the project's contribution to the goals and objectives of the Emergency Plan for AIDS Relief.

4. A thorough description of the staffing needs associated with this project and the ability of the applicant to meet these needs. This should include the names of specific individuals who would likely work on this cooperative agreement project, their skills and experiences to date, and their role in the project in year one. Complete resumes/biographical sketches of these key personnel should be included as an appendix. This should include individuals currently working for the applicant organization, as well as those who would be hired as consultants or staff, if funded.

5. In addition to the 20-page narrative, the applicant should submit a description of a specific plan to develop a new and innovative HIV training center for medical personnel outside of Tamil Nadu State. This is one of HHS/GAP in India's priority strategies for 2005 and, thus, it is important for the applicant to show some ability to formulate this into a feasible and effective strategy that can be initiated within six months of funding. It will also serve as a concrete way to judge the applicant's ability to plan, mobilize resources, and work in highly technical subjects. In ten pages or less, the applicant should briefly define the specific goals of this intervention; determine a specific site for the intervention (including an explanation of why this site is best suited for the project); identify specific consultants and subgrantees required, and their scope of work; create a project timeline and budget; and determine how to monitor the progress and success of this intervention.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. Additional information includes the following:

- Organizational Charts.
- Curriculum Vitas/Resumes.
- Letters of Support.
- Eligibility requirements are as follows:

a. Proof of legal status in India (ten years).

b. Proof of work in the health sector (preferably in the area of HIV/AIDS care and support) for over five years.

c. Experience and capability in efficiently implementing and monitoring subcontracts and/or subgrants in India.

HHS will consider applications that cannot provide proof of eligibility unresponsive.

You must include a full budget and budget justification for year one in the application. The specific overhead costs should be clear, with the total not exceeding the limit set forth earlier in this announcement. A summary budget, with a brief budget justification, should also be included to address years two through five of the cooperative agreement. The summary budget for years two through five should be accompanied by a brief justification and be consistent with planned program activities. The budget justification will not count in the page limit stated above.

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. If the application form does not have a DUNS number field, please write your DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 6, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

You may submit your application electronically at *http://www.grants.gov*. We consider applications completed online through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov*. We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov, your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives the submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will

consider the submission as received by the deadline.

If you submit a hard copy application, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If the submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Award will allow recipients reimbursement of pre-award costs, such as photocopying, fax, postage or delivery charges, and translation.
- Awardees will establish a suitable administrative and financial management structure, utilizing less than 10 percent of grant funds in overhead (inclusive of salaries, rent, office supplies, and management fees), or five percent (exclusive of salaries, rent, office supplies, and management fees).
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization (WHO), Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an annual audit by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception of nevirapine in Prevention of Mother-to-Child Transmission (PMTCT) cases with prior written approval), occupational exposures, and non-occupational exposures.
- No funds appropriated under this announcement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. Government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.,* ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address:

Electronic Submission:

HHS/CDC strongly encourages you to submit electronically at: *http://www.grants.gov.* You will be able to download a copy of the application package from *http://www.grants.gov*, complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of your application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that you submit your grant application by using Microsoft Office products (e.g., Microsoft Word, Microsoft Excel, etc.). If you do not have access to Microsoft Office products, you may submit a PDF file. You may find directions for creating PDF files on the Grants.gov web site. Use of files other than Microsoft Office or PDF could make your file unreadable for our staff, or

Paper Submission

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management—RFA AA019, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Understanding the national HIV/AIDS response and cultural and political context in India and fitting into the five-year strategy and goals of the President's Emergency Plan. Understanding the issues, principles and systems required in providing effective leadership, management and support of subgrantees and technical experts, including the financial and the technical requirements to promote the goals and specific strategies of HHS/GAP India. (30 points).

Does the applicant demonstrate an understanding of the national cultural and political context and the technical and programmatic areas covered by the project? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in India? Does the applicant prove (through its experience and the written proposal) that it has a firm understanding of public health and development within an Indian context, as well as some expertise in the existing systems of health care delivery and medical training in local languages in India? Does the applicant's proposal demonstrate knowledge of the systems required to effectively manage U.S. Government funds, disburse U.S. Government funds to a network of NGOs, CBOs, faith-based organizations and others, and provide management support to this network?

2. Work Plan. (20 points).

Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and activities that are evidence-based, realistic, achievable, time-framed, measurable and culturally appropriate in India to achieve the goals of this program and of the Emergency Plan? Does the applicant propose an immediate start up plan to identify and select subgrantees and technical experts in a transparent and competitive process, which will help the grantee establish needed interventions and, at the same time, assist HHS in expanding its overall programmatic strategies?

3. Personnel. (20 points).

Are the professional personnel, including qualifications, training, availability and experience, adequate to carry out the proposed activities? Are specific individuals identified to lead this large initiative, and are they appropriate for the given task? Does the applicant have the connections and good will in the region to identify and recruit additional personnel? Do the proposed staff, sub-grantees, and consultants have the appropriate experience, the community trust, and the local language fluency necessary to provide technical assistance to CBOs, NGOs, faith-based organizations, the private sector, and/or state/local government agencies?

4. Administrative and Accounting Experience and Plan. (20 points).

Does the applicant have a proven track record in managing large budgets; running transparent and competitive procurement processes, supervising consultants and contractors; using subgrants or other systems of sharing resources with CBOs, faith-based organizations or smaller NGOs; and providing technical assistance? Is there a plan to prepare reports; monitor and audit expenditures under this agreement; manage the resources of the program; and produce, collect and analyze performance data?

5. Ability to work with HHS/GAP and other key stakeholders on implementing the project. (10 points).

Does the application address the requirement to work collaboratively with HHS/GAP in India in the development and implementation of program activities? Does the applicant, and their proposed staff, have the communication skills and systems to work effectively with multiple partners,

including HHS/GAP in India? Does the applicant describe a plan to progressively build the capacity of local organizations and of target beneficiaries and communities to respond to the epidemic?

6. Budget. (Reviewed, but not scored).

Is the budget for conducting the activity itemized and well-justified and consistent with the five-year strategy and goals of the President's Emergency Plan and the stated activities and planned program activities? Is the overhead less than 10 percent of the total budget (including salaries, supplies, rent, and management fees) or less than five percent (excluding salaries, rent, office supplies, and management fees)?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

In addition, the following factors could affect the funding decision:

While U.S.-based organizations are eligible to apply, we will give preference to existing national/Indian organizations. It is possible for one organization to apply as lead grantee with a plan that includes partnering with other organizations, preferably local. Although matching funds are not required, preference will be go to organizations that can leverage additional funds to contribute to program goals.

V.3. Anticipated Award Date

September 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions.
- AR–7 Executive Order 12372.
- AR–8 Public Health System Reporting Requirements.
- AR–12 Lobbying Restrictions.
- AR–14 Accounting System Requirements.
- AR–15 Proof of Non-Profit Status.
- AR–25 Release and Sharing of Data.

Applicants can find additional information on these requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, please attach it to your Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for India.

f. Additional Requested Information.

2. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for India.

3. Financial status report, due no more than 90 days after the end of the budget period.

4. Final financial and performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Michael Friedman, MD, HHS/CDC, Global AIDS Program (India), Country Team c/o U.S. Consulate General, 220 Mount Road, Chennai, India 600 006, Telephone: 91–44–2811–2000, E-mail address: *FriedmanM@gapcdcin.org*, or Nancy Hedemark Nay, MPH (Project Officer), HHS/CDC, Global AIDS Program (India), Country Team c/o U.S. Embassy, Shantipath, Chanakyapuri, New Delhi, India 110 021, Telephone: 91–11–2419–8000, E-mail address: *NHN1@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail address: *zbx6@cdc.gov.*

VIII. Other Information

Applicants can find this and other HHS funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (click on ''Funding,'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 5, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Total Control of the Epidemic: A Door-to-Door Approach to Strengthen Community-Based Interventions for HIV/AIDS Prevention, Care and Treatment in Namibia

Announcement Type: New.

Funding Opportunity Number: AA072.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates: Application Deadline: September 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [U.S.C. 7601].

Background: The President Bush's Emergency Plan for AIDS Relief has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to treat more than two million HIV-infected people with effective combination anti-retroviral therapy by 2008; care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008; and prevent seven million infections by 2010, with a focus on 15 priority countries, including 12 in sub-Saharan Africa. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Over the same time period, as part of a collective national response, the Emergency Plan goals specific to Namibia are to treat at least 23,000 HIV-infected individuals and care for 115,000 HIV-affected individuals, including orphans.

Purpose: The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions, and improved linkages to HIV counseling and testing and HIV treatment services targeting rural and other underserved populations in Namibia.

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and design a customized program of assistance that fits within the host nation's strategic plan.

HHS announces the availability of fiscal year (FY) 2005 funds for a cooperative agreement to implement HIV/AIDS prevention, care, and treatment in the community in northern Namibia.

The purpose of this announcement is to support the community response in Namibia to increase its capacity to prevent new HIV infections and to improve community linkages with available health care and social services for confidential HIV counseling and testing (CT), HIV/AIDS care, treatment, and support. The Namibian Ministry of Health and Social Services (MoHSS) has requested assistance from HHS to rapidly expand health care and social services within Namibia through a population-based door-to-door education program known as ''Total Control of the Epidemic'' (TCE). The TCE approach has been shown to significantly improve the community response to HIV/AIDS, such as increases in HIV testing rates in neighboring Botswana. TCE has begun in the northern regions of Namibia, including the Omusati, Oshana, and half of the Ohangwena and Oshikoto regions, and this announcement will extend this unique program to the remaining half of Ohangwena and Oshikoto regions and the neighboring region of Kavango in 2005. These five regions account for 54 percent of the Namibia population. Based on performance and need, it is also anticipated that the TCE program will be extended to other regions in subsequent years.

HHS/CDC assistance will include: (1) Technical guidance to awardee personnel by working in close collaboration with the MOHSS to develop appropriate training materials for field staff in HIV prevention, including Abstinence (''A''), Being faithful to a partner of known HIV status (''B''), and for populations engaged in high-risk behaviors [1] correct and consistent Condom use (''C'') [1][''A,B,C'' model]; (3) the benefits of knowing your HIV status and how to access services for CT; (4) increasing awareness in the community that HIV Confidential counseling and testing will be more routinely offered in the health-care setting, *e.g.*, when pregnant, or sick with TB or other HIV-related conditions; (5) the availability of comprehensive HIV/AIDS care in the health facilities, including prevention and treatment of opportunistic infections and anti-retroviral therapy (ART); and (6) the importance of nutrition and positive living for those infected by HIV.

Measurable outcomes of the program will be in alignment with the numerical performance goals of the President's Emergency Plan and with the following performance goals of the National Center for HIV, Sexually Transmitted Disease and Tuberculosis Prevention of the Centers for Disease Control and Prevention (CDC) within HHS: By 2010, work with other countries, international organizations, the U.S. Department of State, United States Agency for International Development (USAID), and other partners to achieve the United Nations General Assembly Special Session on HIV/AIDS goal of reducing prevalence among young persons 15 to 24 years of age, reducing HIV transmission, and improving care of persons living with HIV/AIDS (PLWHA).

This announcement is only for non-research activities supported by HHS, including the CDC. If an applicant proposes research activities, HHS will not review the application. For the definition of research, please see the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities: The recipient of these funds is responsible for activities in multiple program areas designed to target underserved populations in northern Namibia. Either the awardee will implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the U.S. Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

[1] Behaviors that increase risk for HIV transmission include engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing abstinence and faithfulness behavior-change interventions.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

The awardee will produce an annual operational plan in the context of this four-year plan, which the U.S. Government Emergency Plan team on the ground in Namibia will review as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process managed by the Office of the U.S. Global AIDS Coordinator. The awardee may work on some of the activities listed below in the first year and in subsequent years, and then progressively add others from the list to achieve all of the Emergency Plan performance goals, as cited in the previous section. HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds for activities on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

Awardee Activities for this program are as follows:

1. Identify, train, compensate, and support field educators from the community to deliver the TCE program.

2. Collaborate with local, regional, and national government officials to ensure that activities and approaches are consistent with national HIV/AIDS policies, the National Strategic Plan on HIV/AIDS, and the five-year strategies and goals of the President's Emergency Plan.

3. Collaborate with other non-governmental organizations to avoid duplication, and to improve access of the population within TCE areas to needed services.

4. Inform and educate the public, including community leaders and traditional healers, about HIV/AIDS, including age-appropriate prevention through the ''A,B,C'' model, prevention of mother-to-child transmission (PMTCT), confidential voluntary counseling and testing (VCT) and access to care, support, and treatment.

5. Mobilize the communities in Namibia to support and utilize PMTCT, confidential counseling and testing, and HIV/AIDS care, including organizing groups for mobile confidential VCT.

6. Provide basic counseling on HIV risk-reduction and positive living.

7. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.

8. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s) for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.

9. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

10. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program is as follows:

1. Collaborate with the awardee in adapting the TCE approach to the Namibia cultural and social context, including, but not limited to, the provision of technical assistance to design program activities and training materials, quality assurance, monitoring and evaluation, and providing recommendations.

2. Organize an orientation meeting with the awardee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

3. Conduct support visits to work sites in collaboration with the Ministry of Health and Social Services to promote linkages to health facilities and services related to voluntary counseling and testing, prevention of mother-to-child transmission, antiretroviral therapy, TB/HIV, and palliative HIV/AIDS care.

4. Review and approve the process used by the awardee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator. Provide trainers to assist the awardee with training of staff members and field officers.

5. Monitor project and budget performance. Review and approve awardee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

6. Review and approve awardee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

7. Meet on a monthly basis with awardee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

8. Meet on a quarterly basis with awardee to assess quarterly technical and financial progress reports and modify plans as necessary.

9. Meet on an annual basis with awardee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

II. Award Information

Type of Award: Cooperative Agreement.

Fiscal Year Funds: 2005.

Approximate Total Funding: $5,000,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $769,165 (This amount is for the first 12-month budget period.)

Floor of Award Range: $769,165.

Ceiling of Award Range: $2,000,000 (This ceiling is for the first 12-month budget period.)

Anticipated Award Date: September 23, 2005.

Budget Period Length: 12 months.

Project Period Length: Four years.

Throughout the project period, HHS' commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the

Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Funding under this Cooperative Agreement will be used in FY 2005 to immediately and more efficiently expand the TCE program to reach underserved populations. Applicants must be able to demonstrate the ability to deliver TCE in the following geographic areas: The areas of Ohangwena and Oshikoto regions where TCE has not begun and the neighboring region of Kavango. Applicants must have the ability to financially and technically oversee the project and provide implementation of a large-scale interpersonal communication project and the ability to collect information, train staff and advocate for the program in support of the National AIDS Strategic Plan, and to disseminate personalized communication to support the fight against HIV/AIDS in the Republic of Namibia.

III.2. Cost Sharing or Matching Funds

Preference will go to organizations that leveraged additional resources from the Global Fund to contribute to program goals in Oshana, Omusati, and Oshikoto Regions.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

- *Note:* Title 2 of the United States Code Section 1611 state that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages you to submit your application electronically by using the forms and instructions posted for this announcement on *www.grants.gov,* the official Federal agencywide E-grant Web site.

Paper Submission: Application forms and instructions are available on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. You must submit the narrative in the following format:

- Maximum number of pages: 25. If your narrative exceeds the page limit, we will only review the first pages within the page limit.
- Font size: 12 point unreduced
- Double-spaced
- Paper size: 8.5 by 11 inches paper is ''preferred'' but customary sized paper used by international organizations will be accepted.
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.
- You must submit the narrative in English

The narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals and Objectives
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Timeline
- Staff
- Performance Measures
- Budget Justification (The budget justification will not be counted in the 25 page limit).

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes:

- Certified copies of letters or notification from the Global Fund concerning award of funds for Omusati, Oshana, Oshikoto, and Ohangwena regions.
- Letters of support from their respective regional offices and the regional office of Kavango.
- Curriculum Vitae of the project director with the application and describe how Namibian personnel will be integrated into project management in the interest of capacity-building and sustainability.

The organization or agency must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the HHS/CDC Web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm.*

If the application form does not have a DUNS number field, please write the DUNS number at the top of the first page of the application, and/or include the DUNS number in the application cover letter.

Additional requirements that could require submittal of additional documentation with the application are listed in section ''VI.2. Administrative and National Policy Requirements.''

Application Deadline Date: September 6, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date.

You may submit your application electronically at *http://www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If you submit your application electronically with Grants.gov (*http://*

www.grants.gov), your application will be electronically time/date stamped, which will serve as receipt of submission. You will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit the application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives the submission after the closing date because: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If you submit hard copy application, HHS/CDC will not notify you upon receipt of the submission. If you have a question about the receipt of the application, first contact the carrier. If you still have a question, contact the PGO–TIM staff at (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must be taken into account while writing your budget, are as follows:

Funding to be administered include: Provision of salaries and short term contracts for technical and support staff needed to scale up TCE programs in the community to a nation-wide level; funding for the support infrastructure in terms of office space, equipment, supplies, transport, communications, and logistics in support of program activities; funding for training, materials, and supervision in the field for the staff engaged in HIV/AIDS prevention, care, and treatment programs.

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the U.S. or to international organizations, regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain an audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.
- Needle Exchange—No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

- Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all sub-agreements under this award. These provisions must be express terms and conditions of the sub-agreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this

section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, ''Prostitution and Related Activities.'' ') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You may find guidance for completing your budget on the HHS/CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address

Electronic Submission

HHS/CDC strongly encourages you to submit electronically at *http://www.grants.gov.* You will be able to download a copy of the application package from *www.grants.gov,* complete it offline, and then upload and submit the application via the Grants.gov site. We will not accept e-mail submissions. If you are having technical difficulties in Grants.gov, you may reach them by e-mail at *support@grants.gov* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. eastern time, Monday through Friday.

HHS/CDC recommends that you submit your application to Grants.gov early enough to resolve any unanticipated difficulties prior to the deadline. You may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement.

You must clearly mark the paper submission: ''BACK–UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommended that you submit the grant application by using Microsoft Office products (*e.g.*, Microsoft Word, Microsoft Excel, *etc.*). If you do not have access to Microsoft Office products, you may submit a PDF. You may find directions for creating PDF files on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make your file unreadable for our staff.

or

Paper Submission

Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management–AA072, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application, and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Technical Approach (25 points).

To the extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

2. Understanding of the Problem (20 points).

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects. Does the applicant demonstrate understanding of the processes and principles of The Global Fund to Fight AIDS, Tuberculosis and Malaria, and does the applicant display a willingness and ability to integrate its program with activities funded by The Global Fund? Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations in Namibia and meet the goals of the Emergency Plan?

3. Ability to Carry Out the Project (20 points).

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 points).

The extent to which professional personnel, including Namibians, involved in this project are qualified, including evidence of experience in working with HIV/AIDS, community-based programs, and monitoring and evaluation.

5. Plans for Administration and Management of Projects (15 points).

Does the applicant demonstrate adequacy of plans for administering the projects, and does the applicant describe a plan to progressively build the indigenous capacity of Namibians and of target beneficiaries and communities to manage various aspects of the project and to respond to the epidemic?

6. Budget (Reviewed but not scored).

The extent to which the itemized budget for conducting the project, along with justification, is reasonable and consistent with the five-year strategy and goals of the President's Emergency Plan, Emergency Plan activities in Namibia, and stated objectives and planned program activities.

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S.

Government Country Program Office. The panel may include both Federal and non-Federal participants.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 23, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92.

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–6 Patient Care
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements

Applicants can find additional information on the requirements on the HHS/CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

You need to include an additional Certifications form from the PHS5161–1 application needs in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161–1-Certificates.pdf.* Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachments Form.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies, of the following reports:

1. Interim progress reports (annual): a brief, comprehensive narrative progress report should be submitted no less than 90 days after the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Namibia.

f. Additional Requested Information.

2. Financial status report due no more than 90 days after the end of the budget period.

3. Final financial and performance reports, due no more than 90 days after the end of the project period.

4. Annual progress report, due no more than 60 days after the end of the budget period. Reports should include progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Namibia.

Recipients must mail these reports to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Leonard Floyd, Project Officer, U.S. Department of State, 2540 Windhoek Place, Washington, DC 20521–8320, Telephone: 011 264 61224 149, E-mail: *Floydl@nacop.net.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–1515, E-mail: *SWynn@cdc.gov.*

VIII. Other Information

Applicants can find this and other CDC funding opportunity announcements on the HHS/CDC Web site, Internet address: *http://www.cdc.gov* (Click on ''Funding'' then ''Grants and Cooperative Agreements''), and on the Web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 5, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15892 Filed 8–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Strengthen HIV/AIDS Prevention, Care, and Treatment Services for Infants of HIV Positive Mothers in the Republic of Haiti Through Provision of Improved Pediatric HIV/AIDS Laboratory Diagnosis

Announcement Type: New.

Funding Opportunity Number: RFA AA178.

Catalog of Federal Domestic Assistance Number: 93.067.

Key Dates:

Application Deadline: September 6, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 301(a) and 307 of the Public Health Service Act [42 U.S.C. Sections 241 and 242l], as amended, and under Public Law 108–25 (United States Leadership Against HIV/AIDS, Tuberculosis and Malaria Act of 2003) [22 U.S.C. 7601].

Background: President Bush's Emergency Plan for AIDS Relief (The Emergency Plan) has called for immediate, comprehensive and evidence-based action to turn the tide of global HIV/AIDS. The initiative aims to prevent at least seven million new HIV infections by 2010; to treat more than two million people with effective combination anti-retroviral therapy by 2008; and to provide care for ten million HIV-infected and affected persons, including those orphaned by HIV/AIDS, by 2008, with a focus on 15 priority countries. The five-year strategy for the Emergency Plan is available at the following Internet address: *http://www.state.gov/s/gac/rl/or/c11652.htm.*

Under the leadership of the U.S. Global AIDS Coordinator, as part of the President's Emergency Plan, the U.S. Department of Health and Human Services (HHS) works with host countries and other key partners to assess the needs of each country and

design a customized program of assistance that fits within the host nation's strategic plan.

An essential element of preventing new cases of HIV is to ensure that high-risk groups have adequate access to screening, treatment, and care facilities. Haiti's HIV prevalence rate in adults is reported to be 5.6 percent, according to the Joint United Nations Programme on HIV/AIDS (UNAIDS) 2004 Annual Report. Access to prevention and treatment is limited to the Haitian population because of the underdeveloped public health infrastructure and lack of clinical capacity.

Haiti's Central Plateau region is a rural area northeast of the capital, Port-au-Prince. Years of neglect and ill-conceived engineering projects have left the region's population largely destitute and reliant on largely subsistence farming for survival. Access to this region is difficult due to the poor transportation infrastructure. These social, economic and physical barriers have prevented significant numbers of Haitian non-governmental organizations from emerging and offering services in the Central Plateau.

Purpose: The purpose of this funding announcement is to progressively build an indigenous, sustainable response to the national HIV epidemic through the rapid expansion of innovative, culturally appropriate, high-quality HIV/AIDS prevention and care interventions. In Haiti, Emergency Plan goals include treatment of at least 25,000 HIV-infected individuals and care for 125,000 HIV-infected and affected individuals, including orphans.

Measurable outcomes of the program will be in alignment with the numerical performance goals of the President's Emergency Plan and one (or more) of the following performance goal(s) for the National Center for HIV, sexually transmitted diseases and Tuberculosis Prevention of the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services (HHS): Increase the proportion of HIV-infected people who are linked to appropriate prevention, care and treatment services; strengthen the capacity nationwide to monitor the epidemic; develop and implement effective HIV prevention interventions; and evaluate prevention programs.

This announcement is only for non-research activities supported by HHS. If an applicant proposes research, we will not review the application. For the definition of research, please see the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*

Activities: The awardee will either implement activities directly or will implement them through its subgrantees and/or subcontractors; the awardee will retain overall financial and programmatic management under the oversight of HHS/CDC and the strategic direction of the Office of the Global AIDS Coordinator. The awardee must show a measurable progressive reinforcement of the capacity of indigenous organizations and local communities to respond to the national HIV epidemic, as well as progress towards the sustainability of activities.

Applicants should describe activities in detail as part of a four-year action plan (U.S. Government Fiscal Years 2005–2008 inclusive) that reflects the policies and goals outlined in the five-year strategy for the President's Emergency Plan.

HHS/CDC, under the guidance of the U.S. Global AIDS Coordinator, will approve funds on an annual basis, based on documented performance toward achieving Emergency Plan goals, as part of the annual Emergency Plan for AIDS Relief Country Operational Plan review and approval process.

This program announcement seeks proposals from Haitian organizations to strengthen and expand pediatric testing and diagnosis for infants of HIV-positive mothers. The funding through this cooperative agreement will establish and provide ongoing and effective pediatric HIV/AIDS testing and diagnosis and strengthen laboratory support services and personnel integral in reducing the incidence of pediatric HIV/AIDS in Haiti. Program proposals should include program strategies that address the following activities:

1. Provide pediatric testing and diagnosis to infants.
2. Strengthen laboratory services to support pediatric diagnosis and treatment, and build capacity in lab personnel internally and within the HIV/AIDS service-delivery network.
3. Record and report sample collection results regularly.
4. Reduce the incidence of pediatric HIV/AIDS through partnering with prevention of mother-to-child transmission (PMTCT) linkages to ensure access to pediatric HIV/AIDS information and care.
5. Expand services and transfer pediatric diagnostic testing technology to other sites.
6. Administer anti-retroviral (ARV) treatment in adherence with Department of Health and Human Services (HHS) guidelines.
7. Provide basic laboratory services in support of pediatric HIV/AIDS diagnosis and treatment.
   1. Perform CD4 counts.
   2. Perform complete blood counts.
   3. Perform HIV rapid testing.
   4. Perform confirmatory HIV/AIDS testing.
8. Provide post-test counseling, care, and other social services, as needed by the newborn.
9. Provide appropriate referrals to ensure that HIV-infected pregnant women receive care for their own health, and to prevent HIV transmission to their babies.
10. Provide referrals to appropriate prevention ,[1] treatment, care and support services.
11. Implement monitoring and evaluation strategies, assessing:
   1. Number of infants tested.
   2. Number of infants receiving treatment and follow-up.
   3. Number of technical assists provided to other lab sites.
12. Work to link activities described here with related HIV care and other social services in the area, and promote coordination at all levels, including through bodies such as village, district, regional and national HIV coordination committees and networks of faith-based organizations.
13. Participate in relevant national technical coordination committees and in national process(es) to define, implement and monitor simplified small grants program(s)for faith- and community-based organizations, to ensure local stakeholders receive adequate information and assistance to engage and access effectively funding opportunities supported by the President's Emergency Plan and other donors.
14. Progressively reinforce the capacity of faith- and community-based organizations and village and district AIDS committees to promote quality, local ownership, accountability and sustainability of activities.

[1] Prevention interventions directed toward behavior change should promote the ABC model. Methods and strategies should emphasize abstinence for youth and other unmarried persons, mutual faithfulness and partner reduction for sexually active adults, and correct and consistent use of condoms by those populations who are engaged in high-risk behaviors. Behaviors that increase risk for HIV transmission include: engaging in casual sexual encounters, engaging in sex in exchange for money or favors, having sex with an HIV-positive partner or one whose status is unknown, using drugs or abusing alcohol in the context of sexual interactions, and using intravenous drugs. Women, even if faithful themselves, can still be at risk of becoming infected by their spouse, regular male partner, or someone using force against them. Other high-risk persons or groups include men who have sex with men and workers who are employed away from home. Awardees may not implement condom social marketing without also implementing the abstinence and faithfulness behavior-change interventions outlined above.

15. Develop and implement a project-specific participatory monitoring and evaluation plan by drawing on national and U.S. Government requirements and tools, including the strategic information guidance provided by the Office of the U.S. Global AIDS Coordinator.

Administration: Comply with all HHS management requirements for meeting participation and progress and financial reporting for this cooperative agreement. (*See* HHS Activities and Reporting sections below for details.) Comply with all policy directives established by the Office of the U.S. Global AIDS Coordinator.

In a cooperative agreement, HHS staff is substantially involved in the program activities, above and beyond routine grant monitoring.

HHS Activities for this program are as follows:

1. Organize an orientation meeting with the awardee to brief them on applicable U.S. Government, HHS, and Emergency Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the U.S. Global AIDS Coordinator.

2. Review and approve the process used by the awardee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

3. Review and approve awardee's annual work plan and detailed budget, as part of the Emergency Plan for AIDS Relief Country Operational Plan review and approval process, managed by the Office of the U.S. Global AIDS Coordinator.

4. Review and approve awardee's monitoring and evaluation plan, including for compliance with the strategic information guidance established by the Office of the U.S. Global AIDS Coordinator.

5. Meet on a monthly basis with awardee to assess monthly expenditures in relation to approved work plan and modify plans as necessary.

6. Meet on a quarterly basis with awardee to assess quarterly technical and financial progress reports and modify plans as necessary.

7. Meet on an annual basis with awardee to review annual progress report for each U.S. Government Fiscal Year, and to review annual work plans and budgets for subsequent year, as part of the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

8. Support an electronic medical record (EMR) database system; provide and support a surveillance database system.

9. Provide and install of hardware necessary for the use of database systems.

10. Assist in organizing regional meetings.

11. Provide technical laboratory consultations to support all activities related to pediatric diagnosis.

12. Provision of laboratory consultations to pediatric diagnosis and coordination of this project.

II. Award Information

Type of Award: Cooperative Agreement.

HHS involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $1,000,000 (This amount is an estimate, and is subject to availability of funds.).

Approximate Number of Awards: One.

Approximate Average Award: $200,000 (This amount is for the first 12-month budget period, and includes direct costs.).

Floor of Award Range: $200,000.

Ceiling of Award Range: $200,000.

Anticipated Award Date: September 15, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, HHS's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government, through the Emergency Plan for AIDS Relief review and approval process for Country Operational Plans, managed by the Office of the U.S. Global AIDS Coordinator.

III. Eligibility Information

III.1. Eligible Applicants

Eligible applicants must:

- Be private, non-profit organizations, indigenous to Haiti, and may be faith-based organizations.
- Have between three to five years of experience in HIV/AIDS pediatric diagnosis and testing.
- Currently work in HIV/AIDS care in the Central Plateau Region of Haiti.
- Already be integrated into the Haitian national HIV/AIDS program.

III.2. Cost-Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If applicants request a funding amount greater than the ceiling of the award range, HHS/CDC will consider the application non-responsive, and it will not enter into the review process. We will notify you that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the special requirements listed in this section, it will not enter into the review process. We will notify you that your application did not meet submission requirements.

- HHS/CDC will consider late applications non-responsive. *See* section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address to Request Application Package

To apply for this funding opportunity use application form PHS 5161–1.

Electronic Submission: HHS strongly encourages the applicant to submit the application electronically by using the forms and instructions posted for this announcement on *http://www.grants.gov*, the official Federal agency wide E-grant Web site. Only applicants who apply on-line are permitted to forego paper copy submission of all application forms.

Paper Submission: Application forms and instructions are available on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the HHS/CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. We can mail application forms to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application

forms. You must submit the narrative in the following format:

- Maximum number of pages: 30. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12 point unreduced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.
- Submitted in English.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Executive Summary: Provide a clear and concise summary of the proposed goals, major objectives and activities required for achievement of program goals, and amount of funding requested for budget year one of this cooperative agreement.
- Project Context and Background (Understanding and Need)
- Project Strategy—Description and Methodologies
- Project Goals
- Project Outputs
- Project Contribution to the Goals and Objectives of the Emergency Plan for AIDS Relief
- Work Plan and Description of Project Components and Activities
- Performance Measures
- Timeline (*e.g.*, GANNT Chart)
- Management of Project Funds and Reporting.

You may include additional information in the application appendices. The appendices will not count toward the narrative page limit. This additional information includes the following:

- Budget Justification (only for Year 01)
- Curricula Vitae
- Organizational Charts
- Letters of Support

You must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the HHS/CDC web site at: *http://www.cdc.gov/od/pgo/funding/grantmain.htm*. If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that could require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: September 6, 2005.

Explanation of Deadlines: Applications must be received in the HHS/CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date.

Applications may be submitted electronically at *http://www.grants.gov.* We consider applications completed on-line through Grants.gov as formally submitted when the applicant organization's Authorizing Official electronically submits the application to *http://www.grants.gov.* We will consider electronic applications as having met the deadline if the applicant organization's Authorizing Official has submitted the application electronically to Grants.gov on or before the deadline date and time.

If submittal of the application is done electronically through Grants.gov (*http://www.grants.gov*), the application will be electronically time/date stamped, which will serve as receipt of submission. Applicants will receive an e-mail notice of receipt when HHS/CDC receives the application.

If you submit your application by the United States Postal Service or commercial delivery service, you must ensure the carrier will be able to guarantee delivery by the closing date and time. If HHS/CDC receives your submission after closing because of: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time; or (2) significant weather delays or natural disasters, you will have the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, HHS/CDC will consider the submission as received by the deadline.

If a hard copy application is submitted, HHS/CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for us to process and log submissions.

This announcement is the definitive guide on application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and we will discard it. We will notify you that you did not meet the submission requirements.

IV.4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

IV.5. Funding Restrictions

Restrictions, which you must take into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives; however, prior approval by HHS/CDC officials must be requested in writing.
- All requests for funds contained in the budget shall be stated in U.S. dollars. Once an award is made, HHS/CDC will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.
- The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.
- The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).
- You must obtain annual audit of these HHS/CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by HHS/CDC.
- A fiscal Recipient Capability Assessment may be required, prior to or post award, in order to review the

applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

• Funds received from this announcement will not be used for the purchase of anti-retroviral drugs for treatment of established HIV infection, with the exception of nevirapine in PMTCT cases and with prior written approval, occupational exposures, and non-occupational exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

• No funds appropriated under this act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Prostitution and Related Activities

The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons.

Any entity that receives, directly or indirectly, U.S. Government funds in connection with this document (''recipient'') cannot use such U.S. Government funds to promote or advocate the legalization or practice of prostitution or sex trafficking. Nothing in the preceding sentence shall be construed to preclude the provision to individuals of palliative care, treatment, or post-exposure pharmaceutical prophylaxis, and necessary pharmaceuticals and commodities, including test kits, condoms, and, when proven effective, microbicides.

A recipient that is otherwise eligible to receive funds in connection with this document to prevent, treat, or monitor HIV/AIDS shall not be required to endorse or utilize a multisectoral approach to combating HIV/AIDS, or to endorse, utilize, or participate in a prevention method or treatment program to which the recipient has a religious or moral objection. Any information provided by recipients about the use of condoms as part of projects or activities that are funded in connection with this document shall be medically accurate and shall include the public health benefits and failure rates of such use.

In addition, any recipient must have a policy explicitly opposing prostitution and sex trafficking. The preceding sentence shall not apply to any ''exempt organizations'' (defined as the Global Fund to Fight AIDS, Tuberculosis and Malaria, the World Health Organization and its six Regional Offices, the International AIDS Vaccine Initiative or to any United Nations agency).

The following definition applies for purposes of this clause:

• Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act. 22 U.S.C. 7102(9).

All recipients must insert provisions implementing the applicable parts of this section, ''Prostitution and Related Activities,'' in all subagreements under this award. These provisions must be express terms and conditions of the subagreement, must acknowledge that compliance with this section, ''Prostitution and Related Activities,'' is a prerequisite to receipt and expenditure of U.S. government funds in connection with this document, and must acknowledge that any violation of the provisions shall be grounds for unilateral termination of the agreement prior to the end of its term. Recipients must agree that HHS may, at any reasonable time, inspect the documents and materials maintained or prepared by the recipient in the usual course of its operations that relate to the organization's compliance with this section, ''Prostitution and Related Activities.''

All prime recipients that receive U.S. Government funds (''prime recipients'') in connection with this document must certify compliance prior to actual receipt of such funds in a written statement that makes reference to this document (*e.g.*, ''[Prime recipient's name] certifies compliance with the section, 'Prostitution and Related Activities.' '') addressed to the agency's grants officer. Such certifications by prime recipients are prerequisites to the payment of any U.S. Government funds in connection with this document.

Recipients' compliance with this section, ''Prostitution and Related Activities,'' is an express term and condition of receiving U.S. Government funds in connection with this document, and any violation of it shall be grounds for unilateral termination by HHS of the agreement with HHS in connection with this document prior to the end of its term. The recipient shall refund to HHS the entire amount furnished in connection with this document in the event HHS determines the recipient has not complied with this section, ''Prostitution and Related Activities.''

You can find guidance for completing your budget on the HHS/CDC web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm*.

IV.6. Other Submission Requirements

Application Submission Address: Electronic Submission: HHS/CDC strongly encourages applicants to submit applications electronically at *http://www.Grants.gov.* The application package can be downloaded from *http://www.Grants.gov.* Applicants are able to complete it off-line, and then upload and submit the application via the Grants.gov Web site. We will not accept e-mail submissions. If the applicant has technical difficulties in Grants.gov, the applicant can reach customer service at *http://www.grants.gov/CustomerSupport* or by phone at 1–800–518–4726 (1–800–518–GRANTS). The Customer Support Center is open from 7 a.m. to 9 p.m. Eastern Time, Monday through Friday.

HHS/CDC recommends that submittal of the application to Grants.gov should be early to resolve any unanticipated difficulties prior to the deadline. Applicants may also submit a back-up paper submission of the application. We must receive any such paper submission in accordance with the requirements for timely submission detailed in Section IV.3. of the grant announcement. You must clearly mark the paper submission: ''BACK-UP FOR ELECTRONIC SUBMISSION.''

The paper submission must conform to all requirements for non-electronic submissions. If we receive both electronic and back-up paper submissions by the deadline, we will consider the electronic version the official submission.

We strongly recommend that the applicant submit the grant application by using Microsoft Word, Microsoft Excel, etc.). If the applicant does not have access to Microsoft Office products, you may submit a PDF file. Directions for creating PDF files can be found on the Grants.gov Web site. Use of file formats other than Microsoft Office or PDF could make the file unreadable for our staff.

or

Paper Submission: Submit the original and two hard copies of your application by mail or express delivery service to the following address: Technical Information Management-AA178, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341.

V. Application Review Information

V.1. Criteria

Applicants must provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative

agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. Applicants must submit these measures of effectiveness with the application and they will be an element of evaluation.

We will evaluate your application against the following criteria:

1. Need (20 Points) To what extent does the applicant justify the need for this program within the target community?

2. Plan (20 Points) Does the applicant display knowledge of the five-year strategy and goals of the President's Emergency Plan, such that it can build on these to develop a comprehensive, collaborative project to reach underserved populations? Does the applicant describe strategies that are pertinent and match those identified in the five-year strategy of the President's Emergency Plan and describe activities that are evidence-based, realistic, achievable, measurable and culturally appropriate in Haiti? Is the plan appropriate to the social, political and cultural context in Haiti? Is the plan adequate to carry out the proposed objectives? How complete and comprehensive is the plan for the entire project period? Does the plan include quantitative process and outcome measures?

3. Monitoring Evaluation and Reporting (20 points) Does the applicant have a system for reviewing and adjusting program activities based on monitoring information? Applicants must develop indicators for each program milestone and incorporate them into the periodic financial and programmatic reports. Applicants must draw all indicators from the President's Emergency Plan for AIDS Relief Indicator Guide, and be consistent with the guidance established by the Office of the U.S. Global AIDS Coordinator. Applicants must generate periodic financial and program reports to show disbursement of funds and progress towards achieving program objectives.

4. Methods (15 Points).

Are the proposed methods feasible? To what extent will they accomplish the program goals?

5. Management and Personnel (15 Points).

Do the staff members have appropriate experience? Are the staff roles clearly defined? As described, will the staff be sufficient to accomplish the program goals? Is there a plan to manage the resources of the program, prepare reports, monitor and evaluate activities and audit expenditures?

6. Eligibility (10 points).

Organizations indigenous to Haiti must have between three to five years of experience in HIV/AIDS pediatric diagnosis and testing, must currently work in HIV/AIDS care in the Central Plateau, and must be integrated into the Haitian national HIV/AIDS program.

7. Budget and Justification (Reviewed, but not scored) Is the itemized budget for conducting the project, along with justification, reasonable and consistent with the five-year strategy and goals of the President's Emergency Plan, Emergency Plan activities in Haiti, and the National Haitian HIV/AIDS program?

V.2. Review and Selection Process

The HHS/CDC Procurement and Grants Office (PGO) staff will review applications for completeness, and HHS Global AIDS program will review them for responsiveness. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will receive notification that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. All persons who serve on the panel will be external to the U.S. Government Country Program Office. The panel may include both Federal and non-Federal participants.

Applications will be funded in order by score and rank determined by the review panel. HHS/CDC will provide justification for any decision to fund out of rank order.

In addition, the following factors could affect the funding decision:

- Maintaining geographic diversity
- Preference to organizations in certain geographic areas

HHS/CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

September 15, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Award (NoA) from the HHS/CDC Procurement and Grants Office. The NoA shall be the only binding, authorizing document between the recipient and HHS/CDC. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–4 HIV/AIDS Confidentiality Provisions
- AR–10 Smoke-Free Workplace Requirements
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements

Applicants can find additional information on these requirements on the HHS/CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm*.

You need to include an additional Certifications form from the PHS 5161–1 application in your Grants.gov electronic submission only. Please refer to *http://www.cdc.gov/od/pgo/funding/PHS5161-1-Certificates.pdf*. Once you have filled out the form, please attach it to the Grants.gov submission as Other Attachment Forms.

VI.3. Reporting Requirements

You must provide HHS/CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities and Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activities and Objectives.

d. Budget and budget narrative with justification.

e. Measures of Effectiveness, including progress against the numerical goals of the President's Emergency Plan for AIDS Relief for Haiti.

f. Additional Information.

2. Annual reports are due within 30 days of the end of the budget period. The report should detail progress toward achieving program milestones and projected next year activities. Indicators must be developed for each program milestone and incorporated

into the annual financial and programmatic reports. All indicators need to be drawn from the Emergency Plan.

3. Financial status report, no more than 90 days after the end of the budget period. The financial report must show obligations, disbursements and funds remaining by program activity. Indicators must be developed for each program milestone and incorporated into the periodic financial and programmatic reports. All indicators need to be drawn from The Emergency Plan Indicator Guide.

4. Final performance reports, no more than 90 days after the end of the project period.

Recipients must mail these reports to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For program technical assistance, contact: Kathy Grooms, Project Officer, Global AIDS Program, HHS/CDC National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, Mailstop E–04, Atlanta, GA 30333. Telephone: 404–639–8394.

For financial, grants management, or budget assistance, contact: Vivian Walker, Grants Management Specialist, CDC Procurement and Grants Office, U.S. Department of Health and Human Services, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2724. E-mail: *vwalker@cdc.gov*.

VIII. Other Information

Applicants can find this and other HHS/CDC funding opportunity announcements on the HHS/CDC web site, Internet address: *http://www.cdc.gov* (Click on ''Funding,'' then ''Grants and Cooperative Agreements''), and on the web site of the HHS Office of Global Health Affairs, Internet address: *http://www.globalhealth.gov*.

Dated: August 5, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 05–15893 Filed 8–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement AA134]

Strengthening HIV/AIDS, TB and STI Prevention, Control and Treatment Activities Within the Police Force of Ethiopia; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to strengthen the activities in the prevention, control, and treatment of HIV/AIDS, Sexually Transmitted Infections (STI) and Tuberculosis (TB) within the Police Force of Ethiopia. The project particularly aims to: (1) Improve HIV/AIDS, STI and TB prevention following the Abstinence, Be Faithful, and Correct and Consistent Condom Use (ABC) strategies, care and treatment services within the Police Force of Ethiopia; (2) strengthen human resource capacity of the police force for HIV/AIDS/STI/TB services; and (3) implement and support targeted monitoring and evaluation. The Catalog of Federal Domestic Assistance number for this program is 93.067.

B. Eligible Applicant

Assistance will be provided only to the FPC of the Federal Democratic Republic of Ethiopia for this project.

The FPC of Ethiopia is the most appropriate and qualified agency to conduct the activities because:

1. FPC's HIV Prevention and Control Office is the only office uniquely positioned in terms of legal authority, ability, and credibility to coordinate and support prevention, care, and treatment activities among members of the police force and their dependents.

2. The FPC administers all the police force health facilities which constitute the only facilities where members of the police force and their dependents receive care.

3. FPC is the umbrella entity that can access the police force and their dependents at the national and regional levels.

4. FPC is mandated by the Federal Government of Ethiopia to work on HIV/AIDS in behalf of the police force and their dependants with international organizations and civil societies in the prevention and control of HIV/AIDS.

5. The Police Hospital is the only referral hospital for the police and their dependants in the country playing a leading role in providing an integrated and comprehensive HIV/AIDS treatment and care and serving also as a major training center for all cadres of health care professionals deployed at the police force health facilities in the country that also integrate training, service and research.

C. Funding

Approximately $140,000 is available in FY 2005 to fund this award on September 15, 2005, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For technical questions about this program, contact: Tadesse Wuhib, MD, MPH, Country Director, CDC-Ethiopia, P.O. Box 1014, Entoto Road, Addis Ababa. Telephone: (Office) 251–1–66–95–33; (Cell) 251–9–228543. E-mail address: *wuhibt@etcdc.com*.

Dated: August 4, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–15894 Filed 8–10–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Medical Device User Fee Rates for Fiscal Year 2006

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the fee rates and payment procedures for medical device user fees for fiscal year (FY) 2006. The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) and the Medical Device User Fee Stabilization Act of 2005 (MDUFSA), authorizes FDA to collect user fees for certain medical device applications. The FY 2006 fee rates are provided in this notice. For all applications submitted on or after October 1, 2005, and through September 30, 2006, fees must be paid

at the FY 2006 rates at the time the applications are submitted to FDA. The fee you must pay is the fee that is in effect on the date your application is received by FDA or on the date your check is received, whichever is later. This notice provides details on how fees for FY 2006 were determined and payment procedures for medical device applications subject to user fees.

FOR FURTHER INFORMATION CONTACT:

For further information on MDUFMA: Visit the FDA Web site *http://www.fda.gov/cdrh/mdufma*.

For questions relating to this notice: Frank Claunts, Office of Management (HF–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION:

I. Background

Section 738 of the act (21 USC 379j) establishes fees for certain medical device applications and supplements. Under statutorily defined conditions, FDA may waive or reduce fees (21 U.S.C. 379j(d) and (e)).

Under MDUFMA, the fee rate for each type of application is set at a specified percentage of the standard fee for a premarket application (a premarket application is a premarket approval application (PMA), a product development protocol, or a biologic licensing application). MDUFSA specifies that the standard fee for a premarket application submitted during FY 2006 is $259,600. From this starting point, this notice establishes fee rates for FY 2006. These fees are effective on October 1, 2005, and will remain in effect through September 30, 2006.

II. Fee Calculations for FY 2006

Under the act, all fees are set as a percentage of the full fee for a premarket application (see 21 U.S.C. 379j(a)(1)(A)), and the act sets the standard fee for a premarket application at $259,600 for FY 2006 (see 21 U.S.C. 379j(c)(1); this is referred to as the ''base fee.'' A 180-day supplement is set at 21.5 percent of the base fee; the fee for a real-time supplement is set at 7.2 percent of the base fee (see 21 U.S.C. 379j(a)(1)(A)).

For all applications other than premarket notification submissions (510(k)s), the small business rate is 38 percent of the standard (full fee) rate (see 21 U.S.C. 379j(d)(2)(C)). For 510(k) premarket notification submissions, the fees are to be set so that fees from all 510(k)s would produce revenue as if all were assessed a fee of 1.42 percent of the base fee, but these fee rates are to be adjusted so that the fee paid by a qualifying small business is 80 percent of the full rate for a 510(k) premarket notification submission (see 21 U.S.C. 379j(e)(2)(C)). Based on FDA's estimates, about 19 percent of 510(k) premarket notifications will qualify for the small business fee, and about 81 percent will pay the standard (full) fee. The FY 2006 fee rates for all application categories are set out in table 1 of this document.

TABLE 1.—FEE TYPES, PERCENT OF PMA FEE, AND FY 2006 FEE RATES

Application Fee Type	Full Fee Amount as a Percent of Premarket Application Fee	FY 2006 Full Fee	FY 2006 Small Business Fee
PMA (submitted under section 515(c)(1) or 515(f) of the act or section 351 of the Public Health Service Act)		$259,600	$98,648
Premarket Reporting (submitted under section 515(c)(2) of the act)	100%	$259,600	$98,648
Panel Track Supplement	100%	$259,600	$98,648
Efficacy Supplement (to an approved premarket application under section 351 of the PHS Act)	100%	$259,600	$98,648
180-Day Supplement	21.5%	$55,814	$21,209
Real Time Supplement	7.2%	$18,691	$7,103
510(k)	1.42% in aggregate	$3,833	$3,066

III. Small Business Qualification for Purposes of MDUFMA Fees

Firms with annual gross sales or receipts of $30 million or less, including the gross sales and receipts of all affiliates, partners, and parent firms, may qualify for a fee waiver for their first PMA. Firms with annual gross sales or receipts of $100 million or less, including the gross sales and receipts of all affiliates, partners, and parent firms, may qualify for lower rates for all applications that are subject to a fee.

Even if a firm qualified under the act as a small business for MDUFMA fees in FY 2005, it must obtain a new small business certification and decision number for FY 2006 and for each subsequent FY. This can be initiated any time after the publication of this notice. A firm that does not have an FY 2006 small business qualification decision number from FDA will not be permitted to submit the reduced small business fees for applications submitted during FY 2006. FDA urges firms to apply for this qualification at least 60 days before they intend to submit their application and fee.

To qualify, you are required to submit the following:

(1) A completed FY 2006 Small Business Qualification Certification (Form FDA 3602). This form is provided in FDA's guidance document, FY 2006 MDUFMA Small Business Qualification Worksheet and Certification, available on FDA's Web site at *http://www.fda.gov/cdrh/mdufma*. This form is not available separate from the guidance document.

(2) Certified copies of your Federal Income Tax Return for the most recent taxable year (2004 or later), and certified copies of the income tax returns of your affiliates, partners, and parent firms.

You can find information for determining if an applicant qualifies for a small business first-time PMA waiver and lower rates for subsequent applications on the FDA Web site at *http://www.fda.gov/cdrh/mdufma*, under the heading ''Guidance Documents,'' click on the link ''Qualifying as a Small Business.'' This Web site provides detailed instructions and the address for mailing

documentation to support qualification as a small business under MDUFMA.

IV. Procedures for Paying Application Fees

Any application or supplement subject to fees under MDUFMA that is received on or after October 1, 2005, through September 30, 2006, is subject to the FY 2006 fee rate. The later of the date that the application is received in the reviewing center's document room or the date that the check is received by US Bank determines whether the fee rates for FY 2005 or FY 2006 apply. FDA must receive the correct fee at the time that an application is submitted, or the application will not be accepted for filing or review.

FDA requests that you follow the steps below before submitting a medical device application subject to a fee. Please pay close attention to these procedures to ensure that FDA links the fee with the correct application. (Note: In no case should the check for the fee be submitted to FDA with the application.)

A. Step One—Secure a Payment Identification Number and Medical Device User Fee Cover Sheet From FDA Before Submitting Either the Application or the Payment. Note: FY 2006 Fee Rates Will be Available on the Cover Sheet Web Site Beginning on September 6, 2005

Log onto the MDUFMA Web site at *http://www.fda.gov/oc/mdufma* and under the forms heading, click on the link ''User Fee Cover Sheet.'' Complete the Medical Device User Fee Cover Sheet. Be sure you choose the correct application submission date range. (Two choices will be offered from September 6 until October 1, 2005. One choice is for applications that will be received on or before September 30, 2005, which will be subject to FY 2005 fee rates. A second choice is for applications that will be received on or after October 1, 2005, which will be subject to FY 2006 fee rates.) After completing data entry, print a copy of the Medical Device User Fee Cover Sheet and note the unique Payment Identification Number located in the upper right-hand corner of the printed cover sheet.

B. Step Two—Electronically Transmit a Copy of the Printed Cover Sheet with the Payment Identification Number to FDA's Office of Financial Management

Once you are satisfied that the data on the cover sheet is accurate, electronically transmit that data to FDA according to instructions on the screen. Since electronic transmission is possible, applicants are required to set up a user account and use passwords to assure data security in the creation and electronic submission of cover sheets.

C. Step Three—Mail Payment and a Copy of the Completed Medical Device User Fee Cover Sheet to the St. Louis Address Specified Below

- Make the payment in U.S. currency by check, bank draft, or U.S. Postal money order payable to the Food and Drug Administration. (The tax identification number of the Food and Drug Administration is 53–0196965, should your accounting department need this information.)
- Please write your application's unique Payment Identification Number, from the upper right-hand corner of your completed Medical Device User Fee Cover Sheet, on your check, bank draft, or U.S. Postal money order.
- Mail the payment and a copy of the completed Medical Device User Fee Cover Sheet to: Food and Drug Administration, P.O. Box 956733, St. Louis, MO, 63195–6733.

If you prefer to send a check by a courier (such as FEDEX, DHL, UPS, etc.), the courier may deliver the check to: US Bank, Attn: Government Lockbox 956733, 1005 Convention Plaza, St. Louis, MO 63101.

(Note: This address is for courier delivery only. Contact the US Bank at 314–418–4821 if you have any questions concerning courier delivery.)

It is helpful if the fee arrives at the bank at least 1 day before the application arrives at FDA. FDA records the official application receipt date as the later of the following:

- The date the application was received by FDA.
- The date US Bank receives the payment. US Bank is required to notify FDA within 1 working day, using the Payment Identification Number described previously.

D. Step Four—Submit your Application to FDA with a Copy of the Completed Medical Device User Fee Cover Sheet

Please submit your application and a copy of the completed Medical Device User Fee Cover Sheet to one of the following addresses:

- Medical device applications should be submitted to: Food and Drug Administration, Center for Devices and Radiological Health, Document Mail Center (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.
- Biologic applications should be sent to: Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Center (HFM–99), suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448.

Dated: August 5, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–15863 Filed 8–10–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: July 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of July 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AFSHARIAN, PAYAM SANTA MONICA, CA	8/18/2005
AQUATIC & PHYSICAL THERAPY ASSOCIATES KALAMAZOO, MI	8/18/2005
AWAHMUKALAH, MARGARET AVONDALE, PA	8/18/2005
BERGMAN, BARBARA RHINELANDER, WI	8/18/2005
BILLS, BETTY OPA LOCKA, FL	8/18/2005
BROWN, KELENKA E CHICAGO, IN	8/18/2005
CABALLERO, HERMINIO MIAMI, FL	8/18/2005
CAP PHARMACY, INC DENVER, CO	12/13/2004
CERDA, LOURDES FONTANA, CA	8/18/2005
COCHRAN, JUDITH GUTHRIE, OK	8/18/2005
DANIELS, LANISHA	8/18/2005

Subject, city, state	Effective date
LUDLOW, MA	
DOORLAG, DIANE ..... GALESBURG, MI	8/18/2005
DUNLAP, TANYA ..... HOQUIAM, WA	8/18/2005
ELIAS, JORGE ..... NORWALK, CT	8/18/2005
ELLIOT, PAUL ..... STUART, FL	8/18/2005
FORREST, MARGARET ..... BREMEN, OH	8/18/2005
GAMBRO SUPPLY CORPORATION ..... BRENTWOOD, TN	12/1/2004
GBOGI, GABRIEL ..... KALAMAZOO, MI	8/18/2005
HAMILTON, WILLIAM ..... OWENSBORO, KY	8/18/2005
IYOTTE, ALENA ..... SAINT FRANCIS, SD	8/18/2005
JENKINS, SHARON ..... LOUISVILLE, KY	8/18/2005
JIN, KYO ..... LOS ANGELES, CA	8/18/2005
KIRKPATRICK, CAROL ..... AUSTIN, TX	8/18/2005
KNOWLES, GREGORY ..... TEQUESTA, FL	8/18/2005
LEVIN, IRVING ..... STUDIO CITY, CA	8/18/2005
LODGE, MAILEE ..... JONESBOROUGH, TN	8/18/2005
MALLORY, JAMES ..... BIG CANOE, GA	8/18/2005
MARTIN, WILLIAM ..... OAKDALE, LA	8/18/2005
MONROE, RAUL ..... BRISTOL, FL	8/18/2005
NORRIS, MICHELLE ..... EAGLE BUTTE, SD	8/18/2005
OKON, COLUMBUS ..... PHOENIX, AZ	4/29/2003
OKORO, CHIJIOKE ..... FORREST CITY, AR	8/18/2005
PASCUA, LEA ..... MESA, AZ	8/28/2003
PASHA, MAHZAR ..... MONTGOMERY, AL	8/18/2005
PERRY, SHEILA ..... RICHMOND, VA	8/18/2005
RAMEE, DANNETTER ..... METAIRIE, LA	8/18/2005
RANA, ATHAR ..... ODESSA, TX	8/18/2005
RUSHING, PHILLIP ..... BIXBY, OK	8/18/2005
SMITH, ROBIN ..... FREEPORT, ME	8/18/2005
STEPPUHN, JORGE ..... POMONA, CA	8/18/2005
SUBER, TYRONE ..... COLUMBIA, SC	8/18/2005
TAVARES, KATHERINE ..... GALVESTON, TX	8/18/2005
THREET, STEVEN ..... JACKSON, TN	8/18/2005
THREET, STEVEN ..... JACKSON, TN	8/18/2008
VARA, MANUEL ..... CORPUS CHRISTI, TX	8/18/2005
WAINWRIGHT, WAYNE ..... POMONA, CA	8/18/2005/
WALLER, CALVIN ..... BUFFALO, NY	8/18/2005
WICK, CARMEN ..... FOND DU LAC, WI	8/18/2005
YEDID, JOSEPH ..... SAN DIEGO, CA	8/18/2005

FELONY CONVICTION FOR HEALTH CARE FRAUD

BARBER, DAWN ..... LINCOLN, RI	8/18/2005
BEAM, CATHIE ..... KEENE, NH	8/18/2005
BELFORD, MARY ..... TOLEDO, OH	8/18/2005
CATANZANO, MARK ..... AYER, MA	8/18/2005
CRADIC, ANTHONY ..... KINGSPORT, TN	8/18/2005
DARNELL, KEVIN ..... MARION, IL	8/18/2005
EMORY, DAWN ..... HIGHLAND HEIGHTS, KY	8/18/2005
FERGUSON, MARTA ..... ZANESVILLE, OH	8/18/2005
HAGGARD, SHARON ..... COLUMBUS, OH	8/18/2005
HOFER, NORLAND ..... FRANKFORT, SD	8/18/2005
LEE, NICOLE ..... CINCINNATI, OH	8/18/2005
LOWE, TROY ..... MARIETTA, OH	8/18/2005
MADDOX, REGINA ..... HAMILTON, OH	8/18/2005
MARSHALL, HEIDI ..... VANCEBURG, KY	8/18/2005
MAY, AMANDA ..... FORT MYERS, FL	8/18/2005
MORENO, MARGARITA ..... PHOENIX, AZ	8/18/2005
PEMBERTON, TINA ..... TROY, OH	8/18/2005
PHILLIPS, DANIEL ..... YOUNGSTOWN, OH	8/18/2005
PREVENTION PHYSICAL THERAPY, INC ..... KALAMAZOO, MI	4/5/2004
QUAST, MELISSA ..... DOUGLAS, AZ	8/18/2005
SHOLTIS, JOHN ..... STEUBENVILLE, OH	8/18/2005
TRAN, QUY ..... SACRAMENTO, CA	8/18/2005
VOGEL, BARRY ..... LIVINGSTON, NJ	8/18/2005
XAVIER, LILLIE ..... MIAMI, FL	8/18/2005

FELONY CONTROL SUBSTANCE CONVICTION

ALDERSON, JAMES ..... COLVILLE, WA	8/18/2005
BAZINET DAWKINS, PAULA ... ATLANTA, GA	8/18/2005
BRANAM, LAWRENCE ..... FLORISSANT, MO	8/18/2005
BRANNON, MISTY ..... LIMA, OH	8/18/2005
BYERS, ANGELA ..... RIVERSIDE, CA	8/18/2005
CAMPBELL, LISA ..... NORTH PORT, FL	8/18/2005
COYNE, DANIELLE ..... CONCORD, OH	8/18/2005
CRAWFORD, LOIS ..... FREDERICK, CO	8/18/2005
DARBY, REBECCA ..... PORTSMOUTH, OH	8/18/2005
DAVIS, CLIFFORD ..... TAFT, CA	8/18/2005
DECAPUA, ANN ..... PAINESVILLE, OH	8/18/2005
DINENNO, THERESE ..... HATBORO, PA	8/18/2005
HAYNES, STACY ..... POPLAR BLUFF, MO	8/18/2005
JOHNSON, MICHELLE ..... ALBERT LEA, MN	8/18/2005
KELLY, GLENN ..... WEST HEMPSTEAD, NY	8/18/2005
LAWSON, TERRY ..... WHITLEY CITY, KY	8/18/2005
LICARI, JOSEPH ..... CANTON, MI	8/18/2005
MCDANIEL, JANET ..... HOUSTON, TX	8/18/2005
O'BRIEN, JAMES ..... CAMARILLO, CA	8/18/2005
PACIFICO, MICHAEL ..... EASTON, PA	8/18/2005
ROADS, SUSAN ..... GREENFIELD, OH	8/18/2005
RODKEY, JEFFREY ..... CHANCE, MD	8/18/2005
SCIOLI, ADAM ..... PHILADELPHIA, PA	8/18/2005
SHAW, LAKENDRA ..... VIRGINIA BEACH, VA	8/18/2005
SMITH, KAREN ..... LA MIRADA, CA	8/18/2005
TUCKER, CHRISTINA ..... SHERMAN, TX	8/18/2005
WISE, MARSHA ..... AKRON, OH	8/18/2005

PATIENT ABUSE/NEGLECT CONVICTIONS

ALLEN, JOSHUA ..... FT WALTON BEACH, FL	8/18/2005
BAKER, CHRISTOPHER ..... MALVERN, IA	8/18/2005
BAKER, MELVIN ..... CARDIFF BY THE SEA, CA	8/18/2005
BALLENGER, VINCENT ..... MOBERLY, MO	8/18/2005
BOYD, BRENDA ..... PLAIN DEALING, LA	8/18/2005
HENDRICKSON, STEPHANIE KUNA, ID	8/18/2005
HILL, JAMES ..... LAUREL, MS	8/18/2005
JOSEPH, ISAAC ..... S. YARMOUTH, MA	8/18/2005
LANCERIO, SAUL ..... CRANSTON, RI	8/18/2005
LEATHERBURY, LINDA ..... SAN ANTONIO, TX	8/18/2005
LONDA, SALEH ..... MOUNT RAINIER, MD	8/18/2005
LOPEZ, LISA ..... EL CAJON, CA	8/18/2005
MAGEE, ANTOINETTE ..... PASCAGOULA, MS	8/18/2005
MATHENGE, SIMON	8/18/2005

Subject, city, state	Effective date
OKLAHOMA CITY, OK	
MCGEE, LATASHA ..... SHREVEPORT, LA	8/18/2005
MEYER, LISA ..... DAVENPORT, IA	8/18/2005
OACHS, KRISTAL ..... ALBERT LEA, MN	8/18/2005
PICKLES, ELIZABETH ..... NEWTON, IA	8/18/2005
RUTLEDGE, NAOMI ..... COOLIDGE, AZ	8/18/2005
SHEEHAN, MONICA ..... WARWICK, RI	8/18/2005
SMILEY, JOHN ..... CRESTVIEW HILLS, KY	8/18/2005
SMITH, WILLIE ..... DETROIT, MI	8/18/2005
STROHLIN, LLEWELLYN ..... CAMERON, MO	8/18/2005
WELLS, BARBARA ..... WILMINGTON, DE	8/18/2005
WILLIAMS, NELLIE ..... AVONDALE, LA	8/18/2005
YOUNG, MARY ..... TULSA, OK	8/18/2005
CONVICTION FOR HEALTH CARE FRAUD	
BARNWELL, KIMBERLY ..... HOLLYWOOD, SC	8/18/2005
JONES, RANDY ..... TULSA, OK	8/18/2005
PEREA, ROBERTO ..... SAN PEDRO, CA	8/18/2005
POWELL, RICHARD ..... BALTIMORE, MD	8/18/2005
WATERS, VANDETTA ..... ORANGEBURG, SC	8/18/2005
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ADAMS, HOMER ..... VANCOUVER, WA	8/18/2005
AKIN, JAMIE ..... BRANDENBURG, KY	8/18/2005
ALEMAN, DAVID ..... ODEM, TX	8/18/2005
ANDERSON, MATTHEW ..... MORENCI, AZ	8/18/2005
ANGULO, ARMANDO ..... DORAL, FL	8/18/2005
APPLEGATE, LORETTA ..... SPRINGFIELD, MO	8/18/2005
ARNOLD, JOANN ..... GARDENDALE, AL	8/18/2005
ASKEW, LINDA ..... ST LOUIS, MO	8/18/2005
ATKINSON, LARAINNE ..... RIEGELWOOD, NC	8/18/2005
AUSTIN, JANETTA ..... BOLIVAR, MO	8/18/2005
BALDWIN, ROBERT ..... PORTERVILLE, CA	8/18/2005
BARRETT, KEVIN ..... BENSON, NC	8/18/2005
BATE, JULIE ..... CLEARWATER, FL	8/18/2005
BAZUA, ANGELICA ..... TUCSON, AZ	8/18/2005
BEAN, MARY ..... FT WORTH, TX	8/18/2005
BENNER, ADRIAN ..... SCHURZ, NV	8/18/2005
BENZ, MARY ..... VENICE, FL	8/18/2005
BOSSARD, HELENA ..... FT MYERS, FL	8/18/2005
BOWLER, CAROL ..... MOCKSVILLE, NC	8/18/2005
BRADFORD, NATALIE ..... DISPUTANTA, VA	8/18/2005
BREDENKAMP, DAWN ..... TUCSON, AZ	8/18/2005
BROCKBANK, KEVEN ..... TAYLORSVILLE, UT	8/18/2005
BROOKS, ROY ..... WILTON MANORS, FL	8/18/2005
BROWN, ADAM ..... GAINESVILLE, FL	8/18/2005
BROWN, DONNA ..... FRANKLIN, WI	8/18/2005
BUBKE, GAIL ..... KINGSLEY, IA	8/18/2005
BURCH, ROSAMARY ..... AMARILLO, TX	8/18/2005
BURGESS, DONNA ..... ASHEBORO, NC	8/18/2005
CARO, YADIRA ..... BRANDON, FL	8/18/2005
CHAPMAN, JOHN ..... FT WALTON BEACH, FL	8/18/2005
CJ'S BODYWORKS ..... JACKSONVILLE BEACH, FL	8/18/2005
CLARKE, KATRINA ..... CAPE CORAL, FL	8/18/2005
CLENDENON, JUDITH ..... MCCALL, ID	8/18/2005
COLLINS, JANICE ..... MADAWASKA, ME	8/18/2005
COY, LAURA ..... QUINCY, MA	8/18/2005
DAY, SHIRLEY ..... DECATUR, TN	8/18/2005
DEITCH, JOHN ..... SAN DIEGO, CA	8/18/2005
DENNY, KERMIT ..... TUCSON, AZ	8/18/2005
DUPUIS, ANGELA ..... VERO BEACH, FL	8/18/2005
ELLIOTT, LINDA ..... PHOENIX, AZ	8/18/2005
ENGRISSEI, PATRICIA ..... HADDONFIELD, NJ	8/18/2005
ESTAVILLE, MICHELLE ..... OXNARD, CA	8/18/2005
FABULAE, CHERYL ..... KANSAS CITY, MO	8/18/2005
FANGEROW, STEPHEN ..... RUNNING SPRINGS, CA	8/18/2005
FARIES, JOSEPH ..... PORTAGEVILLE, MO	8/18/2005
FEE, CINDY ..... CHANDLER, AZ	8/18/2005
FENLEY, LINDA ..... MEMPHIS, TN	8/18/2005
FORD, MAJOR ..... LOS ANGELES, CA	8/18/2005
FUGITT, STEVE ..... LINDSAY, CA	8/18/2005
GEMICI, MURAT ..... VISTA, CA	8/18/2005
GIACOLETTI, JOSHUA ..... TUCSON, AZ	8/18/2005
GOMEZ, CECILIA ..... MIRA LOMA, CA	8/18/2005
GOMEZ, KATHRYN ..... CALEXICO, CA	8/18/2005
GUAN, BIHONG ..... AMBLER, PA	8/18/2005
GULER, NANCY ..... HANNAFORD, ND	8/18/2005
GWALTNEY, JANIS ..... CARBONDALE, IL	8/18/2005
HALL, JOYCE ..... APOPKA, FL	8/18/2005
HANEY, TERESA ..... ROANOKE, VA	8/18/2005
HARRIS, PRESTON ..... SAN JOSE, CA	8/18/2005
HASSELL, CYNTHIA ..... AUSTIN, TX	8/18/2005
HEBENSTREIT, CATHRYN ..... ST LOUIS, MO	8/18/2005
HEMINGWAY, THERESA ..... WEST JORDAN, UT	8/18/2005
HOLLAND, STEVEN ..... ERICK, OK	8/18/2005
HRISO, AMY ..... BLOOMINGTON, IN	8/18/2005
HUNTER, BRANDON ..... MATTHEWS, NC	8/18/2005
JEALOUS, JAMES ..... N WOODSTOCK, NH	8/18/2005
JENNINGS, NICHOLE ..... LOUISVILLE, KY	8/18/2005
JOCHEMS, ADRIAN ..... GLENWOOD SPRINGS, CO	8/18/2005
JOHNSON, DELORES ..... COLUMBUS, OH	8/18/2005
KABRY, WILLIAM ..... NAPLES, FL	8/18/2005
KELLEY, SUSAN ..... WARREN, MI	8/18/2005
KINCAID, BRENDA ..... LEWISBURG, TN	8/18/2005
KROL, TERESA ..... MCLEAN, VA	8/18/2005
KUEHL, SUSAN ..... REDLANDS, CA	8/18/2005
KUSZ, LINDA ..... SOUTH BEND, IN	8/18/2005
LANCEY, SHERRYL ..... CHARLOTTE, NC	8/18/2005
LEE, MARILYN ..... GLENDALE, AZ	8/18/2005
LEFTWICH, JAMES ..... TOLUCA LAKE, CA	8/18/2005
LIM, MICHAEL ..... JACKSON, CA	8/18/2005
LOFTIN, BOBBI ..... TIMBERLAKE, NC	8/18/2005
MAHNESMITH, JAIME ..... GALESBURG, IL	8/18/2005
MANGINA, CAROLA N ..... FT MYERS, FL	8/18/2005
MANTZ, CYNTHIA ..... AFTON, VA	8/18/2005
MARSHALL, JANET ..... FERNANDINA BEACH, FL	8/18/2005
MCCLANAHAN, WILLIAM ..... PULASKI, VA	8/18/2005
MCCREARY, NORA ..... MIDDLESBORO, KY	8/18/2005
MCPHEE, ROBERT ..... TARPON SPRING, FL	8/18/2005
MEADORS, DEBRA ..... SELLERSBURG, IN	8/18/2005
MESSNER, MICHELLE ..... SARASOTA, FL	8/18/2005
MINKER, DEBORAH	8/18/2005

Subject, city, state	Effective date
FT LAUDERDALE, FL	
MIRO, AURELIO ..... LUBBOCK, TX	8/18/2005
MOKARZEL, KATHRYN ..... AUSTIN, TX	8/18/2005
MOLINA, LUIS ..... CORAL GABLES, FL	8/18/2005
MORGAN, JOANNE ..... WINTER PARK, FL	8/18/2005
MORRIS, JAMES ..... KANSAS CITY, MO	8/18/2005
MOSLEY, THOMAS ..... RICHMOND, VA	8/18/2005
MURRAY, CLIFF ..... COSTA MESA, CA	8/18/2005
NEWTON, STEPHEN ..... BIRMINGHAM, AL	8/18/2005
NIXON, ALLISON ..... ASHDOWN, AR	8/18/2005
O'CONNELL, DENISE ..... WESTVIEW, KY	8/18/2005
OSUJI, GAD ..... LOS ANGELES, CA	8/18/2005
PAIGE, ROBERT ..... FLORENCE, AZ	8/18/2005
PEBENITO, KENNETH ..... DARIEN, IL	8/18/2005
PENDLETON, JAMES ..... DUBLIN, CA	8/18/2005
POWELL, ARLENE ..... PHOENIX, AZ	8/18/2005
PRESTON, TRISHA ..... PHOENIX, AZ	8/18/2005
RANNELS, MARK ..... NEW PROVIDENCE, PA	8/18/2005
REATH, ERIN ..... KNOXVILLE, TN	8/18/2005
REYNOLDS, CONSTANCE ..... S DAYTONA, FL	8/18/2005
RIDDLE, SHEILA ..... BURKESVILLE, KY	8/18/2005
RIDPATH, TRACY ..... HOLLISTER, MO	8/18/2005
ROLLINS, DONNA ..... MERIDIAN, MS	8/18/2005
ROMAN, YVONNE ..... HOLLYWOOD, FL	8/18/2005
ROSAS, IRENE ..... PHOENIX, AZ	8/18/2005
ROSEN, TRUDI ..... OVEIDO, FL	8/18/2005
RUFFIN, GARY ..... TUCSON, AZ	8/18/2005
SALANGSANG, EDGARDO ..... HAYWARD, CA	8/18/2005
SALTER, KIM ..... NEDERLAND, TX	8/18/2005
SCHLAGENHAUFF, SCOTT .... COLUMBIA, MO	8/18/2005
SCOTT-RODRIGUEZ, MIA ..... PROVIDENCE, RI	8/18/2005
SEALE, CINDY ..... LOUISVILLE, KY	8/18/2005
SHANLEY, SUSAN ..... RIVERSIDE, RI	8/18/2005
SHERWIN, BOBBY ..... JERSEYVILLE, IL	8/18/2005
SIKES, LISA ..... SAGINAW, TX	8/18/2005
SIMPSON, JODY ..... HARWICH, MA	8/18/2005
SIMPSON, PAMELA ..... WINSTON SALEM, NC	8/18/2005
SMITH, CARRIE ..... SALEM, VA	8/18/2005
SMITH, STEPHEN ..... KAMUELA, HI	8/18/2005
STAVRON, JEFFREY ..... TROY, MO	8/18/2005
STONE, TAMATHA ..... LEWISVILLE, AR	8/18/2005
STORER, ARLICE ..... LOUISVILLE, KY	8/18/2005
SUMMER, JOANNE ..... DUTTON, VA	8/18/2005
SWITALA, JOANNE ..... SOUTHHAMPTON, PA	8/18/2005
TAYLOR, VICKIE ..... CHARLOTTE, NC	8/18/2005
THOMPSON, PATRICIA ..... GARLAND, TX	8/18/2005
TINHORN, ALBERT ..... KAYENTA, AZ	8/18/2005
TKACH, MARY ..... BUCKEYE, AZ	8/18/2005
TUCKER, LORI ..... TUCSON, AZ	8/18/2005
TURNER, TERESA ..... LAKESIDE, CA	8/18/2005
VIDALES, ABIGAIL ..... LOS ANGELES, CA	8/18/2005
VILLEGAS, DEBRA ..... ESMONT, VA	8/18/2005
WEBBER, DAVID ..... WEST HARTFORD, CT	8/18/2005
WEDDLE, KELLY ..... ROANOKE, VA	8/18/2005
WILLIAMS, PRESTON ..... AURORA, CO	8/18/2005
WILSON, RHONDA ..... NASHVILLE, TN	8/18/2005
WITTE, GARY ..... LAKE HAVASU, AZ	8/18/2005
WRIGHT, TERESA ..... RAYMORE, MO	8/18/2005
YI, STEVEN ..... CENTREVILLE, VA	8/18/2005
YODER, SHARON ..... HOLLSOPPLE, PA	8/18/2005
ZITO, ALAINA ..... CAPE MAY, NJ	8/18/2005
FEDERAL/STATE EXCLUSION/ SUSPENSION	
UMANSKY, MICHAEL LOS ANGELES, CA	8/18/2005
FRAUD/KICKBACKS/PROHIBITED ACTS/ SETTLEMENT AGREEMENTS	
BERGMAN, BARBARA ..... RHINELANDER, WI	3/21/2005
CARROLL, JO ANN ..... GLENCOE, MO	5/4/2005
DENNY, BRIAN ..... MINNEAPOLIS, MN	4/12/2005
MERRIFIELD, JANET ..... BRYAN, TX	11/30/2004
SNYDER, TIMOTHY ..... MOORESVILLE, NC	12/13/2004
OWNED/CONTROLLED BY CONVICTED ENTITIES	
HIALEAH GARDENS, FL	
DEFAULT ON HEAL LOAN	
ADONIZIO, CHARLES ..... WILKES BARRE, PA	7/25/2005
DILL, GREGORY ..... ASHEVILLE, NC	8/18/2005
ERICSON, JAMES ..... MINNEAPOLIS, MN	8/18/2005
JACOBS, STEVEN ..... FLUSHING, NY	8/18/2005
NELSON, WILLIAM ..... BRUNSWICK, GA	8/18/2005
VARVA, CHRIS ..... SWANSBORO, NC	8/18/2005
WRIGHT-BENFORD, SHEILA W BLOOMFIELD, MI	8/18/2005

Dated: July 28, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 05–15888 Filed 8–10–05; 8:45 am]

BILLING CODE 4152–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Chimeric Lentiviral Vectors

Suresh K. Arya (NCI).
HHS Reference No. E–191–2005/0—Research Tool.
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

Lentiviral vectors have extensive application in the areas of gene therapy, functional genomics, and target validation, among others. Available for licensing as biological materials are chimeric HIV–1 and HIV–2 lentiviral transfer and packaging vectors. When using lentiviral vectors, it is important that the vectors incorporate as many safety features as possible to avoid the generation of recombinants or replication competent viruses. In other available vector systems derived from HIV–1 or HIV–2, viral genetic elements needed for vector production have been split into three parts to address safety concerns. In the chimeric vectors available herein, the safety is further enhanced by taking advantage of the sequence divergence of HIV–1 and HIV–2 coupled with functionally complementary nature of the genetic elements. The chimeric packaging vectors primarily involve swapping of the gag-pol or tat-rev genes, while the transfer vectors involve swapping of the leader-gag sequences. These vectors are potential candidates for use in gene therapy, for cell therapy with genetically modifying stem cells ex vivo, for use of siRNA or RNA interference for therapeutics, for creation of transgenic animals, and for pathway analysis and target validation by introducing novel genes.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Scytovirin Domain 1 (SD1) Related Polypeptide

Barry R. O'Keefe *et al.* (NCI)
U.S. Provisional Application No. 60/684,353 filed 25 May 2005 (HHS Reference No. E–180–2005/0–US–01).
Licensing Contact: Sally Hu; 301/435–5606; e-mail: *hus@mail.nih.gov.*

The invention provides composition claims for a scytovirin domain 1 (SD1) antiviral polypeptide, nucleic acids encoding the polypeptide, related fusion proteins and conjugates, isolated cells, vectors, and antibodies that bind to the polypeptide. The polypeptide of this invention has the ability to bind to viral proteins, such as gp41 and gp120 of HIV, and exhibit anti-viral activity against type C and D retroviruses such as HIV–1 and HIV–2, Ebola, SARS, Influenza viruses and others. The invention also provides for methods of use to inhibit viral infections therapeutically and prophylactically as well as methods of inhibiting virus in biological samples or inanimate objects. Thus, further development of the invention may yield novel therapies and methods in the prevention of HIV and other retroviruses, and treatment of chronic infection in patients with resistance to current therapies.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Recombinant MVA Viruses Expressing Clade A/G and Clade B Modified HIV Env, Gag and Pol Genes Useful for HIV Vaccine Development

Bernard Moss and Linda S. Wyatt (NIAID)
U.S. Provisional Application No. 60/604,918 filed 27 Aug 2004 (HHS Reference No. E–337–2004/0–US–01).
Licensing Contact: Susan Ano; 301/435–5515; *anos@mail.nih.gov.*

The current technology relates to the construction, characterization and immunogenicity of modified vaccinia Ankara (MVA) recombinant viruses. The MVA double recombinant viruses express modified/truncated HIV–1 Env and mutated HIV Gag Pol under the control of vaccinia virus early/late promoters. This technology describes the MVA double recombinant viruses made by homologous recombination of single MVA recombinants, one expressing Env and one expressing Gag Pol. These single MVA recombinants are made using a transiently expressed GFP marker that is deleted in the final viruses. Two recombinant MVA viruses (MVA 65A/G and MVA 62B) made by this technology have been shown to produce HIV virus-like-particles that are immunogenic in mice. In addition, these two recombinant MVA viruses demonstrate stability through repeated passage of the LVD Seed Stock. This invention provides safe and stable immunogenic clade A/G and clade B vectors that may be tested as an AIDS vaccine candidate. Therefore, it is a promising technology to develop prophylactic and therapeutic AIDS vaccines for U.S. and for West Africa, particularly when used in combination with a DNA vaccine.

Chondroitin Sulphate A Binding Domains: Potential Vaccine for Malaria

Louis H. Miller (NIAID), *et al.*
U.S. Provisional Application No. 60/615,300 filed 30 Sep 2004 (DHHS Reference No. E–221–2004/0–US–01).
Licensing Contact: Robert M. Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

The subject invention is related to a potential vaccine against malaria, and in particular to a vaccine that can prevent malaria infection in pregnant women. The invention relates to the identification of chondroitin sulphate A (CSA) binding domains in var2CSA homologs from different parasite strains. Malaria in pregnancy is a serious complication associated with the parasitized erythrocyte (PE) sequestration in the placenta. With successive pregnancies, pregnant women develop antibodies that recognize placental variants worldwide suggesting these isolates express conserved determinants. *Plasmodium falciparum* encodes multiple copies of an erythrocyte surface adhesion ligands called var genes. Recent work suggests that two different var genes (*var1CSA* and *var2CSA*) could have an important role in PE binding to chondroitin sulphate A (CSA), a primary placental adherence receptor. It has now been shown that *var2CSA* is transcribed in CSA-binding parasites and that the disruption of *var2CSA* results in the inability of the parasites to recover the CSA-binding phenotype. Furthermore, when expressed in Chinese hamster ovary (CHO) cells, three Duffy binding-like domains (DBL2–X, DBL3–X and DBL6-ε) from *var2CSA* revealed strong and specific binding to CSA. The identification of multiple binding domains in *var2CSA* is envisioned as forming the basis of a vaccine against malaria, especially in pregnancy.

In addition to licensing, the technology is available for further development through collaborative research opportunities with the inventors.

Vaccines and Methods of Treating Drug-Resistant HIV–1 and Hepatitis B Viruses

Andrew Catanzaro (NCI), Jay A. Berzofsky (NCI), Robert Yarchoan (NCI), Takahiro Okazaki (NCI), James T. Snyder II (NCI), Samuel Broder.
U.S. Provisional Application No. 60/655,984 filed 22 Feb 2005 (DHHS Reference No. E–137–2003/1–US–01).
Licensing Contact: Robert M. Joynes; 301/594–6565; *joynesr@mail.nih.gov.*

This technology relates to methods for lowering a viral load of a virus where the virus causes a chronic viral infection and is resistant to an antiviral drug. The method comprises administering to a host a medicament comprising an antiviral drug to restrict the intracellular multiplication of the virus and that is capable of selecting for a predetermined

antiviral drug-resistant mutation in a viral protein. The medicament further comprises a synthetic peptide that comprises the predetermined antiviral drug-resistant mutation and at least six amino acid residues flanking that mutation that are identical to the amino acid sequence of the viral protein of the antiviral drug-resistant virus. The synthetic peptide induces a cytotoxic T lymphocyte (CTL) response specific for cells infected with the antiviral drug-resistant virus. The immunostimulating peptide may be further improved by epitope-enhancement for inducing specific CTLs. The antiviral protection against drug-resistant virus shown by compositions of the present invention and mediated by human HLA-restricted CTL has not been previously achieved. Further, the compositions and methods of this technology are useful to target many viruses that can develop antiviral drug resistance, including HIV–1, HIV–2, hepatitis B virus, hepatitis C virus, and human herpesviruses.

Design of a Novel Peptide Inhibitor of HIV Fusion That Disrupts the Internal Trimeric Coiled-coil of gp41

Marius G. Clore, Carole A. Bewley, and John M. Louis (NIDDK).

U.S. Provisional Application No. 60/446,225 filed 11 Feb 2003 (HHS Reference No. E–236–2002/0–US–01);

PCT Application No. PCT/US04/03794 filed 10 Feb 2004, which published as WO 2004/072099 on 11 Aug 2004 (HHS Reference No. E–236–2002/0-PCT–02).

Licensing Contact: Sally Hu; 301/435–5606; e-mail: *hus@mail.nih.gov.*

This invention provides a peptide derived from the sequence of the N-terminal helix (residues 546–581) of the gp41 ectodomain of HIV–1. The peptide, called $N36^{Mut(e,g)}$, contains nine substitutions and disrupts interactions with the C-terminal region of the gp41 ectodomain. $N36^{Mut(e,g)}$ inhibits HIV-envelope mediated cell fusion about 50-fold more effectively than the native sequence (residues 546–581 of HIV–1 envelope) from which it was derived. Thus, $N36^{Mut(e,g)}$ and derivatives has potential as an anti-HIV therapeutic agent as a HIV fusion inhibitor.

This research is described, in part, in CA Bewley *et al.*, ''Design of a novel peptide inhibitor of HIV fusion that disrupts the internal trimeric coiled-coil of gp41,'' J. Biol. Chem. (2002 Apr 19) 277(16):14238–14245; Epub on 21 Feb 2002 as doi:10.1074/jbc.M201453200.

Dated: August 8, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 05–15939 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE in Lung and Genitourinary Cancers.

Date: September 13–15, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue NW., Washington, DC 20007.

Contact Person: Shamala K. Srinivas, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8133, Bethesda, MD 20892, 301–594–1224.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15941 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: September 16, 2005.

Open: 8:30 a.m. to 12 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room E1 and E2, Bethesda, MD 20892.

Closed: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room E1 and E2, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0260.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business of professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15942 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Diabetes Complications in Animals.

Date: September 1, 2005.

Time: 11:00 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792. *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15940 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: September 14, 2005.

Open: 8 a.m. to 12:30 p.m.

Agenda: Report of the Director; Strategic Plan Development; Training and Career Development; Staff and Guest Speaker Scientific Presentations.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Mariott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anthony Demsey, PhD, Director, Office of Extramural Policy, National Institute of Biomedical Imaging and Bioengineering, 6701 Democracy Blvd, Room 241, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on the notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nibib1.nih.gov/about/nacbib/nacbib.htm,* where an agenda and any additional information for the meeting be posted when available.

Dated: August 3, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15943 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Child Health and Human Development; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institutes of Child Health and Human Development Special Emphasis Panel, July 27, 2005, 1 p.m. to July 27, 2005, 1:30 p.m. National Institutes of Health, 6100 Executive Boulevard, 5th Floor Conference Room, Rockville, MD, 20852 which was published in the **Federal Register** on July 22, 2005, 70 FR 42354.

The meting will be held August 9, 2005 at 12 p.m. to 12:30 p.m. The meeting is closed to the public.

Dated: August 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15944 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 15–16, 2005.

Open: September 15, 2005, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program developments.

Place: National Instiutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 6, Bethesda, MD 20892.

Closed: September 16, 2005, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing Conference Room 6, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the buiding by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: http://www.ninds.nih.gov, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 4, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15945 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Preclinical Animal Studies for Autoimmunity.

Date: September 7, 2005.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792. *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Disease and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15946 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases, Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 26, 2005.

Time: 1 p.m. to 4:30 p.m.

Agenda: Report from the Division Director and other program staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Any interested person may file written comments with the committees by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by nongovernment employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15947 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby of a meeting of the National Advisory Environmental Health Sciences Council.

The meetings will be open to the public ad indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: September 13, 2005.

Open: 8:30 a.m. to 3 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P. Sassaman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, PO Box 12233, Research Triangle Park, NC 27709, (919) 541–7723.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15948 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Immune Tolerance Network JOFOC.

Date: August 23, 2005.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Paul A. Amstad, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, DHHS/National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''Pathogenesis of Type 1 Diabetes''.

Date: August 30, 2005.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive 3200, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 451–2615, *mp457n@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Clinical Research Products Management.

Date: August 31, 2005.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Washington, 1221 22nd Street, Washington, DC 20037.

Contact Person: Annie Walker-Abbey, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID/DHHS, 6700B Rockledge Drive, RM. 3266, Bethesda, MD 20892–7616, (301) 451–2671, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 5, 2005.

Anthony M. Coelho, Jr.,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–15949 Filed 8–10–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Clarification of the National Customs Automation Program Test Regarding Reconciliation; Latent Defects

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This document clarifies the Customs and Border Protection Automated Commercial System Reconciliation prototype test by setting forth that the issue of value allowances for alleged latent manufacturing defects

made pursuant to 19 CFR 158.12 or any other provision is not among the issues eligible for Reconciliation. Entry summaries cannot be flagged for Reconciliation to account for latent manufacturing defects discovered after importation. All other aspects of the test remain the same as set forth in previously published **Federal Register** notices.

DATES: The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. Richard Wallio or Ms. Marla Bianchetta, Reconciliation Team, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. NW., Room 5.2A, Washington, DC 20229–0001. Inquiries regarding the test also may be made by e-mail: *Recon.Help@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wallio at (202) 344–2556 or Ms. Marla Bianchetta at (202) 344–2693.

SUPPLEMENTARY INFORMATION:

Background

Initially, it is noted that on November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Public Law 107–296 (the HS Act), establishing the Department of Homeland Security and, under section 403(1) (6 U.S.C. 203(1)), transferring the U.S. Customs Service, including functions of the Secretary of the Treasury relating to the Customs Service, to the new department, effective on March 1, 2003. Also, under the HS Act and the Reorganization Plan Modification for the Department of Homeland Security that was signed on January 30, 2003, the U.S. Customs Service was renamed the Bureau of Customs and Border Protection (CBP). The agency will be referred to by that name in this document, unless reference to the Customs Service (or Customs) is appropriate in a given context.

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 State. 2057 (December 8, 1993)), is currently being tested by CBP under the CBP Automated Commercial System (ACS) Prototype Test. Customs initially announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in several subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001; 67 FR 61200, published on September 27, 2002; 67 FR 68238, published on November 8, 2002; 69 FR 73730, published on September 2, 2004; and 70 FR 1730, published on January 10, 2005. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at *http://www.customs.gov/xp/cgov/import/cargo_summary/reconciliation/.*

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic ''flag'' which is placed on the entry summary at the time the entry summary is filed. Prior to this clarification, the issues for which an entry summary could be ''flagged'' (for the purpose of later reconciliation) were limited to: (1) Value issues; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS; 9802 issues); and (4) post-entry claims under 19 U.S.C. 1520(d) for the benefits of the North American Free Trade Agreement (NAFTA) or the United States-Chile Free Trade Agreement (US–CFTA) for merchandise as to which such claims were not made at the time of entry.

Under the test procedure, the flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. Thus, the flagging of an entry summary constitutes the importer's declaration of intent to file a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (The Reconciliation test procedure for making post-entry NAFTA claims is explained in the February 6, 1998, and December 29, 1999, **Federal Register** notices.)

Reconciliation and Defective Merchandise Claims—19 CFR 158.12

Under § 158.12 of the Customs and Border Protection (CBP) regulations (19 CFR 158.12), importers may request an allowance in value for merchandise found by the port director to be partially damaged at the time of importation. For example, if the port director finds that the imported merchandise contains defective zippers, an allowance in value may be granted to the extent of the defect. Reconciliation is an acceptable method of reporting the change in value if it is known at the time of importation that the merchandise at issue is defective but the extent of the defect is not known. Thus, as in the above example, if the importer does not have sufficient information to determine the extent of the known defect when the entry is filed (*e.g.* because it is not yet known whether the zippers can be repaired, and if so, the cost of such repairs), the entry can be flagged for Reconciliation. The importer can file a Reconciliation entry once the extent of the known defect is established.

Some importers have requested an allowance in value under § 158.12 for imported merchandise that allegedly contains a latent manufacturing defect. A latent manufacturing defect is a defect that exists at the time of manufacture, and thus at the time of importation, but is invisible, hidden, or concealed. The defect is not discovered until some time later (in many cases, long after importation), usually when a consumer requests a repair under a consumer warranty pertaining to the imported article. The importer's claim for a defective merchandise allowance is generally based on the costs of the warranty repairs. Recently, some of these importers have flagged entry summaries for Reconciliation on the issue of latent manufacturing defects so that information may be submitted after any latent defects are revealed (for example, information regarding the nature of the latent defects, the identity of the defective merchandise, and the extent of the defects based on warranty repair costs or other data). Thus, the question has arisen as to whether these types of claims are value issues eligible for Reconciliation. The purpose of this notice is to clarify that CBP does not consider claims for latent defects value issues eligible for Reconciliation and will not accept Reconciliation entries based on such claims. Because the

importer does not know that a latent defect in the merchandise exists at the time of entry summary, the importer cannot flag the entry summary for later resolution through Reconciliation.

CBP notes that the issue of whether these latent defect claims fall within the scope of § 158.12, and if so, the evidence needed to support these claims, is still under review by the courts. There have been several preliminary court rulings on the subject, but several cases addressing these issues are still pending at the Court of International Trade and the Court of Appeals for the Federal Circuit (*Volkswagen of America, Inc.* v. *United States*, Court No. 96–01–00132, Court of International Trade; *Saab Cars USA Inc.* v. *United States*, Court Nos. 04–1268 and 04–1416, Court of Appeals for the Federal Circuit). Regardless of the final outcome of the court cases, the Reconciliation procedure cannot be used with regard to latent defect claims made pursuant to § 158.12 or any other provision.

Test Clarification

Reconciliation may not be used with respect to claims for value allowances made pursuant to § 158.12 or any other provision based on alleged latent manufacturing defects. Thus, to clarify, the Reconciliation test covers the following issues: (1) Value issues other than claims based on latent manufacturing defects; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS; 9802 issues); and (4) post-entry claims under 19 U.S.C. 1520(d) for the benefits of the North American Free Trade Agreement (NAFTA) or the United States-Chile Free Trade Agreement (US–CFTA) for merchandise as to which such claims were not made at the time of entry. CBP considers this a clarification of the test procedure because CBP never contemplated latent defect claims to be value issues eligible for Reconciliation.

Dated: August 3, 2005.

Denise Crawford,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–15904 Filed 8–10–05; 8:45 am]

BILLING CODE 4820–02–U

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–429 (Second Review)]

Mechanical Transfer Presses From Japan

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in May 2005 to determine whether revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On August 1, 2005, the Department of Commerce published notice that it was revoking the order effective June 21, 2005 because ''the domestic interested parties did not participate in this sunset review. * * *'' (70 FR 44089). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

DATES: Effective: June 21, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: August 8, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15935 Filed 8–10–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–548]

In the Matter of Certain Tissue Converting Machinery, Including Rewinders, Tail Sealers, Trim Removers, and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 8, 2005, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Fabio Perini North America, Inc., of Green Bay, Wisconsin. The complaint alleges 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 tissue converting machinery, including rewinders, tail sealers, trim removers, and components thereof, by reason of infringement of claims 1, 3, 6, 7, 8, 13, 14, and 15 of U.S. Patent No. 5,979,818, claims 1–5 of U.S. Patent No. Re. 35,729, and claim 5 of U.S. Patent No. 5,475,917. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: David O. Lloyd, Esq., Office of Unfair

Import Investigations, U.S. International Trade Commission, telephone 202–205–2576.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2005).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 5, 2005, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain tissue converting machinery, including rewinders, tail sealers, trim removers, and components thereof, by reason of infringement of one or more of claims 1, 3, 6, 7, 8, 13, 14, and 15 of U.S. Patent No. 5,979,818, claims 1–5 of U.S. Patent No. Re. 35,729, and claim 5 of U.S. Patent No. 5,475,917, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Fabio Perini North America, Inc., 3060 South Ridge Road, Green Bay, Wisconsin 54304;

(b) The respondent is the following company alleged to be in violation of section 337 and upon which the complaint is to be served:

Chan Li Machinery, Co., Ltd., 103 Wencheng Rd., Taishan Hsiang, Taipei Hsien, Taiwan 243;

(c) David O. Lloyd, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–M, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: August 5, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15938 Filed 8–10–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–510]

Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Termination of Investigation; Issuance of a Limited Exclusion Order and a Cease and Desist Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has terminated the above-captioned investigation in which it has found a violation of the Tariff Act of 1930 and has issued a limited exclusion order and a cease and desist order.

FOR FURTHER INFORMATION CONTACT: Jonathan J. Engler, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3112. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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*.

SUPPLEMENTARY INFORMATION: This patent-based section 337 investigation was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. (''Trend Micro'') of Cupertino, California. 69 FR 32044–45 (2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, and products containing same by reason of infringement of claims 1–22 of U.S. Patent No. 5,623,600 (''the 600 patent''). The notice of investigation named Fortinet, Inc. (''Fortinet'') of Sunnyvale, California as the sole respondent.

On October 12, 2004, the ALJ issued an initial determination (ID) (Order No. 6) terminating the investigation as to claims 2, 5–6, 9–10, and 16–22 of the 600 patent based upon Trend Micro's unopposed motion to withdraw these claims. The Commission did not review Order No. 6, hence the claims of the 600 patent in issue are claims 1, 3, 4, 7, 8, and 11–15.

On December 14, 2004, the ALJ issued an ID (Order No. 13) granting complainant Trend Micro's motion for a summary determination that it satisfies the economic prong of the domestic industry requirement. Order No. 13 was not reviewed by the Commission.

An evidentiary hearing was held from January 24, 2005 to January 28, 2005. On March 29, 2005, a second evidentiary hearing was conducted and additional exhibits received into evidence.

On May 9, 2005, the administrative law judge (''ALJ'') issued his final ID finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11–15 of the 600 patent are not invalid or unenforceable, and are infringed by respondent's products. The ALJ also found that claims 1 and 3 of the 600 patent are invalid as anticipated by prior art and that a domestic industry exists. He also issued his recommended determination on remedy and bonding.

On May 20, 2005, respondent Fortinet filed a petition for review of the final ID

and complainant Trend Micro filed a contingent petition for review. The IA did not file a petition. On May 27, 2005, Fortinet filed a response to Trend Micro's contingent petition for review, and Trend Micro filed a response to Fortinet's petition for review. On June 2, 2005, the IA filed a response to Trend Micro and Fortinet's petition for review.

On July 8, 2005, the Commission issued a notice indicating that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337.70 FR 40731 (July 14, 2005). The Commission also invited the parties to file written submission regarding the issues of remedy, the public interest, and bonding, and provided a schedule for filing such submissions.

Having reviewed the record in this investigation, including the parties' written submissions and responses thereto, the Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of systems for detecting and removing viruses or worms, components thereof and products containing same covered by claims 4, 7, 8, and 11–15 of the '600 patent. The order covers systems for detecting and removing viruses or worms, components thereof and products containing same that are manufactured abroad by or on behalf of, or imported by or on behalf of the respondent, 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 the respondent from importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for systems for detecting and removing viruses or worms, components thereof and products containing same.

The Commission further determined that the public interest factors enumerated in sections 337(d)(1) and (f)(1), 19 U.S.C. 1337(d)(1) and (f)(1), do not preclude issuance of either the limited exclusion order or the cease and desist order. In addition, the Commission determined that the amount of bond to permit temporary importation 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 and opinion in support thereof were delivered to the President on the day of their issuance.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.50 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.50).

Issued: August 8, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–15934 Filed 8–10–05; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Application for registration (DEA Form 224); Application for registration renewal (DEA Form 224a); and Affidavit for chain renewal (DEA Form 224B).

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 October 11, 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 Patricia M. Good, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

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:* Application for Registration (DEA Form 224); Application for Registration Renewal (DEA Form 224a); and Affidavit for Chain Renewal (DEA Form 224B)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 224, 224a and 224B; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-Profit Institutions; State, local or tribal government. All firms and individuals who distribute or dispense controlled substances must register with the DEA under the Controlled Substances Act. Registration is needed for control measures over legal handlers of controlled substances and is used to monitor their activities.

(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 13,510 persons complete DEA Form 224 on paper, at 12 minutes per form, for an annual burden of 2,702 hours. It is estimated that 41,839 persons complete DEA Form 224 electronically, at 8 minutes per form, for an annual burden of 5,579 hours. It is estimated that 159,009 persons complete DEA Form 224a on paper, at 12 minutes per form, for an annual burden of 31,820 hours. It is estimated that 178,884 persons complete DEA Form 224a electronically, at 4 minutes per form, for an annual burden of 11,926 hours. It is estimated that 72 persons complete DEA Form 224b, at 5 hours per form, for an annual burden of 360 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this

collection will create a burden of 52,387 annual burden hours.

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: August 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–15874 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested:

ACTION: 60-day notice of information collection under review: Application for registration (DEA Form 225); Application for registration renewal (DEA Form 225a); Affidavit for chain renewal (DEA Form 225B).

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 October 11, 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 Patricia M. Good, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

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:* Application for Registration (DEA Form 225); Application for Registration Renewal (DEA Form 225a); Affidavit for Chain Renewal (DEA Form 225B).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 225, 225a, and 225B; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(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. Abstract: The Controlled Substances Act requires all persons who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with DEA. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.

(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 1,318 persons complete DEA Form 225 on paper, at 30 minutes per form, for an annual burden of 659 hours. It is estimated that 284 persons complete DEA Form 225 electronically, at 10 minutes per form, for an annual burden of 47 hours. It is estimated that 5,338 persons complete DEA Form 225a on paper, at 30 minutes per form, for an annual burden of 2,669 hours. It is estimated that 4 persons complete DEA Form 225B on paper, at one hour per form, for an annual burden of 4 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 3,379 annual burden hours.

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: August 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–15875 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Application for registration (DEA Form 363) and application for registration renewal (DEA Form 363a).

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), 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 October 11, 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 Patricia M. Good, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

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:* Application for Registration (DEA Form 363) and Application for Registration Renewal (DEA Form 363a)

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 363 and 363a; Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions; State, local, or tribal government. Practitioners who dispense narcotic drugs to individuals for maintenance or detoxification treatment must register with the DEA under the Narcotic Addiction Treatment Act of 1974. Registration is needed for control measures and is used to prevent diversion.

(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 130 persons complete DEA Form 363 on paper, at 30 minutes per form, for an annual burden of 65 hours. It is estimated that 25 persons complete DEA Form 363 electronically, at 8 minutes per form, for an annual burden of 3.3 hours. It is estimated that 691 persons complete DEA Form 363a on paper, at 30 minutes per form, for an annual burden of 345.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that this collection will create a burden of 414 annual burden hours.

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: August 5, 2005.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 05–15876 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States of America and the State of Maryland* v. *Baltimore County, Maryland,* AMD 05CV2028, was lodged on July 26, 2005, with the United States District Court for the District of Maryland.

In the complaint filed in this matter, the United States alleges violations of section 301 of the Clean Water Act, 33 U.S.C. 1311, and Maryland alleges violations of Sections 9–322 and 9–323 of the Maryland Environment Article, arising from unpermitted discharges of wastewater from Baltimore County's sanitary sewer collection system to various waters of the United States and the State. The proposed Consent Decree would resolve the United States' and Maryland's claims set forth in the complaint through Baltimore County's performance of injunctive measures, the payment of a civil penalty of $750,000 (shared equally by the United States and Maryland), and the performance of three supplemental Environmental Projects (''SEPs'') valued at no less than $4,500,000. Baltimore County has estimated that the injunctive measures, which include comprehensive inspection, rehabilitation, and repair requirements for sewer lines, pump stations, and other system components, will cost in excess of $800,000,000 to implement over the 14½ year schedule set forth in the consent decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *United States et al.* v. *Baltimore County, Maryland,* DJ No. 90–5–1–1–4402/2.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Maryland, 36 S. Charles Street, 4th Floor, Baltimore, MD 21201, and at the Region 3 Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $48.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States et al.* v. *Baltimore County, Maryland,* DJ No. 90–5–1–1–4402/2.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–15867 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and Oil Pollution Act

Consistent with 28 CFR 50.7, notice is hereby given that on July 27, 2005, a proposed consent decree (''decree'') in *United States* v. *Sunoco, Inc (R&M) and Sun Pipe Line Company* (collectively, ''Sunoco''), Civil Action No. 05–3866, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States seeks civil penalties and natural resource damages against Sunoco for violations under section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3), and section 1002(b)(2)(A) of the Oil Pollution Act, 33 U.S.C. 2702(b)(2)(A), resulting from a February 2, 2000 oil spill from Sunoco's North Ship Pipeline into a wetland located in the John Heinz National Wildlife Refuge in Philadelphia, Pennsylvania. The proposed decree provides that Sunoco will pay a civil penalty of $2,742,600, and natural resource damages in the amount of $865,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, Ben Franklin Station, U.S. Department of

Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Sunoco, Inc (R&M) and Sun Pipeline Company,* D.J. Ref. 90–5–1–1–07212.

The decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at the U.S. Environmental Protection Agency-Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, Ben Franklin Station, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–15866 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Pursuant to section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on July 29, 2005, a proposed Consent Decree in *United States* v. *U.S. Sugar, et al.*, 05–61271–CV–Huck/Simonton (S.D. Fl.) was lodged with the United States District Court for the Southern District of Florida.

In this action the United States sought to require the Defendants to conduct remedial design and remedial action to address releases and threatened releases of hazardous substances at the Florida Petroleum Reprocessors Superfund Site (''Site'') in the town of Davie in Broward County, Florida. The United States also sought to recover certain past and future costs incurred and to be incurred by the Environmental Protection Agency (EPA) during the performance of response actions at the Site.

Under the Decree, a group of 52 parties who sent waste oil to the Site will perform the remedial design and remedial action at the Site, pursuant to the March 1, 2001 Record of Decision (ROD). These parties will also pay $96,892.11 to the Hazardous Substances Superfund in reimbursement of EPA's previously unreimbursed response costs at or in connection with the Site. In addition, they will pay EPA's future costs associated with overseeing the remedial design and remedial action and implementing the Consent Decree.

A group of federal agencies who sent waste oil to the Site will pay $1,289,064 to the Hazardous Substances Superfund in reimbursement of EPA's previously unreimbursed response costs at or in connection with the Site.

A former owner and operator of the Site, Barry Paul, and a current owner of the Site, the Florida Department of Transportation, will pay $700,000 and $500,000 respectively to the Hazardous Substances Superfund in reimbursement of EPA's previously unreimbursed response costs at or in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *U.S. Sugar, et al.*, 05–61271–CV–Huck/Simonton (S.D. Fl.), DOJ Ref. 90–11–2–1069.

The Consent Decree may be examined at the Office of the United States Attorney, 500 East Broward Blvd., 7th Floor, Fort Lauderdale, FL 33394 and at EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303. During the public comment period, the consent decree may be examined on the Department of Justice Web site at *http://www.usdoj.gov/enrd/open.html.* A copy of the consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please refer to *United States* v. *U.S. Sugar, et al.*, 05–61271–CV–Huck/Simonton (S.D. Fl.), DOJ Ref. 90–11–2–1069, and enclose a check in the amount of $78.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. To receive the Consent Decree without Appendix A (Record of Decision), pay $40.75.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 05–15865 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–IS–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Clean Water Act

Notice is hereby given that a proposed Consent Decree in *United States of America, State of Maryland, Anacostia Watershed Society, Audubon Naturalist Society of the Central Atlantic States, Inc., Friends of Sligo Creek and Natural Resources Defense Council* v. *Washington Suburban Sanitation Commission,* was lodged on July 26, 2005, with the United States District Court for the District of Maryland, Northern Division.

In the United States' complaint filed in this matter, the United States alleges violations of Sections 301 and 504 of the Clean Water Act, 33 U.S.C. 1311, 1364, and in its complaint in intervention, Maryland alleges violations of Sections 9–322 and 9–323 of the Maryland Environment Article, and other State law, arising from unpermitted discharges of wastewater from WSSC's sanitary sewer collection system to various waters of the United States and the State. Four citizens groups—the Anacostia Watershed Society, the Audubon Naturalist Society of the Central Atlantic States, the Friends of Sligo Creek and the Natural Resources Defense Council also intervened as co-plaintiff, filing a complaint in intervention under the Clean Water Act's citizens suit provision. The proposed Consent Decree would resolve all of the claims alleged in the United States', Maryland's and the Citizens Groups' complaints, and would result in the performance of injunctive measures, the payment of a civil penalty of $1,100,000 (shared equally by the United States and Maryland), and the performance of three Supplemental Environmental Projects (''SEPs'') valued at no less than $4,400,000. WSSC has estimated that the injunctive measures, which include comprehensive inspection, rehabilitation, and repair requirements for sewer lines, pump stations, and other system components, and comprehensive changes in the operation and maintenance of its collection system will add an additional $200,000,000 to the funds already budgeted by WSSC for collection system

maintenance and repairs, over the 14-year schedule set forth in the consent decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044 and should refer to *United States et al.* v. *Washington Suburban Sanitary Commission*, DJ No. 90–5–1–1–07360.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Maryland, 36 S. Charles Street, 4th Floor, Baltimore, MD 21201, and at the Region 3 Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $38.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. The check should refer to *United States et al.* v. *Washington Suburban Sanitary Commission*, DJ No. 90–5–1–1–07360.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–15868 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on July 1, 2005, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 13 new standards have been initiated and 13 existing standards are being revised. More detail regarding these changes can be found at *http://standards.ieee.org/standardswire/sba/06-09-05.html.*

On September 17, 2004, IEEE filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 3, 2004 (69 FR 64105).

The last notification was filed with the Department on May 16, 2005. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 3, 2005 (70 FR 32654).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 05–15909 Filed 8–10–05; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Adjudication of Claims of U.S. Nationals Against the Government of Cuba

AGENCY: Foreign Claims Settlement Commission of the United States.

ACTION: Notice.

SUMMARY: This notice announces the commencement by the Foreign Claims Settlement Commission of a program for adjudication of certain property claims of United States nationals against the Government of Cuba.

DATES: The Commission will begin its adjudication of the claims which are the subject of this notice as soon as practicable following the date hereof. The deadline for filing of these claims will be February 13, 2006. The deadline for completion of this claims adjudication program will be August 11, 2006.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 600 E Street, NW., Room 6002, Washington, DC 20579, Tel. (202) 616–6975, FAX (202) 616–6993.

Notice of Commencement of Claims Adjudication Program, and of Program Completion Date

Pursuant to the authority conferred upon the Secretary of State and the Commission under subsection 4(a)(1)(C) of Title I of the International Claims Settlement Act of 1949 (Pub. L. 455, 81st Cong., approved March 10, 1950, as amended by Public Law 105–277, approved October 21, 1998 (22 U.S.C. 1623(a)(1)(C)), the Foreign Claims Settlement Commission hereby gives notice of the commencement of a program for adjudication of a category of claims of United States nationals against the Government of Cuba. These claims, which have been referred to the Commission by the Secretary of State by letter dated July 15, 2005, are defined as property claims that:

a. Would have been eligible under the Cuban Claims Program (22 U.S.C. 1643 *et seq.*) but for the fact that they did not arise by the time of the filing deadline of May 1, 1967, provided that they were not otherwise adjudicated by the Commission prior to the completion of the Cuban Claims Program;

b. arise on or before the date of publication of this **Federal Register** notice;

c. are not claims for disability or death; and

d. are filed with the Commission within six months of the date of this **Federal Register** notice, *i.e.*, on or before February 13, 2006.

In conformity with the terms of the referral by the Secretary of State, the Commission will determine the claims in accordance with the provisions of the Cuban Claims Program to the extent that such provisions are not inconsistent with 22 U.S.C. 1623, and where such inconsistency exists, in accordance with the provisions of 22 U.S.C. 1623. Also in conformity with the terms of the referral, the claims will be determined by the Commission within twelve months of the date of this **Federal Register** notice, *i.e.*, on or before August 11, 2006. The Commission will then certify to the Secretary of State those claims that it finds to be valid.

The Commission will administer this claims adjudication program in accordance with its regulations, which are published in Chapter V of Title 45, Code of Federal Regulations (45 CFR part 500 *et seq.*). In particular, attention is directed to subsection 509.6(d) of these regulations, which provides that the claimant shall bear the burden of proof on all elements of his or her claim. Copies of the regulations will be available from the Commission upon request, and are also available

electronically at *http://www.gpoaccess.gov/cfr/index.html.*

The collection of information associated with this claims program is exempt from the requirements of 44 U.S.C. 3507 under the exception set forth in 44 U.S.C. 3506(c)(5).

Mauricio J. Tamargo,

Chairman.

[FR Doc. 05–15910 Filed 8–10–05; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

[Docket Nos. 2003–3 CARP DD 2002 and 2004–4 CARP DD 2003]

Distribution of 2002 and 2003 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of termination of proceedings.

SUMMARY: The Copyright Office of the Library of Congress is announcing the termination of two proceedings under the Copyright Arbitration Royalty Panel system to distribute royalty fees paid by importers and manufacturers of digital audio recording devices and media who distributed these products in the United States during the period beginning January 1, 2002, and ending on December 31, 2003. The Office is also providing notice that the authority to make determinations regarding the distribution of the 2004 Digital Audio Recording Royalty Funds passed to the Copyright Royalty Board on May 31, 2005.

DATES: Effective August 11, 2005.

FOR FURTHER INFORMATION CONTACT: Tanya M. Sandros, Associate General Counsel, or Abioye E. Oyewole, CRB Specialist. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: The Audio Home Recording Act of 1992 (the ''Act''), Public Law 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media (''DART'') that are distributed in the United States. 17 U.S.C. 1003. These royalties are deposited with the Copyright Office for further distribution among interested copyright parties (''ICPs''), provided the copyright owners file a claim with the Office during January and February of each year. 17 U.S.C. 1005, 1007. The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. These fees are allocated further to specific subfunds. The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Under the Copyright Arbitration Royalty Panel (''CARP'') system, proceedings to distribute funds in the Sound Recordings and Musical Works Funds occurred in one of two ways. If the claimants within each subfund agreed among themselves how to distribute the royalty fees, the Librarian of Congress distributed the royalties to the claimants in accordance with their negotiated agreement. 17 U.S.C. 1007(b). In the absence of an agreement, the Librarian of Congress convened a CARP, an ad–hoc panel of arbitrators, to determine the distribution of royalty payments. 17 U.S.C. 1007(c). On November 30, 2004, the President signed into law the Copyright Royalty and Distribution Reform Act of 2004 (the ''CRDRA''), Public Law 108–419, 118 Stat. 2341. This Act, which became effective on May 31, 2005, phases out the CARP system and replaces it with three permanent Copyright Royalty Judges (''CRJs''). Additionally, CRDRA allows for the termination of ''any [CARP] proceeding commenced by the date of the enactment of this Act...and any proceeding so terminated shall become null and void. In such cases, the Copyright Royalty Judges may initiate a new proceeding in accordance with regulations adopted pursuant to section 803(b)(6) of title 17, United States Code.'' Section 6(b)(1) of the Copyright Royalty and Distribution Reform Act of 2004, Public Law 108–419. The Copyright Office is announcing the termination of two DART distribution proceedings under this provision.

Prior to the enactment of this Act, the Copyright Office made a number of distributions of the 2002 and 2003 DART royalty funds under the CARP system. In the 2002 DART distribution proceeding, the Copyright Office ordered a distribution of the 2002 royalties in the Sound Recordings Fund on October 1, 2003, based on settlement agreements among the claimants to the Copyright Owners and Featured Recording Artists subfunds. A second distribution to an Independent Administrator followed on November 19, 2003, of 4% of the 2002 Sound Recordings Fund, the amount allocated by law to the Nonfeatured Musicians and Nonfeatured Vocalists royalty subfunds.

Similar distributions were made in the 2003 DART distribution proceeding. On May 27, 2005, the Office made two distributions of royalties in the 2003 Sound Recordings Fund based upon settlement agreements among the interested copyright parties, one for the royalties allocated to the Featured Recording Artists subfund and the other for the funds allocated to the Copyright Owners subfund. The final distribution of the 2003 Sound Recordings Fund royalty fees was an administrative distribution of the funds in the Nonfeatured Musicians and Nonfeatured Vocalists royalty subfunds made on June 28, 2004. However, no action has been taken to distribute the 2002 and 2003 Musical Works Funds nor will the Copyright Office initiate any further proceedings to consider the distribution of these Funds. Rather, the Library elects to terminate these proceedings immediately pursuant to Section 6(b)(1) of the CRDRA. As a result, subsequent proceedings regarding the distribution of the 2002 and 2003 Musical Works Funds shall be initiated under the new CRJ system.

The Office is also providing notice that all proceedings regarding the distribution of the 2004 DART royalty funds came under the jurisdiction of the Copyright Royalty Board on May 31, 2005, the effective date of the CRDRA. Prior to this date, the Office took no action to commence a proceeding to consider the distribution of these funds. It merely accepted the claims filed and made an administrative distribution of the Nonfeatured Musicians and Nonfeatured Vocalists subfunds, actions which do not constitute commencement of a proceeding. Consequently, in accordance with Section 6(b)(1) of the CRDRA, the Library of Congress did not acquire jurisdiction over this proceeding.

Dated: August 5, 2005

Tanya M. Sandros,

Associate General Counsel.

[FR Doc. 05–15924 Filed 8–10–05; 8:45 am]

BILLING CODE 1410–33–S

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–128)]

NASA Aeronautics Research Advisory Committee, Vehicle Systems Program Subcommittee; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Aeronautics Research Advisory Committee (ARAC), Vehicle Systems Program Subcommittee (VSPS).

DATES: Wednesday, September 14, 2005, 8:30 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, 300 E Street, SW., Room 6H65, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Schlickenmaier, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4638.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks

—Vehicle Systems Program Overview

—Vehicle Systems Program Status, Accomplishments and Future Direction

—Closing Comments

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Neal Nijhawan via e-mail at *nnijhawa@nasa.gov* or by telephone at (202) 358–2305. Persons with disabilities who require assistance should indicate this.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 4, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–15845 Filed 8–10–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (05–127)]

NASA Aeronautics Research Advisory Committee, Aviation Safety and Security Program Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Aeronautics Research Advisory Committee (ARAC), Aviation Safety and Security Program Subcommittee.

DATES: Thursday, September 8, 2005, 9 a.m. to 5 p.m. and Friday, September 9, 2005, 8:30 a.m. to 1 p.m.

ADDRESSES: Air Line Pilots Association, 535 Herndon Parkway, Herndon, Virginia 20172.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Aeronautics Research Mission Directorate, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks.

—Review of the Aviation Safety and Security Program Subcommittee.

—Review of the Aviation Safety Projects (FY 2000–2005).

—Review of Aviation Security Projects (FY 2004–2009).

—Review of Barrier Breaking Technology Demonstration Projects (FY 2007–2011).

Attendees will be requested to sign a register. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 4, 2005.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 05–15846 Filed 8–10–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meetings

TYPE: Quarterly meeting.

DATES AND TIMES: October 5–6, 2005, 9 a.m.–5 p.m.

LOCATION: Crowne Plaza San Francisco Union Square Hotel, 480 Sutter Street, San Francisco, CA.

STATUS: This meeting will be open to the public.

AGENDA: Reports from the Chairperson and the Executive Director, Team Reports, Livable Communities Update, Unfinished Business, New Business, Announcements, Adjournment.

SUNSHINE ACT MEETING CONTACT: Mark S. Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *mquigley@ncd.gov* (e-mail)

AGENCY MISSION: NCD is an independent Federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. NCD is composed of 15 members appointed by the President and confirmed by the U.S. Senate.

ACCOMMODATIONS: Those needing reasonable accommodations should notify NCD at least two weeks before these meetings.

LANGUAGE TRANSLATION: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for these meetings should notify NCD at least two weeks before these meetings.

MULTIPLE CHEMICAL SENSITIVITY/ENVIRONMENTAL ILLNESS: People with multiple chemical sensitivity/environmental illness must reduce their exposure to volatile chemical substances to attend these meetings. To reduce such exposure, NCD requests that attendees not wear perfumes or scented products at these meetings. Smoking is prohibited in meeting rooms and surrounding areas.

Dated: August 2, 2005.

Ethel D. Briggs,

Executive Director.

[FR Doc. 05–16030 Filed 8–9–05; 12:09 pm]

BILLING CODE 6820–MA–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Joseph M. Farley Nuclear Power Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) part 50, Appendix R, ''Fire Protection Program for Nuclear Power

Facilities Operating Prior to January 1, 1979,'' Section III.G.2.c, for Facility Operating License Nos. NPF–2 and NPF–8, issued to Southern Nuclear Operating Company (SNC or the licensee), for operation of the Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2, located in Houston County, Alabama. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action: On December 29, 1986, the NRC staff granted Exemption Request 1–3, ''Service Water Intake Structure—Fire Area 72,'' from certain requirements of Appendix R, Section III.G.2.c, that require fire detection and fire suppression capabilities and the enclosure of cables, equipment, and associated non-safety circuits of one redundant train of safe shutdown equipment in a one-hour rated fire barrier. Exemption Request 1–3, issued on December 29, 1986, listed a total of ten items specific to Fire Area 72 for the Service Water Intake Structure (SWIS), which is common to FNP, Units 1 and 2.

By letters dated August 28, 2003, December 28, 2004, and June 9, 2005, SNC submitted proposed revisions to Exemption Request 1–3. SNC stated that the proposed revisions to Exemption Request 1–3 would clarify FNP's fire protection licensing basis, delete unnecessary attributes of the prior approved exemption, and revise the remaining exemption attributes to remove references to the Kaowool one-hour fire barrier material. SNC also stated that the proposed revision to Exemption Request 1–3 is part of SNC's comprehensive plan to respond to concerns about Kaowool fire barrier material. SNC's August 28, 2003, letter provided the disposition for the original ten items plus one additional item related to Exemption Request 1–3. For two of these items, no change in the basis for their inclusion as exemption items was proposed and they were not considered further. For two of the items related to the service water swing pump cables, the principal basis for their inclusion as exemption items was not changed, however an improvement in defense-in-depth due the upgrading of certain walls within the SWIS to 3-hour rated fire barriers was recognized. For two of the items related to the service water header strainer motor operated inlet valves and swing pump motor operated discharge valves, the basis for the exemption is revised to delete reliance on Kaowool and to reflect the re-analysis that shows that damage to cables in the strainer pit cannot result in spurious operation of the valves. For the discharge-to-wet pit and discharge to storage pond flume valves, SNC showed that, based on deterministic and fire modeling results, that fire effects will not result in the mis-positioning of the valves. For the item related to service water pump cables in Fire Area 72 A, an integrated risk assessment shows that safe shutdown can be achieved even if no credit is taken for the Kaowool raceway enclosures. A previously existing Exemption Request 1–3 item relating to the coordination between safe shutdown and non-safe shutdown circuits was found to have been resolved by modifications to the plant and, accordingly, is deleted from Exemption Request 1–3. For the item related to the redundant Train A and Train B service water and related power cables that enter the SWIS near the ceiling in the northeast corner, an integrated risk assessment shows that fire damage would not occur to these cables even if no credit were taken for Kaowool. The proposed action, would allow SNC to re-establish the basis for Exemption Request 1–3 based on programmatic and plant design modifications, a deterministic re-analyses of fire protection considerations, a risk-informed plant change evaluation specifically applicable to the SWIS, enhanced controls on transient combustibles, the existing fire detection and automatic fire suppression capability to maintain defense-in-depth, and the availability of manual fire fighting and associated fire fighting equipment.

The Need for the Proposed Action: The proposed changes to Exemption Request 1–3 from 10 CFR Part 50, Appendix R, Section III.G.2.c is needed to enable SNC to re-establish the bases for the exemption that do not rely on the use of the Kaowool fire barrier material for the enclosure of certain redundant cable trays in the SWIS Fire Area 72.

Environmental Impacts of the Proposed Action: The NRC has completed its safety evaluation of the proposed action and concludes that the proposed changes to Exemption Request 1–3 will not present an undue risk to the public health and safety. The details of the NRC staff's Safety Evaluation will be provided in the revised Exemption Request 1–3 that will be issued in a letter to the licensee approving the changes to Exemption Request 1–3. The action relates to revising the bases for the adequacy of the fire protection program at FNP.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to the operation of the FNP, Units 1 and 2, dated December 1974, and the Final Supplemental Environmental Impact Statement (NUREG–1437, Supplement 18), dated March, 2005.

Agencies and Persons Consulted: In accordance with its stated policy, on August 4, 2005, the NRC staff consulted with the Alabama State official, David Walters, of the Office of Radiation Control, Alabama Department of Public Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 28, 2003, December 28, 2004, and June 9, 2005. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint

North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 5th day of August 2005.

For The Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4351 Filed 8–10–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27026 ; 812–13183]

WNC Housing Tax Credit Fund VI, L.P., Series 13 and Series 14, and WNC National Partners, LLC; Notice of Application

August 4, 2005.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting relief from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections, other than rule 38a–1.

Applicants: WNC Housing Tax Credit Fund VI, L.P., Series 13 and WNC Housing Tax Credit Fund VI, L.P., Series 14 (each a ''Series,'' and collectively, the ''Fund''), and WNC National Partners, LLC (the ''General Partner'').

Summary of the Application: Applicants request an order to permit each Series to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

DATES: The application was filed on April 18, 2005, and amended on July 22, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 29, 2005, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 100 F Street, NE., Washington, DC 20549–9303. Applicants, 17782 Sky Park Circle, Irvine, California 92614.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, (202) 551–6817, or Mary Kay Frech, Branch Chief, (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Each Series was formed in 2005 as a California limited partnership. Each Series will operate as a ''two-tier'' partnership, i.e., each Series will invest as a limited partner in other limited partnerships (''Local Limited Partnerships''). The Local Limited Partnerships in turn will engage in the ownership and operation of apartment complexes expected to be qualified for low income housing tax credit under the Internal Revenue Code of 1986, as amended. The General Partner is a California limited liability company whose sole member is WNC & Associates, Inc. (''WNC & Associates''), a California corporation.

2. The objectives of each Series are (a) to provide current tax benefits primarily in the form of low income housing credits which investors may use to offset their Federal income tax liabilities, (b) to preserve and protect capital, and (c) to provide cash distributions from sale or refinancing transactions.

3. On April 18, 2005, the Fund filed a registration statement under the Securities Act of 1933, pursuant to which the Fund intends to offer publicly, in two series of offerings, 25,000 units of limited partnership interest (''Units'') at $1,000 per Unit. The minimum investment will be five Units for most investors, although employees of the General Partner and/or its affiliates and/or investors in syndications previously sponsored by the General Partner and/or its affiliates may purchase a minimum of two Units. Purchasers of the Units will become limited partners (''Limited Partners'') of the Series offering the Units.

4. A Series will not accept any subscriptions for Units until the requested exemptive order is granted or the Series receives an opinion of counsel that it is exempt from registration under the Act. Subscriptions for Units must be approved by the General Partner. Such approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in a Series is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings, and automobiles), of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings, and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or such more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed on the transferor Limited Partner.

5. Although a Series' direct control over the management of each apartment complex will be limited, the Series' ownership of interests in Local Limited Partnerships will, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. A Series normally will acquire at least a 90% interest in the profits, losses, and tax credits of the Local Limited Partnerships. However, in certain cases, the Series may acquire a lesser interest in such partnerships. Each Local Limited Partnership's partnership agreement will provide that distributions of proceeds from a sale or refinancing of an apartment complex will be paid to a Series in the range of from 10% to 50%.

6. Each Series will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the

apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the Local Limited Partnership agreement materially and adversely affecting the Series' investment.

7. Each Series will be controlled by the General Partner, pursuant to a partnership agreement (the ''Partnership Agreement''). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Series. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement, and to dissolve the Series. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Series.

8. Applicants state that the Partnership Agreement and prospectus of the Series contain provisions designed to ensure fair dealing by the General Partner with the Limited Partners. Applicants also state that all compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and prospectus. Applicants believe that the fees and other forms of compensation that will be paid to the General Partner and its affiliates are fair and on terms no less favorable to the Series than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, WNC Capital Corporation, an affiliate of the General Partner, will receive a dealer-manager fee and a nonaccountable underwriting expense allowance in amounts equal to 2% and 1%, respectively, of capital contributions. The General Partner or an affiliate will receive a nonaccountable organizational and offering expense reimbursement in an amount equal to 3% of capital contributions. The General Partner has agreed to pay all organizational and offering expenses (excluding selling commissions, the dealer-manager fee, the nonaccountable underwriting expense allowance and the nonaccountable expense reimbursement).

10. During the acquisition phase, each Series will pay WNC & Associates a fee equal to 7% of capital contributions for analyzing and evaluating potential investments in Local Limited Partnerships and for various other services. WNC & Associates will receive a nonaccountable acquisition expense reimbursement equal to 2% of capital contributions in consideration of which WNC & Associates will pay all acquisition expenses of each Series. Aggregate fees and expenses paid in connection with the organization of each Series, the offering of Units, and the acquisition of Local Limited Partnership interests by each Series will be limited by the Partnership Agreement and will comply with guidelines published by the North American Securities Administrators Association. These guidelines require that a specified percentage (generally 80%, but subject to reduction) of the aggregate Limited Partners' capital contributions to the Fund be committed to Local Limited Partnership interests.

11. During the operating phase, the General Partner will receive 0.1% of any cash available for distribution, and each Series may pay certain fees and reimbursements to the General Partner or its affiliates. An asset management fee will be payable for services related to the administration of the affairs of each Series and ongoing management of each Series. Other fees may be paid in consideration of property management services provided by the General Partner or its affiliates as the management and leasing agents for some of the apartment complexes. In addition, the General Partner and its affiliates generally will be allocated 0.1% of profits and losses of each Series for tax purposes and tax credits.

12. During the liquidation phase, and subject to certain prior payments to the Limited Partners, each Series will pay the General Partner or its affiliates a fee equal to 1% of the sales price of the apartment complexes sold in which the General Partner or its affiliates have provided a substantial amount of services. The General Partner also will receive 10% of any additional sale or refinancing proceeds.

13. All proceeds from a Series' public offering of Units initially will be placed in an escrow account with USbank (''Escrow Agent''). Pending release of offering proceeds to the Series, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a Series, funds in escrow will be released to the Series and held by it pending investment in Local Limited Partnerships.

14. If more than one entity that the General Partner or its affiliates advises or manages may invest in a particular investment opportunity, the decision as to the entity that will be allocated the investment will be based upon such factors as the effect of the acquisition on diversification of each entity's portfolio, the estimated income tax effects of the purchase on each entity, the amount of funds of each entity available for investment, and the length of time such funds have been available for investment. Priority generally will be given to the entity having uninvested funds for the longest period of time. However, any entity that was formed to invest primarily in apartment complexes eligible for state low income housing tax credits (''state tax credits'') as well as for Federal low income housing tax credits will be given priority with respect to any investment that is eligible for state tax credits over entities which are not seeking to provide state tax credits.

Applicants' Legal Analysis

1. Applicants believe that the Fund and its Series will not be ''investment companies'' under sections 3(a)(1)(A) or 3(a)(1)(C) of the Act. If the Fund and its Series are deemed to be investment companies, however, applicants request an exemption under sections 6(c) and 6(e) of the Act from all provisions of the Act, except sections 37 through 53 of the Act and the rules and regulations under those sections, other than rule 38a–1.

2. Section 3(a)(1)(A) of the Act provides that an issuer is an ''investment company'' if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants believe that the Fund will not be an investment company under section 3(a)(1)(A) because the Fund will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(1)(C) of the Act provides that an issuer is an ''investment company'' if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire ''investment securities'' having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items). Applicants state that although the Local Limited Partnership interests may be deemed ''investment securities,'' they are not readily marketable, cannot be sold without severe adverse tax consequences, and have no value apart from the value of the apartment

complexes owned by the Local Limited Partnerships.

4. Applicants believe that the two-tier structure is consistent with the purposes and criteria set forth in the Commission's release concerning two-tier real estate partnerships (the ''Release'').[1] The Release states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for an exemption from the Act pursuant to section 6(c). Section 6(c) provides that the Commission may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 6(e) permits the Commission to require companies exempted from the registration requirements of the Act to comply with certain specified provisions of the Act as though the company were a registered investment company.

5. The Release lists two conditions, designed for the protection of investors, which must be satisfied by two-tier partnerships to qualify for the exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units. In addition, applicants assert that the requested exemption is both necessary and appropriate in the public interest.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–4353 Filed 8–10–05; 8:45 am]

BILLING CODE 8010–01–P

[1] Investment Company Act Release No. 8465 (Aug. 9, 1974).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52216; File No. SR–Amex–2005–024]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Establish a Process for the Waiver, Deferral, or Rebate of Listing Fees for Certain Closed-End Funds

August 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On July 27, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Section 140 of the Amex Company Guide to provide a process for the waiver, deferral, or rebate of listing fees for certain closed-end funds. The text of the proposed rule change is available on the Amex's Web site, *http://www.amex.com*, at the Amex's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made non-substantive changes to the text of the proposed rule change.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend section 140 of the Amex Company Guide to provide that the Amex Board of Governors or its designee may, in its discretion, waive, defer, or rebate all or any part of the initial listing fee applicable to a closed-end fund that transfers to the Amex from another marketplace. The Exchange currently has the authority to waive, defer, or rebate initial listing fees applicable to stocks, bonds, and warrants.[4] To enable the Amex to respond to specific competitive situations, the Exchange believes it is appropriate to provide the authority to waive, defer, or rebate all or any part of the listing fees applicable to closed-end funds that transfer to the Amex from another marketplace. Such authority could be exercised only by the Amex Board of Governors or its designee. At its November 17, 2004, meeting, the Amex Board of Governors delegated authority to a staff committee, as its designee, to determine whether to grant the listing fee waiver, deferral, or rebate. The committee is comprised of management representatives from the Office of the Chairman and the ETF Marketplace, Finance and Listing Qualifications Departments.[5] In addition, an attorney from the Office of the General Counsel would provide legal counsel to the committee. It is contemplated that fee reductions would be granted only infrequently to attract an important listing that is likely to generate significant transaction fee revenue. The committee composition is intended to ensure that fee reduction requests receive an appropriate degree of scrutiny and are granted only under circumstances in which a reduction is warranted for competitive reasons. The waiver, deferral, or rebate of closed-end fund listing fees would not impact the Exchange's resource commitment to regulatory oversight of the listing or other regulatory programs.[6]

[4] *See* Securities Exchange Act Release No. 50270 (August 26, 2004), 69 FR 53750 (September 2, 2004) (SR–Amex–2004–70).

[5] An affirmative vote of a majority of the committee members attending a particular meeting (subject to a three person quorum requirement) would be necessary for waivers, deferrals, or rebates.

[6] The Amex believes that if it determines to waive, defer, or rebate listing fees in a comprehensive and/or recurring manner that would constitute a stated policy, practice, or interpretation of an existing rule, the Amex would file an additional rule change pursuant to Rule 19b–4(f)(1) with respect such policy practice or interpretation.

2. Statutory Basis

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act [7] in general and furthers the objectives of section 6(b)(5) [8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–024 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–024 and should be submitted on or before September 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–4350 Filed 8–10–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52210; File No. SR–NASD–2004–089]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval To Proposed Rule Change and Amendment No. 1 Thereto To Require Limit Order Protection and To Expand the Application of Manning Obligations to Exchange-Listed Securities

August 4, 2005.

On June 9, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require members to provide price improvement to customer limit orders under certain circumstances, and to expand the application of NASD IM–2110–2 (''Manning'' obligations) to exchange-listed securities. The proposed rule change prohibits a member from trading for its own account in a Nasdaq or exchange-listed security at a price that is better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or at a better price.

On November 2, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for notice and comment in the **Federal Register** on February 25, 2005.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of section 15A of the Act [5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6),[6] which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that requiring price improvement for customer limit orders as detailed in the proposed rule change, and the expansion of the application of Manning obligations under NASD IM–2110–2 to include exchange-listed securities, will provide the opportunity for investors to receive better limit order executions, and thus enhance the overall integrity of the market.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced NASD's original proposed rule change in its entirety.

[4] Securities Exchange Act Release No. 51231 (February 18, 2005), 70 FR 9402.

[5] 15 U.S.C. 78*o*–3

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] In approving this proposed rule change, the Commission has considered the proposal's impact

Continued

It is therefore ordered, pursuant to section 19(b)(2) of the Act [8] that the proposed rule change (SR–NASD–2004–089) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–4349 Filed 8–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52206; File No. SR–PCX–2005–59]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 3 Thereto Relating to Amendments to the Exchange's Trade-Through and Locked Markets Rules

August 4, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2005, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the PCX. The PCX filed Amendment No. 1 to the proposed rule change on July 8, 2005.[3] The PCX filed Amendment No. 2 to the proposed rule change on July 29, 2005 and withdrew Amendment No. 2 on August 1, 2005. The PCX filed Amendment No. 3 to the proposed rule change on August 1, 2005.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to codify the ''trade and ship'' and ''book and ship'' concepts pursuant to the Intermarket Option Linkage Plan (''Plan''). The text of the proposed rule change is available on the PCX's Web site (*http://www.pacificex.com*), at the PCX's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to provide that: (i) A Participant Exchange may trade an order at a price that is one minimum quoting increment inferior to the National Best Bid or Offer (''NBBO'') if a Linkage Order [5] is transmitted to the NBBO market(s) to satisfy all interest at the NBBO price (this is the ''trade and ship'' concept); and (ii) a Participant Exchange may book an order that would lock another Participant Exchange if a Linkage Order is sent to such other Participant Exchange to satisfy all interest at the lock price (this is the ''book and ship'' concept). Under the trade and ship proposal, any execution received from the NBBO market must (pursuant to agency obligations) be reassigned to the customer order that is underlying the Linkage Order that was transmitted to ''take out'' the NBBO market. Below are examples illustrating the applications of these concepts:

Trade and Ship Example. Participant Exchange A is disseminating an offer of $2.00 for 100 contracts. Participant Exchange B is disseminating the national best offer of $1.95 for 10 contracts. No other market is at $1.95. Participant Exchange A receives a 100-contract customer buy order to pay $2.00. Under this proposal, Participant Exchange A could execute 90 contracts (or 100 contracts) of the customer order at $2.00 provided Participant Exchange A simultaneously transmits a 10-contract Principal Acting as Agent (''P/A'') [6] Order to Participant Exchange B to pay $1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive the 10-contract fill at $1.95 and 90 contracts at $2.00 (if the customer order was originally filled in its entirety at $2.00, an adjustment would be required to provide the customer with the $1.95 price for 10 contracts reflecting the P/A Order execution). As proposed, this would not be deemed a Trade-Through.

Book and Ship Example. Participant Exchange A is disseminating a $1.85–$2.00 market. Participant Exchange B is disseminating a $1.80–$1.95 market. The $1.95 offer is for 10 contracts. No other market is at $1.95. Participant Exchange A receives a customer order to buy 100 contracts at $1.95. Under this proposal, Participant Exchange A could book 90 contracts of the customer buy order at $1.95 provided Participant Exchange A simultaneously transmitted a 10-contract P/A Order to Participant Exchange B to pay $1.95. Assuming an execution is obtained from Participant Exchange B, the customer would receive the 10-contract fill and the rest of the customer's order will be displayed as a $1.95 bid on Participant Exchange A. The national best offer would likely be $2.00. As proposed, this would not be deemed a ''locked'' market for purposes of the Plan.

2. Statutory Basis

The PCX believes that the proposed rule change is consistent with section 6(b) of the Act [7] in general, and furthers the objectives of section 6(b)(5) of the Act [8] in particular, because the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not

on efficiency, competition, and capital formation. *See*, 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated July 8, 2005 (''Amendment No. 1''). In Amendment No. 1, the PCX revised the rule text to use terms consistent with PCX's current rules and made clarifying changes in the purpose and statutory basis sections.

[4] *See* Partial Amendment dated August 1, 2005 (''Amendment No. 3''). In Amendment No. 3, the PCX made clarifying changes to the rule text and the purpose section.

[5] *See* PCX Rule 6.92(a)(12).

[6] *See* PCX Rule 6.92(a)(12)(i).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2005–59 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–PCX–2005–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2005–59 and should be submitted on or before September 1, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–4348 Filed 8–10–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52220; File No. SR–Phlx–2005–49]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Impose Licensing Fees in Connection With the Firm-Related Equity Option and Index Option Fee Cap

August 5, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2005, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. Phlx has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its schedule of fees to adopt a license fee of $0.10 for options traded on the following products:[5] (1) Keefe, Bruyette & Woods Regional Banking Index or the KBW Regional Banking Index, traded under the symbol KRX, and (2) Keefe, Bruyette & Woods Mortgage Finance Index or the KBW Mortgage Finance Index, traded under the symbol MFX (collectively ''KBW products''), to be assessed per contract side for index option ''firm'' transactions (comprised of index option firm/proprietary comparison transactions, index option firm/proprietary transactions and index option firm/proprietary facilitation transactions). This license fee will be imposed only after the Exchange's $60,000 ''firm-related'' equity option and index option comparison and transaction charge cap, described more fully below, is reached.

Currently, the Exchange imposes a cap of $60,000 per member organization[6] on all ''firm-related'' equity option and index option comparison and transaction charges combined.[7] Specifically, ''firm-related'' charges include equity option firm/proprietary comparison charges, equity option firm/proprietary transaction charges, equity option firm/proprietary facilitation transaction charges, index option firm/proprietary comparison charges, index option firm/proprietary transaction charges, and index option firm/proprietary facilitation transaction charges (collectively ''firm-related charges''). Thus, such firm-related charges in the aggregate for one billing month may not exceed $60,000 per month per member organization.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] This fee will be charged to Exchange members.

[6] The firm/proprietary comparison or transaction charge applies to member organizations for orders for the proprietary account of any member or non-member broker-dealer that derives more than 35% of its annual, gross revenues from commissions and principal transactions with customers. Member organizations are required to verify this amount to the Exchange by certifying that they have reached this threshold by submitting a copy of their annual report, which was prepared in accordance with Generally Accepted Accounting Principles (''GAAP''). In the event that a member organization has not been in business for one year, the most recent quarterly reports, prepared in accordance with GAAP, are accepted. *See* Securities Exchange Act Release No. 43558 (November 14, 2000), 65 FR 69984 (November 21, 2000) (SR–Phlx–2000–85).

[7] *See* Securities Exchange Act Release No. 51024 (January 11, 2005), 70 FR 3088 (January 19, 2005) (SR–Phlx–2004–94).

The Exchange also imposes a license fee of $0.10 per contract side for equity option and index option ''firm'' transactions on certain licensed products (collectively ''licensed products'') after the $60,000 cap, as described above, is reached.[8] Therefore, when a member organization exceeds the $60,000 cap (comprised of combined firm-related charges), the member organization is charged $60,000, plus license fees of $0.10 per contract side for any contracts in licensed products (if any) over those that were included in reaching the $60,000 cap. In other words, if the cap is reached, the $0.10 license fee is imposed on all subsequent equity option and index option firm transactions; these license fees are charged in addition to the $60,000 cap.

The Exchange proposes to adopt a $0.10 license fee per contract side for the KBW products for index option firm transactions, which will be imposed after the $60,000 cap is reached in the same way as the current licensed product fees are assessed. Thus, when a member organization exceeds the $60,000 cap, the member organization will be charged $60,000 plus any applicable license fees for trades of licensed products, including the KBW products, over those trades that were counted in reaching the $60,000 cap.[9]

The fees set forth in this proposal are scheduled to become effective for transactions settling on or after August 1, 2005.

The text of the proposed rule change is available on the Phlx's Web site, *http://www.phlx.com*, at the Phlx's Office of the Secretary, and at the Commission's Public Reference Section.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of assessing the KBW products license fee of $0.10 per contract side after reaching the $60,000 cap as described in this proposal is to help defray licensing costs associated with the trading of these products, while still capping member organizations' fees enough to attract volume from other exchanges. The cap operates this way in order to offer an incentive for additional volume without leaving the Exchange with significant out-of-pocket costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change would impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive any written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2)[13] thereunder. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2005–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Phlx–2005–49. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2005–49 and should be submitted on or before September 1, 2005.

[8] For a complete list of licensed products, see $60,000 ''Firm Related'' Equity Option and Index Option Cap on the Exchange's fee schedule. *See also*, Securities Exchange Act Release No. 52054 (July 18, 2005), 70 FR 42611 (July 25, 2005) (SR–Phlx–2005–40).

[9] Consistent with current practice, when calculating the $60,000 cap, the Exchange first calculates all equity option and index option transaction and comparison charges for products without license fees and then equity option and index option transaction and comparison charges for products with license fees (*e.g.*, QQQ license fees) that are assessed by the Exchange after the $60,000 cap is reached. *See* Securities Exchange Act Release No. 50836 (December 10, 2004), 69 FR 75584 (December 17, 2004) (SR–Phlx–2004–70).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4352 Filed 8–10–05; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for revisions to OMB-approved information collections, extensions (no change) of OMB-approved information collections and new information collection requests.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Annual Registration Statement Identifying Separated Participants With Deferred Benefits, Schedule SSA—0960–0606

Schedule SSA is a form filed annually as part of a series of pension plan documents required by section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the schedule SSA on behalf of the pension benefit plan. Below are the estimates of the cost and hour burdens for completing and filing schedule SSA(s). We have used an average to estimate the hour burden. However, the burden may be greater or smaller depending on whether the respondent is a large or small pension benefit plan and how many schedule SSA's are filed in a given year.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 88,000.

Frequency of Response: 1.

Average Burden Per Response: 2.5 hours.

Estimated Annual Burden: 220,000 hours.

Estimated Annual Cost Burden for all Respondents: $12,194,400.

2. Protection and Advocacy for Beneficiaries of Social Security (PABSS)—0960–NEW

Background

In August of 2004, SSA announced its intention to award grants to establish community-based protection and advocacy projects in every State and U.S. Territory, as authorized under section 1150 of the Social Security Act. Potential awardees were protection and advocacy organizations established under Title I of the Developmental Disabilities Assistance and Bill of Rights Act which submitted a timely application conforming to the requirements in the notice. The projects funded under this grant are part of SSA's strategy to increase the number of beneficiaries who return to work and achieve self-sufficiency as the result of receiving advocacy or other services. The overall goal of the program is to provide information and advice about obtaining vocational rehabilitation and employment services and to provide advocacy or other services that a beneficiary with a disability may need to secure, maintain, or regain gainful employment.

Collection Activities

The PABSS project collects identifying information from the project sites and benefits specialists. In addition, data are collected from the beneficiaries on background, employment, training, benefits, and work incentives. SSA uses the information to manage the program, with particular emphasis on contract administration, budgeting, and training.

SSA also uses the information to evaluate the efficacy of the program and to ensure that those dollars appropriated for PABSS services are being spent on SSA beneficiaries. The project data will be valuable to SSA in its analysis of and future planning for the Social Security Disability Insurance and Supplemental Security Income programs.

Type of Request: New information collection.

Title of collection	Number of annual responses	Frequency of response	Average burden per response (minutes)	Estimated annual burden hours
Site	57	5	1.8	8.6
Specialist	225	5	1.8	33.8
Beneficiary	60,000	1	5.3	5,300
Total Estimated Annual Burden				5,342

[14] 17 CFR 200.30–3(a)(12).

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

Statement Regarding Date of Birth and Citizenship—20 CFR 404.716—0960–0016

Form SSA–702 collects information needed when preferred or other evidence is not available to prove age or citizenship for an individual applying for Social Security benefits. SSA uses this form for individuals who must establish age as a factor of entitlement or U.S. citizenship as a payment factor. Respondents are applicants for one or more Social Security benefits who need to establish their dates of birth as a factor of entitlement or U.S. citizenship as a factor of payment.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,200.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 200 hours.

National Direct Deposit Initiative—31 CFR 210—0960–NEW

Many recipients of social security benefits choose to receive their payments via the Direct Deposit Program, in which funds are transferred directly into recipients' accounts at a financial institution (FI). However, 8 million Title II payment recipients still receive their payments through traditional paper checks. In an effort to encourage these beneficiaries to change from paper checks to the Direct Deposit Program, SSA is collaborating with the Department of the Treasury and several FIs to implement the National Direct Deposit Initiative. In this program, SSA will work with FIs to determine which of the target 8 million Title II beneficiaries have accounts at the participating banks. The banks will then send forms to these beneficiaries encouraging them to enroll in the Direct Deposit Program. The respondents are the participating FIs and Title II beneficiaries currently receiving their payments via check.

Type of Request: New information collection.

Note: Please note that in the 60-day **Federal Register** Notice (published on May 13, 2005 at 70 FR 25643) we reported different data for the number of respondents, total burden, and cost burden. Since that time, SSA has received updated information on these categories. The new numbers in the chart below reflect the updated data.

Respondents	Information collection requirement	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)	Cost requirement	Estimated cost burden per respondent	Total annual cost burden
Title II Payment Recipients.	Direct Deposit Enrollment Form.	100,000	1	2	3,333	N/A	N/A	N/A
Financial Institutions (banks).	Data screening/matching activities; SSA's data management requirements.	10	1	240	40	Printing and mailing of 100,000 Enrollment Forms.	$1,039	$10,390
Totals	.....	110,000	.....	.....	3,373	.....	.....	10,390

Dated: August 8, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–15963 Filed 8–10–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4925]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 p.m. on Thursday, September 8, 2005, in Room 3200–3202 of the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC 20590–0001. The primary purpose of the meeting is to prepare for the Tenth Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers to be held at the IMO Headquarters in London, England from September 26 to September 30, 2005.

The primary matters to be considered include:

—Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods, and review of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

—Review and mandatory application of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), including evaluation of properties of solid bulk cargo.

—Casualty and incident reports and analysis.

—Amendments to the Code of Safe Practice for Cargo Stowage and Securing (CSS Code).

—Guidance on serious structural deficiencies in containers; reporting procedure on serious structural deficiencies.

—Measures to enhance maritime security.

—Revision of the guidelines for the Transport and Handling of Limited Amounts of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels (LHNS) and the guidelines for the Design and Construction of Offshore Supply Vessels (OSV).

—Amendments to the guidelines for partially weather tight hatchway covers on board containerships.

—Extension of the Code of Practice for the Safe Unloading and Loading of Bulk Carriers (BLU Code) to include grain.

—Guidance on providing safe working conditions for securing of containers.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information about attendance by writing: CDR R.J. Hennessy or Mr. R.C.

Bornhorst, U.S. Coast Guard (G–MSO–3), Room 1210, 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1694.

Dated: August 3, 2005.

Clayton L. Diamond,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 05–15931 Filed 8–10–05; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Delegation of Authority 283]

Delegation by the Secretary of State as Chairperson of the Board of the Millennium Challenge Corporation to the Vice President for Monitoring and Evaluation

By virtue of the authority vested in me as Chairperson of the Board of the Millennium Challenge Corporation by Section 18 of Article I of the Bylaws and other relevant provisions of the Bylaws and law, I hereby delegate, prescribe, assign and designate to the Vice President for Monitoring and Evaluation, Charles O. Sethness, the functions, duties and powers of the Chief Executive Officer, to be exercised subject to my direction, to the extent authorized by law.

Any authorities covered by this delegation may also be exercised by me and may be redelegated to the extent authorized by law.

This delegation shall enter into effect on August 9, 2005 and shall expire upon designation of an Acting Chief Executive Officer under Section 3345 of Title 5, United States Code or upon the appointment and entry upon the duty of a new Chief Executive Officer pursuant to Section 604(b) of the Millennium Challenge Act of 2003.

This delegation of authority shall be published in the **Federal Register.**

Dated: August 3, 2005.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. 05–15932 Filed 8–10–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 22, 2005

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2005–21950.

Date Filed: July 20, 2005.

Parties: Members of the International Air Transport Association.

Subject: Passenger Agency Conference held in Singapore on 07–09 June 2005. Memorandum: Finally Adopted Resolutions rl–r26. Minutes: PAC/Reso/437 dated 13 July 2005. Intended effective date: 1 January 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 05–15918 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 431.35–2A, Reusable Launch and Reentry Vehicle System Safety Process—Notice of Issuance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular 431.35–2A, ''Reusable Launch and Reentry Vehicle System Safety Process,'' dated July 20, 2005.

This advisory circular provides guidance for applying a systematic and logical system safety process for identification, analysis, and control of public safety hazards and risks associated with the operation of reusable launch vehicle and reentry vehicle systems.

DATES: FAA Office of Commercial Space Transportation in Washington, DC issued AC 431.35–2A on August 4, 2005.

How to Obtain Copies: You can download a copy of Advisory Circular 431.35–2A, Reusable Launch and Reentry Vehicle System Safety Process, from the Internet at *http://www.airweb.faa.gov/rgl.* A paper copy will be available in approximately 6–8 weeks from the U.S. Department of Transportation, Subsequent Distribution Office, M–30, Ardmore East Business Center, 3341 Q 75th Avenue, Landover, MD 20795.

FOR FURTHER INFORMATION CONTACT: Stewart Jackson, Manager, Systems Engineering and Training Division (AST–300), FAA Office of Commercial Space Transportation, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7903; e-mail *stewart.jackson@faa.gov.*

Issued in Washington, DC, August 4, 2005.

Camilla F. McArthur,

Space Systems Development Division (AST–100), Office of Commercial Space Transportation.

[FR Doc. 05–15849 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Anacortes Airport, Anacortes, Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request for public comment.

SUMMARY: The FAA is requesting comments on the Port of Anacortes, Anacortes, Washington, request to change a portion (approximately 4.8 acres) of airport property from aeronautical use to non-aeronautical use. The property is located on the southeast side of the airport, adjacent to residential dwellings.The property is undeveloped and will not be developed for aeronautical purposes. The property will remain available for non-aeronautical airport purposes. The property was acquired through ADAP/AIP grants several years ago.

This notice is the result of an agreement between the Port of Anacortes (Port), the owner and operator of the airport, and the city of Anacortes (City), the zoning and permitting authority, to establish a sub-area zoning plan, an obstruction removal and safety fence installation project, and a Development Agreement providing for future (20 years) airport development.

There are several positive impacts to the airport by allowing the airport to remove the aeronautical use obligation. The acrimonious relationship between the Port and the City is improving after a decade of deterioration. The airport users benefit from a stabilized relationship between the Port and the City. The airport and the airport users benefit from vested permits for construction of safety and perimeter fences and to remove Part 77 obstructions. Airport developers benefit from a predictable building permit application process where aeronautical uses are ''permitted uses'' rather than ''conditional uses''.

The proposal provides for the Port to provide the appraised value of

($135,000) for development rights to the property. The funds will be utilized, with the agreement of FAA, for Airport Improvement Plan eligible airport capital improvement projects.

DATES: Comments must be received on or before September 12, 2005.

ADDRESSES: comments must be mailed or delivered to the FAA at the following address: J.Wade Bryant, Manager; Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office; 1601 Lind Avenue, SW., Suite 250; Renton, Washington 98055–4056. Telephone number: (425) 227–2650; Fax number (425) 227–1650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Anacortes, Airport, Anacortes, Washington: Mr. Dan Stahl, Executive Director; Port of Anacortes; P.O. Box 297; Anacortes, WA 98221.Telephone number: (360) 293–3134; Fax number (360) 293–9608.

FOR FURTHER INFORMATION CONTACT: J. Wade Bryant, at the above address. Documents reflecting this request may be reviewed by appointment at this same location or at the Offices of the Port of Anacortes, Anacortes, Washington.

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for aeronautical purposes.

J. Wade Bryant, Manager,

Seattle Airports District Office

[FR Doc. 05–15851 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request To Release Airport Property at Ellington Field, Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes of rule and invites public comment on the release of land at the Ellington Field under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 12, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address:

Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard Vacar, Director of Aviation, at the following address:

City of Houston, Department of Aviation, 16930 JFK Blvd., Houston, Texas 77032.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Senior Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 7693–0650. Telephone: (817) 222–5614; e-mail: *ben.guttery@faa.gov;* fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Ellington Field under the provisions of the AIR 21.

On August 1, 2005, the FAA determined that the request to release property at Ellington Field, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, part 155.

The following is a brief overview of the request:

The City of Houston requests the release of 42.36 acres of aeronautical and non-aeronautical use airport property. The land was part of a General Services Administration deed of property to the City in 1984. The funds generated by the release will be used for upgrading, maintenance, cooperation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Ellington Field in Houston, Texas, telephone number 713–847–4200.

Dated: Issued in Fort Worth, Texas, on August 2, 2005.

Edward Agnew,

Acting Manager, Airports Division.

[FR Doc. 05–15853 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-use Assurance Quad City International Airport, Moline, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal to change a portion of the airport from aeronautical use to non-aeronautical use and to authorize the lease of the airport property. The proposal consists of a 2.656-acre portion of Parcel Z (9.19 acres). The land is currently vacant and is not needed for aeronautical use. The land was acquired under the FAA Project Numbers 9–11–024–C309. There are no impacts to the airport by allowing the airport to lease the property. The change from aeronautical to non-aeronautical use will allow the construction of a hotel on the subject 2.656-acre parcel. Approval does not constitute a commitment by the FAA to financially assist in the lease of the subject airport property nor a determination of eligibility for grant-in-aid funding from the FAA. The disposition of proceeds from the lease of the airport property will be in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that required the property to be used for an aeronautical purpose.

DATES: Comments must be received on or before September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Pur, Program Manager, Federal Aviation Administration, Great Lakes Region, Chicago Airports District Office, CHI–ADO–611, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone Number (847) 294–7527/ FAX Number (847) 294-7046. Documents reflecting this FAA action may be reviewed at this same location or at Quad City International Airport, Moline, Illinois.

SUPPLEMENTARY INFORMATION: Following is a legal description of the property located in Moline, Illinois, and described as follows:

Part of Outlot 3, 4, 5, 8 and part of the vacated Right-of-Way between outlot 5

and 8 in Valley View Place, an addition in the Northwest Quarter of Section 21, Township 17 North, Range 1 West of the Fourth Principal Meridian, Rock Island County, Illinois.

Commencing at the Northwest Corner of said Northwest Quarter; thence North 89 degrees 37 minutes 26 seconds East, along the North line of said Northwest Quarter, a distance of 1346.94 feet to the Southerly Right-of-Way Line of Airport Road (F.A. RTE 10); thence South 57 degrees 20 minutes 31 seconds East, along said Southerly Right-of-Way Line, a distance of 169.92 feet; thence South 49 degrees 30 minutes 29 seconds East, along said Southerly Right-of-Way Line, a distance of 108.84 feet to the Point of Beginning; thence South 49 degrees 30 minutes 29 seconds East, along said Southerly Right-of-Way Line, a distance of 256.67 feet; thence South 66 degrees 59 minutes 20 seconds East, along said Southerly Right-of-Way, a distance of 257.33 feet; thence South 04 degrees 17 minutes 28 seconds West, a distance of 145.95 feet; thence South 88 degrees 41 minutes 14 seconds East, a distance of 47.06 feet to said Southerly Right-of-Way Line; thence South 01 degrees 18 minutes 46 seconds West, along said Southerly Right-of-Way Line, a distance of 30.20 feet to the Northwest Corner of Flick's 1st Addition; thence South 65 degrees 43 minutes 17 seconds West, a distance of 183.64 feet; thence curving to the left a distance of 397.76 feet, along the arc of a circle having a radius of 540.00 feet, and a chord bearing of North 45 degrees 22 minutes 50 seconds West, and a chord distance of 388.83 feet; thence North 66 degrees 28 minutes 58 seconds West, a distance of 146.96 feet; thence North 19 degrees 38 minutes 36 seconds West, a distance of 32.90 feet; thence North 37 degrees 59 minutes 21 seconds East, a distance of 199.01 feet to the Point of Beginning.

The above-described parcel contains 2.656 acres, more or less. For the purpose of this description, the North Line of said Northwest Quarter of Section 21, has a bearing of North 89 degrees 37 minutes 26 seconds East, based on the North American Datum of 1983, Illinois State Plans Coordinate System, West Zone.

Issued in Des Plaines, Illinois on July 28, 2005.

Larry H. Ladendorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–15857 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collections. The ICR describes the nature of the information collection and the expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 12, 2005, page 19144.

DATES: Comments must be submitted on or before September 12, 2005. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

1. *Title:* Part 60—Flight Simulation Device Initial and Continuing Qualification and Use (NPRM).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0680.

Forms(s): NA.

Affected Public: A total of 70 flight simulator training device operators.

Abstract: The collection of this information is necessary to ensure safety of flight by ensuring complete and adequate training, testing, checking, and experience is obtained and maintained by those who conduct flight simulation training.

Estimated Annual Burden Hours: An estimated 72,072 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 3, 2005.

Judith D. Street,

FAA Information Collection Clearance Officer, Information Systems and Technology Services Staff, ABA–20.

[FR Doc. 05–15852 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200/ EUROCAE Working Group 60: Modular Avionics, Second Joint Plenary Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200/EUROCAE Working Group 60 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200/ EUROCAE Working Group 60: Modular Avionics.

DATES: The meeting will be held August 31–September 2, 2005 starting at 9 a.m.

ADDRESSES: The meeting will be held at Civil Aviation Authority Aviation House, Gatwick Airport South, West Sussex, UK RH6 0YR

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org;* (2) Chris Duff-Cole; telephone +44 (0) 1293 56171; e-mail *chris.duff-cole@srg.caa.co.uk.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 200/ EUROCAE Working Group 60 meeting. The agenda will include:

- August 31:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Accept Agenda, Review/Approve previous minutes of 12th plenary session, Review Open Action Items
  - Brief Reports on Related Committees (ARINC653, WG63)
  - Review of Outstanding Comments

on draft Integrated Modular Avionics (IMA) Development Guidance and Certification Considerations document

- September 1:
  - Plenary Session: Continue Review of Outstanding Comments
- June 24:
  - Plenary approval of the (IMA) documents
  - Closing Plenary Session (Complete resolution of FRAC comments, approve and forward FRAC document for approval, Review Action Items, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 27, 2005.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 05–15858 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2005, there were three applications approved. This notice also includes information on on application, approved in December 2004, inadvertently left off the December 2004 notice. Additionally, 23 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: City of Fort Collins and City of Loveland, Fort Collins, Colorado.

Application Number: 05–04–C–00–FNL.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $315,329.

Earliest Charge Effective Date: March 1, 2005.

Estimated Charge Expiration Date: November 1, 2007.

Class of Air Carriers Not Required to Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use:

Rehabilitation of runway 15/33 (phases II and III).
Fog seal and mark runway 15/33.
Replace airfield lighting controls.

Decision Date: December 29, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Lafayette Airport Commission, Lafayette, Louisiana.

Application Number: 05–04–C–00–LFT.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $1,967,250.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: April 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial carriers operating under Part 135 and filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Lafayette Regional Airport.

Brief Description of Projects Approved For Collection and Use:

Replace airfield signage.
Upgrade airfield electrical system.
Rehabilitate airfield lighting control system.
Rehabilitate taxiway lighting.
PFC administrative costs.

Brief Description of Disapproved Project: Upgrade runway 11/29 edge lighting.

Determination: The existing medium intensity lighting meets design standards and upgrading to high intensity lighting will not facilitate improved approach/departure minima. Therefore, the project does not meet the requirements of § 158.15.

Decision Date: February 14, 2005.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Pineallas County, Clearwater, Florida.

Application Number: 05–01–C–00–PIE.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $3,357,649.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: November 1, 2007.

Class of Air Carriers Not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at St. Petersburg-Clearwater International Airport.

Brief Description of Projects Approved For Collection and Use:

Overlay of terminal ramp and taxiways A, C, and D.
Water rescue craft acquisition and fire house expansion.
Airfield guidance sings installation.
Airport and airfield lighting control panel relocation.
Security access system installation.
Terminal building expansion and renovation (phases 1 and 2).
Taxiway T relocation.
Runway 17/35 lighting rehabilitation.
Baggage claim expansion (phases 1 through 5).
Security fence improvement (1999 project).
Runway 17/35 marking.
Runway 17L/35R environmental assessment study.
2003 master plan update, stormwater plan, and benefit costs analysis for runway extension.
Runway 17L/35R threshold relocation.
Land acquisition, runway 35R.
Security fencing and enhancements (2001 project).
Runway 17L/35R rehabilitation.
Terminal apron rehabilitation.
Aircraft rescue and firefighting trucks, rescue boat, and airport sweeper.
Additional environmental assessment and pre-permitting runway 17L/35R extension.
Runway 17L/35R extension/safety areas and related land acquisition.
Taxiway M lighting rehabilitation.

Security enhancements (fencing 2004/2005 project).
Environmental assessment and benefit cost analysis for parallel general aviation runway.
Terminal expansion—baggage processing area.
PFC application No. 1 development and PFC audits.

Decision Date: February 16, 2005.

FOR FURTHER INFORMATION CONTACT: Vernon P. Rupinta, Orlando Airports District Office, (407) 812–6331, extension 124.

Public Agency: City of San Antonio, Texas.

Application Number: 05–04–C–00–SAT.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $50,682,244.

Earliest Charge Effective Date: November 1, 2012.

Estimated Charge Expiration Date: April 1, 2016.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled on-demand air carriers (formerly identified as air taxi/commercial operators) filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at San Antonio International Airport.

Brief Description of Projects Approved for Collection and Use:

Construct elevated terminal roadways.
Upgrade central utility plant.
Construct apron.
Install utilities—terminal expansion.
Replace two aircraft rescue and firefighting vehicles.
Conduct environmental impact statement.
Reconstruct terminal area roadways.
Install noise monitoring system.
Terminal and airfield security.
Install airfield electrical improvements.
PFC development and administrative costs.

Decision Date: February 22, 2005.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

AMENDMENTS TO PFC APPROVALS

Amendment No. (City, State)	Amendment approved (Date)	Original approved net PFC (Revenue)	Amended approved net PFC (Revenue)	Original estimated charge (Exp. Date)	Amended estimated charge (Exp. Date)
01–03–C–01–GTF, Great Falls, MT	08/02/04	$8,481,340	$8,501,340	09/01/18	09/01/18
*97–02–C–01–FCA, Kalispell, MT	08/25/04	8,217,803	8,217,803	06/01/20	09/01/13
96–02–C–02–BOI, Boise, ID	12/16/04	11,274,478	10,540,605	08/01/01	08/01/01
94–01–C–03–BTM, Butte, MT	12/28/04	716,406	717,553	08/01/01	01/01/01
95–02–U–01–BTM, Butte, MT	12/28/04	(1)	(1)	08/01/01	01/01/01
97–03–C–03–BTM, Butte, MT	12/28/04	53,260	53,260	07/01/01	05/01/01
97–03–C–04–BTM, Butte, MT	12/28/04	47,131	47,131	05/01/01	05/01/01
98–04–C–01–BTM, Butte, MT	12/28/04	215,040	155,272	05/01/03	08/01/02
94–01–C–02–TXK, Texarakana, AR	01/06/05	547,484	363,302	12/01/99	09/01/98
98–02–C–02–TXK, Texarkana, AR	01/06/05	412,532	286,230	08/01/04	02/01/01
01–03–C–01–TXK, Texarkana, AR	01/06/05	125,891	121,170	06/01/05	12/01/02
02–04–C–01–TXK, Texarkana, AR	01/06/05	63,855	39,993	10/01/05	07/01/03
03–05–C–01–TXK, Texarkana, AR	01/06/05	98,250	97,698	08/01/06	03/01/04
92–01–C–04–HLN, Helena, MT	01/12/05	1,8777,003	1,949,098	10/01/03	10/01/03
96–02–U–03–HLN, Helena, MT	01/12/05	(1)	(1)	10/01/03	10/01/03
01–01–C–01–MCN, Macon, GA	02/01/05	356,842	508,897	04/01/05	10/01/06
02–04–C–01–TLH, Tallahassee, FL	02/10/05	10,063,307	11,500,458	10/01/07	02/01/07
*03–04–C–01–ICT, Wichita, KS	02/15/05	9,329,500	9,329,500	11/01/07	06/01/07
01–01–C–01–SAT, San Antonio, TX	02/15/05	102,524,363	116,417,900	11/01/09	11/01/12
03–02–U–01–SAT, San Antonio, TX	02/15/05	.....	(1)	11/01/09	11/01/12
04–03–U–01–SAT, San Antonio, TX	02/15/05	(1)	(1)	11/01/09	11/01/12
99–04–C–02–CPR, Casper, WY	02/18/15	471,251	340,144	06/01/03	06/01/03
*00–01–C–01–LCH, Lake Charles, LA	02/23/05	4,251,977	1,777,234	03/01/21	07/01/09

[1] Not applicable.

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Kalispell, MT, this change is effective on April 1, 2005. For Wichita, KS, and Lake Charles, LA, this change is effective on May 1, 2005.)

Issued in Washington, DC on August 4, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–15850 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2005, there were two applications approved. This notice also includes information on two applications, both approved in March 2005, inadvertently left off the March 2005 notice. Additionally, two approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Lehigh-Northampton Airport Authority, Allentown, PA.

Application Number: 05–07–C–00–ABE.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $27,940,236.

Earliest Charge Effective Date: June 1, 2005.

Estimated Charge Expiration Date: August 1, 2018.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lehigh Valley International Airport.

Brief Description of Projects Approved For Collection and Use: Main terminal renovations and additions.

Decision Date: March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Harrisburg Airports District Office, (717) 730–2835.

Public Agency: Friedman Memorial Airport Authority, Hailey, ID.

Application Number: 05–05–C–00–SUN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $711,054.

Earliest Charge Effective Date: June 1, 2005.

Estimated Charge Expiration Date: April 1, 2009.

Classes of Air Carriers Not Required To Collect PFC's: (1) Operations by air taxi/commercial operators utilizing aircraft having a maximum seating capacity of less than 20 passengers when enplaning revenue passengers in a limited, irregular/non-scheduled, or special service manner; (2) operations by air taxi/commercial operators, without regard to seating capacity, for revenue passengers transported for student instruction, non-stop sightseeing flights that begin and end at Friedman Memorial Airport (SUN) and are conducted within a 25-mile radius of the same airport; and (3) operations in supported of fire-fighting charters, ferry or training flights, air ambulance/medivac flights, and aerial photography or survey flights.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at SUN.

Brief Description of Projects Approved for Collection and Use:

Property acquisition.
Passenger terminal building addition/renovation.
Airport traffic control voice communication control system.
Snow removal equipment acquisition.
Aircraft rescue and firefighting truck.
Aircraft rescue and firefighting building expansion.
Master plan update.
Airport site and feasibility study.
Airport traffic control tower improvements, phase 1.
Terminal building improvements.
Acquire trailer-mounted deicing equipment.
Automated weather observation system.
Terminal access road, phase 1.

Brief Description of Withdrawn Projects:

Safety area grading and runway shift.
Install engineered materials arresting system on runway 13.
Snow removal equipment/maintenance vehicle building.
Airport master plan preferred airport alternative.
Environmental assessment (pre-environmental impact statement) for the preferred airport alternative.
Acquire snow removal equipment.
Replace runway 13/31 porous friction course.

Determination: These projects were withdrawn by the public agency on February 18, 2005. Therefore, the FAA did not rule on these projects in this decision.

Air traffic control tower improvements, phase 2.

Determination: This project was withdrawn by the public agency on December 16, 2004. Therefore, the FAA did not rule on these projects in this decision.

Decision Date: March 29, 2005.

FOR FURTHER INFORMATION CONTACT: Suzanne Lee-Pang, Seattle Airports District Office, (425) 227–2654.

Public Agency: Victoria County, Victoria, TX.

Application Number: 05–04–C–00–VCT.

Application Type: Impose and use a PFC.

PCF Level: $4.50.

Total PFC Revenue Approved in this Decision: $262,549.

Earliest Charge Effective Date: July 1, 2005.

Estimated Charge Expiration Date: January 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved For Collection and Use:

Rehabilitate runway 12L/30R.
Improve runway safety areas.
Improve airport drainage.
Rehabilitate taxiways E and F.
Install security fencing.

Decision Date: April 5, 2005.

FOR FURTHER INFORMATION CONTACT: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City of Greenville, MS.

Application Number: 05–04–C–00–GLH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $125,240.

Earliest Charge Effective Date: December 1, 2005.

Estimated Charge Expiration Date: June 1, 2008.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Mid-Delta Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Commercial terminal building renovations, phase 2.
Airfield guidance signage improvements.
Airfield pavement marking improvements.
Terminal area apron lighting replacement.
Airfield electrical vault emergency generator replacement.
PFC application charges.
Partial parallel taxiway B extension.
Convert runway 9/27 to taxiway, remove taxiway F east of runway 18R/36L, phase 2.
Commercial terminal building renovations, phase 3.

Brief Description of Projects Approved for Use:

Rehabilitate runway 9/27 and convert to taxiway.
Terminal building fire escape stairwell.
Terminal area drainage improvement and parking lot relocation.

Decision Date: April 20, 2005.

FOR FURTHER INFORMATION CONTACT: Patrick D. Vaught, Jackson Airports District Office, (601) 664–9900.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–01–C–02–MCW Mason City, IA	03/25/05	$302,790	$302,090	04/01/03	04/01/03
99–03–C–01–FYV Fayettevile, AR	04/14/05	960,303	953,056	01/01/01	01/01/01

Issued in Washington, DC on August 4, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–15859 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In March 2005, there were three applications approved. This notice also includes information on two applications, approved in February 2005, inadvertently left off the February 2005 notice. Additionally, 22 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Montgomery Regional Airport Authority, Montgomery, AL.

Application Number: 05–01–C–00–MGM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $28,599,933.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: January 1, 2027.

Class of Air Carriers Not Required To Collect PFC's: Non-scheduled and on-demand air carriers.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Montgomery Regional Airport.

Brief Description of Project Approved For Collection and Use: Phase III terminal renovation and expansion.

Brief Description of Project Partially Approved For Collection and Use: Remark runway 10/28.

Determination: The application requested PFC revenue to remark both runway 10/28 and runway 3/21. However, the FAA has determined that runway 3/21 is not an eligible runway.

Decision Date: February 25, 2005.

FOR FURTHER INFORMATION CONTACT: Roderick T. Nicholson, Jackson Airports District Office, (601) 664–9884.

Public Agency: City of Lynchburg, VA.

Application Number: 05–04–C–00–LYH.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,810,000.

Earliest Charge Effective Date: May 1, 2005.

Estimated Charge Expiration Date: June 1, 2015.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved For Collection and Use: Reimbursement of PFC development and administration costs.

Brief Description of Project Approved For Collection:

Runway 4/22 extension (phase IV construction).
Passenger loading bridge.
Rehabilitation of hangar 7 and 8 ramp (9,000 square yards).

Decision Date: February 28, 2005.

FOR FURTHER INFORMATION CONTACT: Terry J. Page, Washington Airports District Office, (703) 661–1354.

Public Agency: City of Durango and County of La Plata, Durango, CO.

Application Number: 05–05–C–00–DRO.

PFC Level: $4.50.

Total PFC Revenue Approved in this Decision: $1,604,120.

Earliest Charge Effective Date: June 1, 2005.

Estimated Charge Expiration Date: July 1, 2009.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved For Collection and Use:

Construct north ramp and access taxiway.
Realign airport entrance road and resurface terminal roadways.
Conduct environmental assessment for south taxiway A extension.
Acquire south runway protection zone land.
Acquire glycol recovery system.

Brief Description of Project Approved for Collection:

Design engineer south taxiway A extension.
Construct south taxiway A extension.

Decision Date: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Telluride Regional Airport Authority, Telluride, CO.

Application Number: 05–04–U–00–TEX.

Application Type: Use PFC revenue.

PCF Level: $4.50.

Total PFC Revenue To Be Used in This Decision: $215,000.

Charge Effective Date: April 1, 2002.

Estimated Charge Expiration Date: February 1, 2006.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use: Land acquisition, phase 1—runway protection zone.

Decision Date: March 11, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: Akron-Canton Regional Airport Authority, North Canton, OH.

Application Number: 05–06–C–00–CAK.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $21,369,000.

Earliest Charge Effective Date: November 1, 2006.

Estimated Charge Expiration Date: November 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Akron-Canton Regional Airport.

Brief Description of Projects Approved For Collection and Use:

Property acquisition—Ketron.
Property acquisition—Goodyear.
Property acquisition—Fouts.
Property acquisition—Frayer.
Property acquisition—Salmons.
Property acquisition—Maynley.
Security enhancements.
Glycol recovery study.
Glycol recovery design.
Snow removal equipment—high speed rotary broom.
Snow removal equipment—high speed rotary broom.
Snow removal equipment—runway deicing truck.
Aircraft apron rehabilitation.
Terminal rehabilitation.
Runway 14/32 closure/conversion to taxiway.

Decision Date: March 23, 2005.

FOR FURTHER INFORMATION CONTACT: Jason Watt, Detroit Airports District Office, (734) 229–2906.

Amendments to PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–01–C–01–BRO Brownsville, TX	04/01/04	$1,087,427	$1,099,404	05/01/03	05/01/03
98–02–C–02–ABY Albany, GA	02/24/05	755,509	751,509	08/01/03	08/01/03
03–03–C–01–ABY Albany, GA	02/24/05	454,849	512,749	07/01/06	02/01/08
98–02–C–02–EAT Wenatchee, WA	02/24/05	404,184	379,526	10/01/00	10/01/00
03–03–C–02–EAT Wenatchee, WA	02/24/05	312,087	281,044	10/01/02	10/01/02
95–02–C–06–CVG Covington, KY	02/25/05	75,857,000	76,920,000	11/01/98	10/01/98
98–04–C–06–CVG Covington, KY	02/25/05	35,198,000	33,061,000	07/01/00	07/01/00
01–06–C–02–CVG Covington, KY	02/25/05	20,265,000	19,353,000	10/01/02	08/01/02
02–08–C–01–CVG Covington, KY	02/25/05	259,789,000	267,326,000	07/01/08	10/01/08
02–05–C–01–SYR Syracuse, NY	03/01/05	10,509,851	12,057,078	02/01/05	08/01/05
99–03–C–04–LBB Lubbock, TX	03/03/05	4,622,222	4,007,468	07/01/02	07/01/02
02–04–C–02–LBB Lubbock, TX	03/03/05	3,356,723	3,250,572	02/01/05	02/01/05
95–02–C–03–EWR Newark, NJ	03/14/05	321,607,000	329,043,000	03/01/03	03/01/02
95–02–C–03–JFK New York, NY	03/14/05	301,279,500	308,245,500	03/01/03	03/01/02
95–02–C–03–LGA New York, NY	03/14/05	242,113,500	247,711,500	03/01/03	03/01/02
96–03–U–01–EWR Newark, NJ	03/14/05	NA	NA	03/01/03	03/01/02
96–03–U–01–JFK New York, NY	03/14/05	NA	NA	03/01/03	03/01/02
96–03–U–01–LGA New York, NY	03/14/05	NA	NA	03/01/03	03/01/02
03–05–C–02–BUR Burbank, CA	03/16/05	20,135,816	22,648,756	03/01/10	05/01/10
97–03–C–03–ONT Ontario, CA	03/16/05	92,680,000	118,454,000	07/01/05	12/01/07
93–01–C–02–BLI Bellingham, WA	03/17/05	366,000	364,677	07/01/94	07/01/94
01–03–C–02–JNU Juneau, AK	03/23/05	371,748	420,712	01/01/02	01/01/02

Issued in Washington, DC on August 4, 2005.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 05–15854 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions

involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Association of American Railroads

[Docket Number FRA–2005–21325]

The Association of American Railroads (AAR), on behalf of itself and its member railroads, seeks a permanent waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR Part 229. Specifically, the AAR requests to change the time interval requirements of 49 CFR 229.27 Annual Tests and 49 CFR 229.29 Biennial Tests for all locomotives equipped with 26–L type brake systems and air dryers, by extending the testing interval to four years.

In 1981, FRA granted a test waiver (H–80–7) to eight railroads, permitting them to exceed the annual and biennial testing requirements of § 229.27 and § 229.29, in order to conduct a study of the safe service life and reliability of the locomotive brake components. On January 29, 1985, FRA expanded the waiver to permit all railroads to inspect the 26–L type brake equipment on a triennial basis. In the 1990's, the Canadian Pacific Railroad (CP) and the Canadian National Railroad (CN) petitioned the FRA to allow them to operate locomotives into the United States that received periodic attention every four years. The requests were based on a decision by Transport Canada to institute a four-year inspection program following a thorough test program in Canada. In November 2000, FRA granted conditional waivers to both the CN and CP Railroads, extending the testing interval to four years for Canadian-based locomotives equipped with 26–L type brake systems and air dryers. The waiver also requires all air brake filtering devices be changed annually and the air compressor to be overhauled not less than every six years.

AAR does not see any rational basis for permitting Canadian-based locomotives with 26–L type brakes and air dryers to operate four years between inspections, while subjecting U.S.-based locomotives with the same brake systems and air dryers to a three-year inspection interval. AAR makes this conclusion based on the fact that Transport Canada has permitted this practice without any accident caused by the malfunction of a 26–L type brake system, and because the FRA approved the CN and CP waiver requests in 2000. Accordingly, AAR requests that the inspection interval for all locomotives equipped with 26–L type brake systems and air dryers be extended to four years.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2005–21325) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 8, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–15950 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–06–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Association of American Railroads

[Docket Number FRA–2005–21613]

The Association of American Railroads (AAR), on behalf of itself and its member railroads, seeks a permanent waiver of compliance from certain provisions of the Railroad Locomotive Safety Standards, 49 CFR part 229. Specifically, the AAR requests relief from the requirements of 49 CFR 229.27(a)(2) Annual Tests and 49 CFR 229.29(a) Biennial Tests, as solely applicable to all present and future installations of the New York Air Brake Corporation (NYAB) and Wabtec Corporation electronic brake systems. AAR is requesting this waiver with the intent to move to a ''performance-based criterion,'' with air brake components repaired or replaced as required. AAR makes this request based on their belief that electronic brake systems are inherently more reliable than their predecessors, along with the system's utilization of diagnostic tools which continuously monitor the function of critical components. AAR proposes a test program be permitted, similar to the CSX Transportation (CSXT) waiver test program, under which the performance of locomotive electric brake systems would be monitored.

On September 1, 2000, FRA granted CSXT a conditional waiver (FRA–1999–6252) from the annual and biennial test requirements for NYAB's Computer Controlled Brake (CCB) systems installed on CSXT locomotives, with a requirement that a Joint CSX/CCB Committee be established to monitor and approve all testing parameters and test functions. The committee is comprised of individuals from rail labor, railroad management, manufacturers, suppliers, and the FRA. The committee meets 2 to 4 times a year to perform functional tests and tear-down inspections on locomoitves that have operated for specific periods of time without any air brake components being replaced. In AAR's written request for this waiver, they make a general statement that the CCB brake system has successfully operated for over eight years and that the CSXT test program has shown that the existing requirements for tests every five years is too restrictive.

The facts relative to waiver FRA–1999–6252 are as follows: The CSXT test program has only evaluated and

approved one brake system at the 8½ year time period, the NYAB–CCB I brake system equipped on GE locomotives with air dryers. The Committee has determined that 8½ years is the limit for all of the brake components for that system, except the 20 Block, which is limited to 6½ years. Time intervals for the CCB I system on EMD locomotives, and CCB II systems on both GE and EMD locomotives have yet to be determined, as the committee continues the evaluation process. All CSXT locomotives are equipped with functioning air dryers.

Under AAR's proposal, categories would be established for each combination of locomotive manufacturer and brake types, with and without air dryers, for testing and evaluation purposes. AAR has allocated the responsibility for testing the different categories of brake systems among six of its member railroads, the Union Pacific, BNSF, the Canadian Pacific, CSXT, the Canadian National, and Norfolk Southern. These six railroads have agreed to conduct testing similar to the same conditions imposed on the CSXT waiver.

AAR assumes that as each category of brake system/locomotive reaches a certain time period, that all locomotives in the same category belonging to AAR's members would be permitted to operate to that same time period without having to perform any of the 229.27(a)(2) and 229.29(a) inspections and tests. Furthermore, with the CSXT test program already underway, AAR would like to have all of its member railroads afforded the same time intervals that have been established for the CSXT locomotives, for locomotives in the same categories as the CSXT locomotives. For example, all GE locomotives with air dryers that are operated by AAR members and are equipped with NYAB's CCB I brake systems, would be permitted to operate for 8½ years before 229.27(a)(2) and 229.29(a) attention is required.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2005–21613) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 8, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–15951 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Red River Valley & Western Railroad

[Waiver Petition Docket Number FRA–2005–21037]

The Red River Valley & Western Railroad (RRVW), seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, Title 49, CFR 223.11(c) (safety glazing for existing locomotives) on locomotive RRVW 1276. The RRVW 1276 operates from the RRVW switching yard to Red River Grain Cooperative under yard limits on approximately 5 miles of track at a speed not to exceed 25 miles per hour.

The FRA field investigation reveals the glazing material for locomotive RRVW 1276 is equipped with automotive type safety glass. There is no evidence of any personal injuries and no incidents of vandalism in the history of the RRVW. The RRVW also operates over Class I track at all times.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2005–21037) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 8, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–15953 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2005–21965]

Applicants: Rock and Rail LLC., Mr. Franklin Lloyd, President, P. O. Box 1026, Canon City, Colorado 81215; Canon City and Royal Gorge Railroad, Mr. Mark Greka, Owner/Manager, 1106 Rose Street, Georgetown, Colorado 80444; Union Pacific Railroad, Mr. T. T. Ogee, AVP Engineering Design, 1400 Douglas Street, Stop 0910, Omaha, Nebraska 68179.

Rock and Rail LLC., the Canon City and Royal Gorge Railroad, and the Union Pacific Railroad Company (UP) jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track and sidings between Canon City, Colorado, milepost 159.2 and Parkdale, Colorado, milepost 171.8, on the former UP Denver Area, Tennessee Pass Subdivision, a distance of approximately 12.6 miles.

The reason given for the proposed changes is that due to changes in operation and traffic, the signal system is no longer required. The UP closed the trackage as a through route in August 1997, and in 1998 sold the portion of trackage from Canon City to Parkdale to RGX.LLC. The line was severed and RGX.LLC acquired a stub-ended industrial spur, accessible only from the Canon City, with no potential for through traffic.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 8, 2005.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 05–15952 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on May 5, 2005, and comments were due by July 5, 2005. No comments were received.

DATES: Comments must be submitted on or before September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Gearhart, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–1867; FAX: 202–366–7901; or e-mail: *beth.gearhart@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Shipbuilding Orderbook and Shipyard Employment.

OMB Control Number: 2133–0029.

Type of Request: Extension of currently approved collection.

Affected Public: Owners of U.S. shipyards who agree to complete the requested information.

Forms: MA–832.

Abstract: MARAD collects this information from the shipbuilding and ship repair industry primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency.

Annual Estimated Burden Hours: 400 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on August 3, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15861 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on May 5, 2005, and comments were due by July 5, 2005. One comment was received by MARAD opposing and objecting to any waivers of any kind being extended due to terrorist concerns. While MARAD appreciates public input regarding the small vessel waiver program, this notice is concerned only with the information collection under review. MARAD is required to and requested comments specifically about whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. Because this comment does not address this information collection, MARAD will not address the respondent's comments in this action.

DATES: Comments must be submitted on or before September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Sharon Cassidy, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: 202–366–5506; FAX: 202–366–6988; or e-mail: *sharon.cassidy@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Application for Waiver of the Coastwise Trade Laws for Small Passenger Vessels.

OMB Control Number: 2133–0529.

Type of Request: Extension of currently approved collection.

Affected Public: Small passenger vessel owners who desire to operate in the coastwise trade.

Forms: None.

Abstract: Owners of small passenger vessels desiring waiver of the coastwise trade laws affecting small passenger vessels will be required to file a written application and justification for waiver to the Maritime Administration (MARAD). The agency will review the application and make a determination whether to grant the requested waiver.

Annual Estimated Burden Hours: 100 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on August 3, 2005.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 05–15862 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0601)

AGENCY: Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, Department of Transportation (DOT).

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing PHMSA/Office of Pipeline Safety (OPS) collection of information for Operator Qualification of Pipeline Personnel. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. The public is invited to submit comments over the next 60 days on ways to minimize the burden associated with collection of information related to the pipeline safety reports of abandoned underwater pipelines

DATES: Comments must be submitted on or before October 11, 2005.

ADDRESSES: Comments should reference Docket No. RSPA–98–4957 and may be submitted in the following ways:

- DOT Web Site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System; 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.
- E-Gov Web Site: *http://www.Regulations.gov*. This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, RSPA–98–4957, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*, and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. **Note:** All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: William Fuentevilla at (202) 366–6199,

or by e-mail at *William.Fuentevilla@dot.gov*.

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

Congress expressed concern with unskilled pipeline personnel in the Pipeline Safety and Reauthorization Act of 1988 (Pub. L. 100–561). This act authorized the Secretary of Transportation to require all individuals responsible for the operation and maintenance of pipeline facilities to be properly qualified to safely perform their tasks. The operator qualification requirements are described in the pipeline safety regulations at 49 CFR Part 192, subpart N and 49 CFR Part 195, subpart G. PHMSA/Office of Pipeline Safety (OPS) seeks to extend an existing collection of information for Operator Qualification of Pipeline Personnel. PHMSA/OPS published the initial notice requesting public comment on April 18, 2002 (67 FR 19312–13).

This information collection supports the DOT strategic goal of safety by reducing the number of fatalities, injuries, and amount of property damage.

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Operator Qualification of Pipeline Personnel.

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 22,300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 466,667 hours.

Issued in Washington DC on August 5, 2005.

Florence L. Hamn,

Director, Office of Regulations.

[FR Doc. 05–15954 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket: RSPA–98–4957]

Request for Public Comments and Office of Management and Budget (OMB) Approval of an Existing Information Collection (2137–0600)

AGENCY: Office of Pipeline Safety, Pipeline and Hazardous Materials Safety Administration, Department of Transportation (DOT).

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process regarding the renewal of an existing PHMSA/Office of Pipeline Safety (OPS) collection of information for pipeline safety reports of abandoned underwater pipelines. PHMSA is requesting OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. The public is invited to submit comments over the next 60 days on ways to minimize the burden associated with collection of information related to the pipeline safety reports of abandoned underwater pipelines.

DATES: Comments must be submitted on or before October 11, 2005.

ADDRESSES: Comments should reference Docket No. RSPA–98–4957 and may be submitted in the following ways:

- DOT Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: DOT Docket Management System; 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.
- E-Gov Web Site: *http://www.Regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

Instructions: You should identify the docket number, RSPA–98–4957, at the beginning of your comments. If you submit your comments by mail, you should submit two copies. If you wish to receive confirmation that PHMSA received your comments, you should include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov,* and may access all comments received by DOT at *http://dms.dot.gov* by performing a simple search for the docket number. **Note:** All comments will be posted without changes or edits to *http://dms.dot.gov* including any personal information provided.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: William Fuentevilla at (202) 366–6199, or by e-mail at *William.Fuentevilla@dot.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, in including the use of automated collection techniques of other forms of information technology.

Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their useful life. This trend is expected to continue. In 1992, Congress responded to this issue by amending the Pipeline Safety Act (49 U.S.C. 60108(c)(6)(B)). The amendment directs the Secretary of Transportation to require operators of an offshore pipeline facility, or a pipeline crossing navigable waters, to report the abandonment to the Secretary of Transportation in a way that specifies whether the facility has been abandoned properly according to applicable Federal and State requirements. PHMSA's regulations for abandonment reporting can be found at Title 49 CFR 192.727 and 195.402.

This information collection supports the DOT strategic goal of safety by reducing the number of fatalities,

injuries, and amount of property damage.

As used in this notice, ''information collection'' includes all work related to preparing and disseminating information related to this recordkeeping requirement including completing paperwork, gathering information and conducting telephone calls.

Type of Information Collection Request: Renewal of Existing Collection.

Title of Information Collection: Pipeline Safety Reports of Abandoned Underwater Pipelines

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents per Year: 10.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 60 hours.

Issued in Washington DC on August 5, 2005.

Florence L. Hamn,

Director, Office of Regulations.

[FR Doc. 05–15955 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(C), PHMSA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous Materials Exemptions and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
X—Renewal.
PM—Party to application with modification request.

Issued in Washington, DC, on August 5, 2005.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
13183–N	Becton Dickinson, Sandy, UT	4	09–30–2005
13281–N	The Dow Chemical Company, Midland, MI	4	09–30–2005
13266–N	Luxfer Gas Cylinder, Riverside, CA	4	09–30–2005
13302–N	FIBA Technologies, Inc., Westboro, MA	4	09–30–2005
13341–N	National Propane Gas Association, Washington, DC	3	09–30–2005
13314–N	Sunoco Inc., Philadelphia, PA	4	09–30–2005
13309–N	OPW Engineered Systems, Lebanon, OH	4	09–30–2005
13347–N	ShipMate, Inc., Torrance, CA	4	09–30–2005
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	09–30–2005
14149–N	Digital Wave Corporation, Englewood, CO	4	09–30–2005
14140–N	Albermarle Corporation, Baton Rouge, LA	4	09–30–2005
14141–N	Nalco Company, Naperville, IL	4	09–30–2005
14146–N	Brunswick Corporation, Lake Forest, IL	4	09–30–2005
14138–N	INO Therapeutics, Inc., Port Allen, LA	4	09–30–2005
14038–N	Dow Chemical Company, Midland, MI	1	09–30–2005
14010–N	Varsal, LLC, Warminster, PA	4	09–30–2005
13999–N	Kompozit-Praha s.r.o., Dysina u Plzne, Czech Republic, CZ	4	09–30–2005
13957–N	T.L.C.C.I, Inc., Franklin, TN	4	09–30–2005
14154–N	Carleton Technologies, Inc.	4	09–30–2005
14151–N	Chevron Texaco, Houston, TX	4	09–30–2005
13582–N	Linde Gas LLC (Linde), Independence, OH	4	09–30–2005
13563–N	Applied Companies, Valencia, CA	4	09–30–2005
13547–N	CP Industries, McKeesport, PA	4	08–31–2005

MODIFICATION TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
7277–M	Structural Composites Industries, Pomona,CA	4	08–31–2005
10019–M	Structural Composites Industries, Pomona,CA	4	08–31–2005
10915–M	Luxfer Gas Cylinders (Composite, Cylinder Division), Riverside, CA	1	08–31–2005
6263–M	Amtrol, Inc., West Warwick, RI	4	08–31–2005
10319–M	Amtrol, Inc., West Warwick, RI	4	08–31–2005
11970–M	ExxonMobile Chemical Company, Mont Belvieu, TX	4	08–31–2005

MODIFICATION TO EXEMPTIONS—Continued

Application No.	Applicant	Reason for delay	Estimated date of completion
13580–M	Carleton Technologies Inc., Orchard Park, NY	4	09–30–2005
12384–M	OilAir Hydraulics, Inc., Houston, TX	4	09–30–2005
13327–M	Hawk FRP LLC, Ardmore, OK	1	08–31–2005
7774–M	Pipe Recovery Systems, Inc., Houston, TX	4	08–31–2005
13488–M	Faber Industries Spa, (U.S. Agent: Kaplan Industries, Maple Shade, NJ)	4	08–31–2005
12988–M	Air Products & Chemicals, Inc., Allentown, PA	4	08–31–2005
12284–M	The American Traffic Safety Services, Assn. (ATSSA), Fredericksburg, VA	1	08–31–2005
11579–M	Dyno Nobel, Inc., Salt Lake City, UT	4	08–31–2005
11241–M	Rohm and Haas Co., Philadelphia, PA	1	09–30–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	08–31–2005
10878–M	Tankcon FRP Inc., Boisbriand, Qc	1, 3	08–31–2005
8162–M	Structural Composites Industries, Pomona, CA	4	08–31–2005
8718–M	Structural Composites Industries, Pomona, CA	4	08–31–2005

RENEWAL OF EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
9649–X	U.S. Department of Defense, Fort Eustis, VA	1, 3	08–31–2005

[FR Doc. 05–15860 Filed 8–10–05; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Pipeline Safety: Countermeasures to Prevent Human Fatigue in the Control Room

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) issues this advisory bulletin to owners and operators of natural gas and hazardous liquid pipelines and liquefied natural gas facilities. The purpose of this advisory is to help operators ensure that controllers are not assigned to shift duties while fatigued, to advise pipeline operators on considerations which could cause a reduction of mental alertness or decision making ability, and to encourage safe management practices.

This advisory also responds to the National Transportation Safety Board's (NTSB) Safety Recommendation P–98–30, which urges PHMSA to establish industry guidelines for pipeline controller work schedules to reduce the likelihood of accidents attributable to controller fatigue.

FOR FURTHER INFORMATION CONTACT: Florence Hamn by telephone at (202) 366–3015; by fax at (202) 366–4566, or by e-mail at *Florence.Hamn@dot.gov*. General information about the PHMSA's Office of Pipeline Safety (OPS) programs may be obtained by accessing the Web site home page at *http://ops.dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

NTSB Recommendations

On November 18, 1998, the NTSB issued Safety Recommendation P–98–30, which urges PHMSA, formerly RSPA, to ''assess the potential safety risks associated with rotating pipeline controller shifts and establish industry guidelines for the development and implementation of pipeline controller work schedules that reduce the likelihood of accidents attributable to controller fatigue.'' This recommendation resulted from NTSB's investigation into the rupture of a hazardous liquid pipeline that released about 957,600 gallons of fuel oil into a river and surrounding areas.

NTSB determined that the probable cause of the rupture was, in part, the failure to ensure that pipeline controllers were properly trained to recognize and respond to operational emergencies, abnormal conditions, and pipeline leaks. NTSB noted that the controller responsible for operation of the failed pipeline had worked under a rotating shift schedule that may have contributed to operator fatigue. NTSB expressed concern about the potential for pipeline controller fatigue from rotating shift schedules.

In 1999, NTSB issued Safety Recommendation P–99–12, which urges PHMSA to establish within two years scientifically based hours of service regulations that set limits on hours of service, provide predictable work and rest schedules, and consider circadian rhythms and human sleep and rest requirements.

This recommendation resulted from the NTSB's review of all transportation accidents reported to U.S. Department of Transportation (DOT) modal administrations over a 10 year period. NTSB noted that it had issued over 70 fatigue-related safety recommendations that resulted from its investigations of major accidents, special investigations, or safety studies that identified operator fatigue as a causal factor. The NTSB noted that scientific research has shown that certain sleep factors can affect fatigue and performance, such as insufficient sleep, irregular schedules, and unpredictable schedules.

PHMSA Actions and Guidance

In response to these recommendations, PHMSA has been aggressively working with the pipeline community and federal agencies to evaluate how rotating controller schedules in the pipeline industry may be related to human fatigue and safety outcomes. From this work, PHMSA has developed the following guidance, which can be applied in the pipeline environment:

Work Schedules/Hours of Service

Fatigue is a critical safety concern for shift workers, especially workers in the

transportation industry. Many pipeline control operators work 10 and 12 hour shifts, and they generally perform sedentary tasks requiring high levels of vigilance. Consequently, fatigue may be an issue, given the long hours of continuous control monitoring and the reduced likelihood of taking rest breaks. Fatigue can result in sleepiness, drowsiness, reduced alertness, and/or slower reaction time. This in turn can make handling stressful or emergency situations on the job more difficult. Being fatigued can make it difficult to concentrate, thereby increasing the possibility of safety-related control errors.

An individual's body processes have peaks and valleys during every 24-hour period. Time cues, like work rest schedules, help set the sleep pattern. Crossing time zones or changing from a day shift to a night shift forces the sleep pattern to move to a different schedule. Time is required to adjust to the new schedule.

Although individuals differ in their optimal sleep requirements, adults typically need between 6 and 10 hours of sleep in a 24-hour period. Most people, however, require approximately 8 hours of sleep per day. When adults get less than 5 hours of sleep over a 24-hour period, peak mental abilities begin to decline. Additionally, sleep deprivation of just a couple of days can slow response times and decrease initiative. Sleep deficit leads to less alertness and slower response times.

Although working non-traditional shifts is a common and necessary part of the pipeline control operator's job, the countermeasures recommended in this advisory can help reduce the potential detrimental effects of shift work on worker safety.

Control Room Environment

Pipeline control operators generally remain seated for long periods of time, and the environment of the control room can affect an individual's sleep patterns. The sedentary work of control operators can add to shift-work fatigue and reduce an operator's alertness because it decreases blood flow and causes sleepiness. An individual's sleep pattern is affected by the presence of light and darkness. By incorporating specific design features, such as lighting and temperature control, operator alertness can be maximized at any time of the day or night, which in turn enhances safety by reducing fatigue and control errors.

Training and Education

Because adequate sleep is the main way to address fatigue, controller education programs must emphasize the recognition of the signs of sleep deprivation. Operators can improve safety by analyzing working conditions, addressing operational safety issues, and conducting sleep-safety training. For example, teaching control supervisors that work rotation schedules that go in the direction of the sun have been found to reduce the negative effects of fatigue. Furthermore, training controllers on the number of hours of sleep needed to reduce fatigue and methods they can use to fall asleep, such as dark light shades, can provide controllers with the tools they need to control fatigue.

Operator Fatigue Studies

Several studies are electronically available that provide more information about operator fatigue, such as the U.S. Department of Transportation's Commercial Transportation Commercial Transportation Operator Fatigue Management Reference (2003). This document can be viewed at *http://ops.dot.gov/regs/reports/Fatigue%20Management%20Reference.pdf*. This publication also references many other studies and reports on human fatigue.

PHMSA urges operators to evaluate potential risks associated with pipeline operator fatigue and shift rotation schedules and take measures to alleviate such risks.

II. Advisory Bulletin (ADB–05–06)

To: Owners and operators of natural gas and hazardous liquid pipeline and liquefied natural gas facilities.

Subject: Countermeasures to Prevent Human Fatigue in the Pipeline Control Room.

Purpose: The purpose of this advisory is to address situations where fatigue could reduce the ability of pipeline operators and their controller staff to operate pipelines in a safe condition. This advisory is designed to help operators ensure that controllers are not assigned to shift duties while fatigued, to advise pipeline operators on considerations which could cause a reduction of mental alertness or decision making ability, and to encourage management practices which will promote safety. This advisory provides guidance to gas and liquids pipeline operators and their pipeline controllers.

Advisory: The functions of a controller are often sedentary tasks requiring high levels of vigilance. Consequently, fatigue may be an issue, given long hours of continuous control monitoring and the reduced likelihood of taking rest breaks. Fatigue can result in sleepiness, drowsiness, and/or reduced alertness. These factors can decrease the ability of the pipeline controller to safely perform critical functions. It is known that fatigue is significantly underestimated as a contributing factor in conventional accident reporting in many transportation modes because it is difficult to accurately detect. The scientific knowledge on human alertness has improved in recent years, but has not been broadly applied to managing operator fatigue because it is difficult to determine how much fatigue has contributed to the cause and/or the magnitude of pipeline accidents. PHMSA, however, has learned that there are measures that can be taken to reduce the detrimental effects of shift work on worker safety, and provides the following guidance for operators to consider:

Work Scheduling and Hours of Service

An individual's body processes have natural peaks and valleys during every 24-hour period. Adults typically need between 6 and 10 hours of sleep in each 24-hour period, and suffer from declining peak mental abilities if they get less than 5 hours of sleep. Natural sleep schedules are affected by shifts in routine, and can be affected by non-routine work schedules. This can lead to fatigue or impair alertness if operators are working non-standard shifts or are working long hours without enough rest. PHMSA advises pipeline operators to consider:

- Developing shift rotation practices to minimize fatigue caused by the disruption of normal sleep patterns.
- Limiting work schedules to no more than 12 hours in any 24 hour period except in extraordinary or emergency situations.
- Developing a policy or procedure to manage unusual circumstances where a controller is required to work more than 12 hours in any 24 hour period.
- Scheduling at least a 10 hour break between work periods.
- Scheduling overtime on an individual basis, not the whole shift of controllers and controller supervisors. Controller fatigue and alertness should be considered in allowing overtime.
- Developing guidelines for scheduling controllers and supervisors in emergency situations taking into consideration controller fatigue and alertness.
- Establishing work relief periods and other measures during controller shifts to promote alertness and enhance capabilities for effective decision making.

Control Room Environmental Factors

An individual's sleep pattern is also influenced by external factors. Many control rooms are designed for day workers. In 24-hour pipeline operations, alertness and vigilance on the night shift is equally as important and should be addressed by the operator. Although there are many methods that can be employed to reduce operator fatigue in the control room, PHMSA advises pipeline operators to consider:

- Using the available information on control room environments to incorporate environmental measures that reduce fatigue and promote alertness.
- Adjusting environmental factors to specifically address the problems associated with night shifts and shift rotation schedules.
- Sharing information across the industry on environmental factors in control rooms that can affect fatigue and controller alertness.

Training and Education

Training and education of both supervisors and controller personnel is critical to the prevention of fatigue-related pipeline incidents. These efforts can maximize the safety and performance of pipeline control personnel by minimizing the effects of fatigue in shift-work operations. Therefore, PHMSA advises pipeline operators to consider:

- Educating controllers and controller supervisors on factors that impact human fatigue.
- Training supervisors of controllers to recognize signs of stress and fatigue both on duty and when reporting for duty.
- Sharing information across the industry on training of controllers and supervisors on the effects of fatigue on controller alertness and decision making.

Issued in Washington, DC, on August 5, 2005.

Theodore L. Willke,

Deputy Associate Administrator for Pipeline Safety.

[FR Doc. 05–15956 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Submission of Audit Reports—Part 248

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 2004 (69 FR 75602).

DATES: Written comments should be submitted by September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone Number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Submission of Audit Reports—Part 248.

Type of Request: Extension of a currently approved reporting requirement.

OMB Control Number: 2138–0004.

Affected Public: Certificated air carriers.

Number of Respondents: 85.

Number of Responses: 85.

Total Annual Burden: 21 hours.

Abstract: BTS collects independent audited financial reports from U.S. certificated air carriers. Carriers not having an annual audit must file a statement that no such audit has been performed. In lieu of the audit report, BTS will accept the annual report submitted to the stockholders. The audited reports are needed by the Department of Transportation as: (1) A means to monitor an air carrier's continuing fitness to operate, (2) reference material used by analysts in examining foreign route cases, (3) reference material used by analysts in examining proposed mergers, acquisitions and consolidations, (4) a means whereby BTS sends a copy of the report to the International Civil Aviation Organization (ICAO) in fulfillment of a United States treaty obligation, and (5) corroboration of a carrier's Form 41 filings.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 5, 2005.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 05–15914 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Research & Innovative Technology Administration

Agency Information Collection; Activity Under OMB Review; Reporting Required for International Civil Aviation Organization (ICAO)

AGENCY: Research & Innovative Technology Administration (RITA), Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) described below is being forwarded to the Office

of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on December 17, 2004 (69 FR 75602–75603).

DATES: Written comments should be submitted by September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, RTS–42, Room 4125, RITA, BTS, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone number (202) 366–4387, Fax Number (202) 366–3383 or e-mail *bernard.stankus@dot.gov.*

SUPPLEMENTARY INFORMATION:

Bureau of Transportation Statistics (BTS)

Title: Reporting Required for International Civil Aviation Organization (ICAO).

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2138–0039.

Forms: BTS Form EF.

Affected Public: Certificated air carriers.

Number of Respondents: 40.

Number of Responses: 40.

Total Annual Burden: 26 hours.

Abstract: As a party to the Convention on International Civil Aviation (Treaty), the United States is obligated to provide ICAO with financial and statistical data on operations of U.S. carriers. Over 99% of the data filled with ICAO is extracted from the air carriers' Form 41 submissions to BTS. BTS Form EF is the means by which BTS supplies the remaining 1% of the air carrier data to ICAO.

The Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note), requires a statistical agency to clearly identify information it collects for non-statistical purposes. BTS hereby notifies the respondents and the public that BTS uses the information it collects under this OMB approval for non-statistical purposes including, but not limited to, publication of both Respondent's identity and its data, submission of the information to agencies outside BTS for review, analysis and possible use in regulatory and other administrative matters.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: BTS Desk Officer.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department of Transportation. Comments should address whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC on August 5, 2005.

Donald W. Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 05–15915 Filed 8–10–05; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–103 (Sub–No. 19X)]

The Kansas City Southern Railway Company—Abandonment Exemption—in Webster Parish, LA

The Kansas City Southern Railway Company (KCSR) has filed a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon approximately 1.12 miles of railroad between milepost 48.48 and milepost 49.60, in Springhill, Webster Parish, LA. The line traverses United States Postal Service Zip Code 71075.

KCSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(l) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 10, 2005, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 22, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 31, 2005, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to KCSR's representative: William A. Mullins, 2401 Pennsylvania Ave., NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

KCSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 16, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), KCSR shall file a notice of

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,200. *See* 49 CFR 1002.2(f)(25).

consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by KCSR's filing of a notice of consummation by August 11, 2006, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: August 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–15703 Filed 8–10–05; 8:45 am]

BILLING CODE 4915–01–P

Federal Register

Thursday,
August 11, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Evaluation of Economic Exclusions From August 2003 Final Designation; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU06

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon; Evaluation of Economic Exclusions From August 2003 Final Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), have re-evaluated the economic exclusions made to our previous final rule (68 FR 46683; August 6, 2003), which designated critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for 4 vernal pool crustaceans and 11 vernal pool plants. A total of approximately 858,846 acres (ac) (347,563 hectares (ha)) of land are now designated critical habitat. This reflects exclusion of lands from the final designation for economic reasons, pursuant to section 4(b)(2) of the Act. This designation also reflects the lands previously confirmed for exclusion under 4(b)(2) of the Act for non-economic reasons (70 FR 11140; March 8, 2005). The non-economic exclusions include the boundaries of various Habitat Conservation Plans, National Wildlife Refuges and National fish hatchery lands (33,097 ac (13,394 ha)), State lands within ecological reserves and wildlife management areas (20,933 ac (8,471 ha)), Department of Defense lands within Beale and Travis Air Force Bases as well as Fort Hunter Liggett and Camp Roberts Army installations (64,259 ac (26,005 ha)), Tribal lands managed by the Mechoopda Tribe (644 ac (261 ha)), and the Santa Rosa Plateau Ecological Reserve (10,200 ac (4,128 ha)) from the final designation.

DATES: This rule becomes effective on September 12, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage, Room W–2605, Sacramento, CA 95825. The final rule, economic analysis, and map will also be available via the Internet at *http://sacramento.fws.gov/.*

We have attempted to address all comments received during the comment periods associated with this final rule, however if you believe that your comments have not been adequately addressed then the Act provides the opportunity for you to petition the Service to amend the final critical habitat rule. Petitions should be submitted to the address above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, at the Sacramento Fish and Wildlife Office address above; telephone (916) 414–6600; facsimile (916) 414–6712.

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's 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. The Service believes 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 Act 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 464 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. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. On December 9, 2004, the Director issued guidance to be used in making section 7 adverse modification determinations.

Procedural and Resource Difficulties in Designating Critical Habitat

The Service has 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 the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance which now consumes nearly the entire endangered species listing program budget. This leaves the Service with little ability to prioritize its 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 (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's 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 the Service 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 relatively 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 (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

The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*). The 11 vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*).

All of the above vernal pool crustaceans and plants live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral (short duration) freshwater habitats. The vernal pool habitats of the 4 vernal pool crustaceans and 11 plants addressed in this final rule have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico (Holland and Jain 1978, 1988; Eriksen and Belk 1999).

Wetlands are defined by plants, soils, and frequency of flooding (Cowardin et al., 1979). There is no single, correct, indisputable, ecologically sound definition for wetlands, primarily because wetlands are so diverse and because the separation between dry and wet environments lies along a continuum (Cowardin et al., 1979). Vernal pools are a type of seasonally-flooded emergent wetland. Seasonally-flooded emergent wetlands are areas where surface water is present for extended periods, especially early in the growing season, but is absent by the end of the season in most years (Cowardin et al., 1979). Emergent wetlands are characterized by erect, rooted, herbaceous hydrophytes (plants that can grow in soils too waterlogged for most other plants), excluding mosses and lichens. This vegetation is present for most of the growing season in most years (Cowardin et al., 1979). One feature that distinguishes vernal pools from other seasonally flooded emergent wetlands is that they are dominated by annual rather than perennial species (Jokerst 1990, Zedler 1990).

Vernal pools form where there is a soil layer below or at the surface that is impermeable or nearly impermeable to water (Smith and Verrill 1998). Precipitation and surface runoff become trapped or perched above this layer. The restrictive soil layers underlying vernal pools are of four main types: hardpans, claypans, volcanic flows, and non-volcanic rock. The soil parent material underlying the vernal pools greatly influences the species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Smith and Verrill 1998). Soils beneath vernal pools are extremely variable and may not be the same as soils mapped by soil surveys (Holland and Dain 1990). Vernal pools typically occur in landscapes that, on a broad scale, are shallowly sloping or nearly level, but on a fine scale may be quite bumpy. Some vernal pool landscapes are dotted with numerous rounded soil mounds known as mima mounds (Scheffer 1947).

Vernal pools begin to fill with the fall and winter rains. Before ponding occurs, there is a period during which the soil is wetted and the local water table may rise. Some pools have a substantial watershed that contributes to their water inputs; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg 1998). Although exceptions are not uncommon, the watershed generally contributes more to the filling of larger or deeper pools, especially playa pools. Even in pools filled primarily by direct precipitation, Hanes and Stromberg (1998) report that subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring. Vernal pools exhibit four major phases: (1) The wetting phase, when vernal pool soils become saturated; (2) the aquatic phase, when a perched water table develops and the vernal pool contains water; (3) a water-logged drying phase, when the vernal pool begins losing water as a result of evaporation and loss to the surrounding soils but soil moisture remains high; and (4) the dry phase, when the vernal pool and underlying soils are completely dry (Keeley and Zedler 1998). Upland areas associated with vernal pools are also an important source of nutrients to vernal pool organisms (Eriksen and Belk 1999; Wetzel 1975). Vernal pool habitats derive most of their nutrients from detritus (decaying matter) washed into pools from adjacent uplands, and these nutrients provide the foundation for a vernal pool aquatic community's food chain. Detritus (both living and dead organic matter) is a primary food source for the vernal pool crustaceans addressed in this rule (Eriksen and Belk 1999). Because vernal pools are mostly rain-fed, they tend to have low nutrient levels and dramatic daily fluctuations in pH, dissolved oxygen, and carbon dioxide (Keeley and Zedler 1998).

Both the amount and timing of rainfall in California and Oregon vary greatly from year to year. As a result, pools may fill to different extents at different times. The duration of ponding of vernal pools also varies, and in certain years some pools may not fill at all. Many characteristics of vernal pool plants and animals result from these organisms' adaptations to the highly variable and unpredictable nature of vernal pools (Holland 1976; Holland and Dains 1990; King et al. 1996; Hanes and Stromberg 1998).

Many vernal pool plants are pollinated by host-specific ground dwelling solitary bees in the Andrenidae family (Thorp and Leong 1998; Thorp 1976; Griggs 1974 as cited in Stone et al. 1988). The lifecycles of these bees are closely tied to those of the vernal pool plants and the emergence of the adult bees from their over-wintering nests within the adjacent upland habitats (within 100 meters; Leong et al. 1995) of vernal pools coincides with the flowering period of several vernal pool plant species (Lasthenia sp., Limnanthes sp., Blennosperma sp.). The upland areas provide habitat for nests, brood cells, resting and overwintering habitat for the bees so they can complete their lifecycles. These solitary, ground nesting bee species assist in pollinating and cross pollinating of several vernal pool plants (Thorp and Leong 1998).

For more information on vernal pool ecology and the species that inhabit them, see the August 6, 2003, final designation of critical habitat for the four vernal pool crustaceans and the eleven vernal pool plants (68 FR 46684) and the individual listing rules for each species (43 FR 44810; 57 FR 24192; 59 FR 48186; 62 FR 14338; 62 FR 34029).

Previous Federal Actions

In January 2004, the Butte Environmental Council and several other organizations filed a complaint alleging that we: (1) Violated both the Act, and the Administrative Procedure Act (APA) by excluding nearly 1 million ac (405,000 ha) from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the court signed a Memorandum and Order in that case remanding the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the five California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court did not alter the August 6, 2003, final lands designated as critical habitat.

In order to comply with the court order, on December 28, 2004, the Service reopened the comment period on the designation for 30 days (69 FR 77700); to solicit any new information concerning the benefits of excluding and including the lands excluded from the final rule pursuant to section 4(b)(2) of the Act on the basis of non-economic considerations. The final non-economic exclusions were published in a **Federal Register** notice on March 8, 2005 (70 FR 11140). On June 30, 2005, a Notice of Availability of the draft Economic Analysis was published (70 FR 37739) and the public comment period reopened for 20 days on the designation to solicit any new information concerning the benefits of excluding. This final rule addresses the second requirement of the remand: The reconsideration of those lands within the five California counties; Butte, Madera, Merced, Sacramento, and Solano, that were excluded based on potential economic impacts for the 15 vernal pool species, incorporates the non-economic exclusions (70 FR 11140), and finalizes the designation of critical habitat for the 4 vernal pool crustaceans and 11 vernal pool plants in California and Southern Oregon.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the 15 vernal pool species in the proposed rule published on September 24, 2002, (67 FR 59883) and subsequent **Federal Register** notices concerning the 15 vernal pool species (67 FR 70201 and 68 FR 12336). We requested all interested parties to submit comments on the specifics of the proposal, including information related to the critical habitat designation, unit boundaries, species occurrence information and distribution, land use designations that may affect critical habitat, potential economic effects of the proposed designation, benefits associated with critical habitat designation, potential exclusions and the associated rationale for the exclusions, and methods used to designate critical habitat.

In the December 28, 2004, reopening of public comment period for noneconomic exclusions related to critical habitat designation (69 FR 77700), we requested all interested parties to submit comments on the specifics of the proposal, including information related to amount and distribution of habitat, essential habitat, rationale for including or excluding habitat, benefits associated with including or excluding critical habitat designation, current or planned activities on proposed critical habitat, and public participation in designating critical habitat.

We contacted all appropriate State and Federal agencies, county governments, elected officials, and other interested parties and invited them to comment. This was accomplished through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, interest groups and other interested individuals. In addition, we invited public comment through the publication of legal notices in numerous newspaper and news media throughout California and Oregon. In 2002, we provided notification of the DEA and proposed rule to all interested parties. At the request of Congressman Cardoza's Office, the Merced County Board of Supervisors, and the Stanislaus County Board of Supervisors, we held two public meetings to explain the December 28, 2004, **Federal Register** notice regarding the noneconomic exclusions to the public and requested that they provide comments. We provided contacts where they could direct questions regarding the proposed designation. We also posted the associated material on our Sacramento Fish and Wildlife Office Internet site following the publication on December 28, 2004. Additionally, we made available to the public upon request individual maps of the noneconomic exclusions.

On June 30, 2005, a Notice of Availability of the revised draft economic analysis was published (70 FR 37739) and the public comment period reopened for 20 days. We asked specifically for comments on the following: (1) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act; (2) Land use practices and current, planned, or foreseeable activities in the subject areas and their possible impacts on proposed critical habitats; (3) Foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, including impacts that may not have been addressed in the draft economic analysis and, in particular, any impacts on small entities or families; (4) Economic and other values associated with designating critical habitat for these species; (5) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; (6) The draft economic analysis noted that approximately 80 percent of the total costs are represented by 25 percent of the critical habitat. We identified that we were considering excluding those areas, which were identified in Table IV–4 of the draft economic analysis as the 20 highest cost areas based on FIPS, and requested comment as to whether the Secretary should exclude these areas based on the benefits associated with exclusion or inclusion of these areas in the final critical habitat which have not already been identified. The basis of the proposed exclusion that was being considered is purely economic; (7) Whether the Secretary exclude the 35 highest cost areas based on the figures in Table IV–4 of the draft economic analysis and what are the benefits of exclusion or inclusion of these areas?; (8) Whether the Secretary exclude the 50 highest cost areas based on the

figures in Table IV–4 of the draft economic analysis and what are the benefits of exclusion or inclusion of these areas?; (9) Table IV–2 of the draft economic analysis details increases in the costs per home related to this critical habitat designation. In addition to any other exclusions, the Secretary considered excluding any areas identified as experiencing a per-home increase in excess of $3,000 from the designation of critical habitat; and requested commenters to identify any benefits related to the exclusion or inclusion of those areas; (10) Queried commenters on whether there any benefits or costs of the proposed designation that the draft economic analysis failed to capture?; and requested commenters to provide as much information as possible related to any costs or benefits that were not identified; and (11) Queried whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

We conducted outreach on the Notice of Availability for the draft economic analysis and re-opening of the public comment period on the proposed designation by contacting Federal, State and County government representatives, local news media, and interested parties who participated or had involvement in the original designation process. The information regarding the draft economic Analysis and other information and outreach materials were posted on the Sacramento Fish and Wildlife Office Web site and made available via the Internet at *http://sacramento.fws.gov/*.

We received a total of 972 comment letters during the first four comment periods, and 70 during the most recent comment period, which ended on July 20, 2005. Comments were received from Federal, Tribal, State and local agencies, and private organizations and individuals. Similar comments were grouped into several general issue categories relating specifically to the proposed critical habitat determination, the proposed exclusions, and the draft economic analysis, and are identified below. For a review of the 972 comment letters received during previous comment periods, and how these were either addressed or responded to, please refer to the our final designation of critical habitat for these species published on August 6, 2003 (68 FR 46683) and our re-evaluation of non-economic exclusions published on March 8, 2005 (70 FR 11140).

Of the 71 comment letters received during our most recent, 20-day public comment period, 18 letters contained comments of a biological nature that did not relate to the draft economic analysis or to economic issues related to the critical habitat designation. Nearly all of the letters received contained some comments relating to economic issues. We received comments from private landowners, private conservation organizations, development and investment companies, City and County governmental bodies, chambers of commerce, members of congress, and concerned citizens. We reviewed all comments received for substantive issues and new information regarding the vernal pool plants and vernal pool crustaceans. Similar comments were grouped into general issue categories relating specifically to the proposed critical habitat determination and the DEA and are identified below.

Peer Review

The proposed designation of critical habitat for the 15 vernal pool species was peer reviewed by six biologists who have knowledge of vernal pool ecosystems and the 15 species addressed in this rule. Two of the reviewers strongly endorsed the approach in the proposal that protecting vernal pools in the context of surrounding upland watersheds is crucial for the conservation and long-term survival of the listed vernal pool species, and stated that the rule placed appropriate emphasis on protecting intact vernal pool complexes. The reviewers also cited the importance of conserving a wide range of vernal pool habitat types and biological diversity. For a discussion of the peer review of vernal pool critical habitat designation, please refer to our August 6, 2003, final designation (68 FR 46683).

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 regulations consistent with the agency's comments or petition.'' Comments previously received from State agencies regarding the September 24, 2002, proposal to designate critical habitat for the 15 vernal pool species (67 FR 59983) are discussed in the August 6, 2003, final designation (68 FR 46683). There were no State agency comments received during the December 28, 2004, reopening of public comment period (69 FR 77700), and no State agency comments were received as part of the 20-day public comment period on the draft economic analysis that ended on July 20, 2005 (70 FR 37739).

Other Public Comments and Responses

Comments Related to the Designation Process

Comment 1: Two commenters pointed out that the 20-day public comment period was too short and did not meet the 60-day standard established by Executive Order 12866.

Our Response: Pursuant to our implementing regulations at 50 CFR 424.16(c)(2), we are required to provide at least a 60-day public comment period on any proposal to list, delist, or reclassify a species, or designate or revise critical habitat. On August 6, 2003, we finalized critical habitat for these 15 vernal pool species. As part of the process of that rulemaking we had an initial 60-day public comment period on our proposal of critical habitat (70 FR 37739), which was extended an additional 28 days. On November 21, 2002, during this public comment period, a draft economic analysis of that proposal was released with 32 days left in the public comment period (67 FR 70201). On March 14, 2003, the public comment period for the draft economic analysis was reopened for an additional 14 days (68 FR 12336). In addition, on December 28, 2004, we opened a 30-day public comment period (69 FR 77700) on the non-economic exclusions that were included in our August 6, 2003, final rule (68 FR 46683). As such, we believe that our original designation was in compliance with our implementing regulations.

In January 2004, the Butte Environmental Council and several other organizations filed a complaint alleging that our designation of critical habitat for the 15 vernal pool species was unlawful. On October 28, 2004, the court signed a Memorandum and Order in that case remanding the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the five California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court did not alter the August 6, 2003, final lands designated as critical habitat. A part of this reconsideration process, we reopened the public comment period for 30 days

(69 FR 77700); to solicit any new information concerning the benefits of excluding and including the lands excluded from the final rule pursuant to section 4(b)(2) of the Act on the basis of non-economic considerations. The final non-economic exclusions were published in a Federal Register notice on March 8, 2005 (70 FR 11140). On June 30, 2005, a Notice of Availability of the draft Economic Analysis was published (70 FR 37739) and the public comment period reopened for 20 days on the designation to solicit any new information concerning the benefits of excluding. The public comment period on the revised economic analysis was limited to 20 days due to the court ordered time frame to publish our final determination.

However, we believe that having the public comment period on the previous proposal for a total of 132 days and on our reconsideration of the exclusions in the previous final designation for an additional 50 days is consistent with our regulations at 50 CFR 424.16(c)(2).

Comment 2: One comment letter asserted the PCEs are so general and vague that it would be difficult to identify if one was in an area containing PCEs, and that the PCEs as written, violate the Alameda whipsnake standard as defined in *Home Builders Ass'n of Northern Cal.* v. *U.S. Fish and Wildlife Serv.* (268 F. Supp. 2d).

Our Response: The two PCEs contained in the final rule for the four crustacean species have been expanded to four PCEs in an effort to more effectively describe critical habitat and to meet the standard identified in *Home Builders Ass'n of Northern California.* The 11 plant species have two PCEs which have been refined to better describe the characteristics that describe their habitat. These PCEs have been developed using the best available scientific information on the characteristics the species need to survive and reproduce. See the ''Primary Constituent Elements'' section below for a complete description of the PCEs for each species addressed by this rule.

Comment 3: On commenter asserted that any designations issued prior to the August 6, 2004, ruling in the *Gifford Pinchot Task Force et al.* v. *USFWS* case (378 F.3d 1059, 1070 (Ninth Cir. 2004)) have not properly accounted for the resulting recovery standard and mitigation requirements and that we should withdraw the designation and reconsider the economic impacts.

Our Response: This designation of critical habitat, and associated exclusions, for the 15 species is the result of a reevaluation of essential habitat for the species throughout their range, and not just the five counties excluded in the original rule designating critical habitat. In the course of establishing this designation, we have taken into account the direction provided by the Ninth Circuit in *Gifford Pinchot.*

Comment 4: One commenter provided a lengthy legal analysis of our approach to combining the costs of listing actions with critical habitat designations, and found our approach unsatisfactory in light of a District of Columbia District Court Decision (*Cape Hatteras,* 344 F. Supp. 2d).

Our Response: In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' The draft economic analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (*i.e.,* the cost estimates are fully co-extensive). By identifying the total costs attributable to listing, including the designation of critical habitat, the draft economic analysis complies with direction from the U.S. 10th Circuit Court of Appeals.

Comment 5: One commenter suggested that the Secretary of Interior should not have broad discretion to override critical habitat designation decisions that are made by biologists because it opens the door for political manipulation.

Our Response: 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 exclusions outweigh the benefits of specifying such areas as critical habitat as long as those exclusions do not result in the extinction of the listed species. The Congressional Record is clear that Congress contemplated occasions where the Secretary could exclude the entire designation. In addition, the discretion that Congress anticipated would be exercised in section 4(b)(2) of the Act is extremely broad. ''The consideration and weight given to any particular impact is completely within the Secretary's discretion'' (Congressional Research Service 1982).

Comment 6: A commenter has asserted that there may be a conflict of interest, because we have contracted with Dr. David Sunding and CRA International to develop the economic analysis of this designation of critical habitat for the 15 vernal pool species because he previously conducted a study of critical habitat economics funded by the building industry and other commercial interests. The commenter suggests that the use of an economic model originally developed in the course of this study is inappropriate.

Our Response: In asking the court to remand the original rule to the Service, we explicitly acknowledged that additional effort must be made in conducting the economic analysis in order to allow the Secretary to make exclusions on the basis of economics under section 4(b)(2). The economic analysis performed by CRA International used pubic data and information and provided for more specificity in identifying effects than any of our previous economic analyses. We believe that this approach is consistent with the spirit of the Service's representations to the court. In fact, the 4(b)(2) exclusions differ markedly from those included in our original rule. To our knowledge, CRA is the only economic contractor performing this type economic analysis with this degree of precision on a landscape basis.

We do not believe that hiring Dr. David Sunding and CRA International to conduct the economic impact analysis of this critical habitat designation, considering his prior receipt of research funding from the building industry, establishes a conflict of interest. CRA International performed a conflict check prior to initiating work on the current study and no conflicts were discovered. Neither CRA nor Dr. Sunding holds any financial interests that would be benefited as an outcome of the analysis and subsequent critical habitat designation.

Hiring a new firm, CRA, to prepare an independent economic analysis of this proposed regulation serves two purposes. First, it provides a second estimate of overall impacts that can be compared with the cost analysis that supported the 2003 final designation. Second, the new analysis provides additional detail regarding potential costs at sub-county level that was not provided in the 2003 analysis, allowing for a refinement of the 4(b)(2) decision process.

We note that the total impact estimates in the two reports are very similar. In the 2003 analysis, the estimate of the total costs of section 7 consultation related to the vernal pool species was estimated to be $1.4 billion over twenty years. In CRA's analysis,

total impacts are estimated to be $0.9 billion over twenty years. CRA reports impacts that are 65 percent of those in the 2003 study, while considering critical habitat acreage that is 75 percent of the 2003 critical habitat. The main distinction between the studies is that the CRA analysis facilitates a more spatially precise definition of impacts.

Comment 7: One commenter asserted that we violated the Act by failing to distinguish between those designated vernal pool systems that are occupied and those that are not.

Our Response: Each of the critical habitat units may include some areas that are unoccupied by the vernal pool crustaceans and vernal pool plants. ''Unoccupied'' is defined here as an area that contains no hatched vernal pool crustaceans or observed above-ground vernal pool plants, and that is unlikely to contain a viable cyst or seed bank. While section 4(b)(2) of the Act states that critical habitat shall be designated on the basis of the best available scientific data, determining the specific areas that the vernal pool crustaceans or vernal pool plants occupy is difficult because, depending on climatic factors and other natural variations in habitat conditions, the size of the localized area in which aboveground plants or hatched crustaceans appear may fluctuate dramatically from one year to another. In some years, individuals may be observed throughout a large area, and in other years they may be observed in a smaller area or not at all. Because it is logistically difficult to determine how extensive the cyst or seed bank is at any particular site, and because hatched vernal pool crustaceans or above-ground vernal pool plants may or may not be present in all vernal pools within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by the vernal pool crustaceans or vernal pool plants at any one time. Due to this difficulty in differentiating between occupied and unoccupied habitat, areas of unoccupied habitat may be interspersed with areas of occupied habitat in each unit.

The inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the vernal pool crustaceans and vernal pool plants. Unoccupied areas provide areas into which populations might expand, provide connectivity or linkage between groups of organisms within a unit, and support populations of pollinators and seed dispersal organisms. We have designated both occupied and unoccupied areas based on the criteria in the Act and based on our belief that they are in need of special management or protection.

Comments Related to Cooperative Efforts

Comment 8: One commenter believed that this designation would hinder essential voluntary conservation efforts (Habitat Conservation Plan (HCP), Natural Communities Conservation Program (NCCP), etc.), both on-going and in the future.

Our Response: HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. We anticipate that future HCPs and those in progress within the range of the 15 vernal pool species will include them as a covered species and provide for their long term conservation. We expect that HCPs undertaken by local jurisdictions (*e.g.*, counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. If an HCP that addresses the vernal pool species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859).

Comment 9: Numerous commenters suggested that we should exclude Placer County because the County is working on an HCP (the Placer County Conservation Plan) that would provide for the protection of the species addressed in this rule. Another commenter suggested that because the Placer Ranch development proposes to protect vernal pools and other wetlands and will mitigate impacts to any aquatic resources that their property should be excluded from this designation.

Our Response: We support and encourage the development of HCPs and conservation plans, and encourage developments to incorporate listed species protections and mitigations into their development plans. HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. We expect that HCPs undertaken by local jurisdictions (*e.g.*, counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species.

We do not, however, adjust the designation of critical habitat for listed species based on future planning efforts where the specific protections for listed species are not known and where the public has not yet had the opportunity to comment on those protection measures. If an HCP that addresses the vernal pool species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking. For the standards needed for an HCP to alter the designation of critical habitat see the ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' section below.

The economic analysis on the critical habitat for the 15 vernal pool species identified Placer County as an area with significant costs associated with the designation of critical habitat for the vernal pool fairy shrimp. As a result of the economic analysis, the Secretary has determined that it is appropriate to exclude the majority of critical habitat in western Placer County from the designation (See Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act).

Comment 10: One commenter asserted that since the Western Riverside County Multi-species HCP (MSHCP) was not mentioned in the conservation efforts section of our D*raft Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* we must have determined that this effort serves no conservation benefit for vernal pool fairy shrimp and, therefore, does not meet the criteria for excluding areas from the critical habitat designation. Another commenter asserted the provisions of the MSHCP are not sufficient to ensure recovery of the vernal pool fairy shrimp.

Our Response: We discussed the conservation benefits of the, then draft, Western Riverside County MSCHP at length in our August 6, 2003, final rule designating critical habitat for the four vernal pool crustaceans and eleven vernal pool plants (68 FR 46683). In that discussion we determined that the proposed efforts, including conservation on approximately 153,000 ac (62,000 ha), were sufficient to warrant excluding Unit 33 for the vernal pool fairy shrimp. The Western Riverside County MSCHP was finalized on June 22, 2004. For a

complete description of our decision on excluding Unit 33 based on the content of the Western Riverside County MSHCP see our August 6, 2003, final rule (68 FR 46683).

Comments Related to the Impacts of Critical Habitat Designation

Comment 11: Designation will threaten the California State University (CSU) Campus development in west Placer County and prevent the development of higher learning opportunities.

Our Response: The area proposed for the development of the CSU Campus in west Placer County is within a census tract that has been excluded from designation of critical habitat on economic grounds under section 4(b)(2) of the Act.

Comment 12: Several commenters requested that we modify the areas proposed for designation as critical habitat either to increase the protections afforded the species or in an effort to better facilitate local long-range planning efforts and reduce economic impacts to private landowners.

Our Response: In developing our proposal of critical habitat for the 15 vernal pool species, we identified those areas that, based on the scientific and commercial data available, we have determined contain essential occurrences of each of the species and/or are defined by the physical and biological features essential to their conservation. We used a number of criteria in defining critical habitat including, but not limited to, the known species occurrence and distribution data, habitat types, degree of habitat fragmentation, soil and landform relationships, connectivity and dispersal factors, and conservation biology principles. After refining our proposal and weighing the best available information, we conclude that the areas designated by this final rule, including currently occupied and unoccupied areas, are essential for the conservation of these species.

We also excluded lands from the final designation that may contain vernal pool habitat, the vernal pool species, and the Primary Constituent Elements (PCEs), but that we determined to not be essential to the conservation of the vernal pool crustaceans and vernal pool plants. We believe that we used the best scientific and commercial information available in determined those areas essential for the 15 vernal pool species that were proposed as critical habitat and subsequently finalized.

Comments Related to Information Quality

Comment 13: One commenter requested that we incorporate the results of Dr. Bob Holland's biogeographical research project, as presented at the Western Section of the Wildlife Society meetings, into the designation process.

Our Response: It is the goal of the Service to utilize the most recent scientific information available. In developing critical habitat designations, we analyze all pertinent scientific and commercial information available to make our final determinations. In the development of this designation, we contacted numerous species experts and other members of the scientific community, including Dr. Holland.

Comment 14: Two letters commented that while 2,213 ac (896 ha) of the Placer Ranch development were designated as critical habitat, only 7 ac (~3 ha) are actually classified as vernal pools and that designating all these acres violates the Act.

Our Response: Placer Ranch has been excluded from this final rule designation. For a more detailed discussion, please see the section ''Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act'' below.

Comment 15: Another commenter requested that poor quality vernal pool systems and those designated areas lacking the PCEs be excluded from the designation.

Our Response: Poor quality vernal pool systems are not necessarily void of listed vernal pool crustaceans or plants, and are candidates for active restoration projects. In designating critical habitat, we have considered how this designation highlights habitat that needs special management considerations or protection and helps ensure that all local habitat conservation planning efforts are consistent with conservation objectives for these species. Once a vernal pool habitat has been protected from direct filling, it is still necessary to ensure that the habitat is not rendered unsuitable for vernal pool species because of factors such as altered hydrology, contamination, nonnative species invasions, other incompatible land uses or neglect. Because their condition is already marginalized, degraded habitats are likely to be more vulnerable to these threats than pristine systems and in need of special management actions.

When determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, boat ramps and other structures that lack the PCEs for the 15 vernal pool species. Any such structures inadvertently left inside critical habitat boundaries are not considered part of the unit. This also applies to land on which 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.

Comments Related to Species Viability

Comment 16: One commenter suggested it is essential that the vernal pool systems on Travis Air Force Base (AFB) be designated as critical habitat to ensure the recovery potential of these species.

Our Response: The Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. The two AFBs were not eligible for designation through operation of section 4(a)(3)(B) of the Act as they had approved Integrated Natural Resource Management Plans (INRMPs), which provided for the conservation of the species. For a detailed discussion of our noneconomic exclusion analysis used in our final designation of critical habitat for the 15 vernal pool species, please refer to our August 6, 2003, final designation (68 FR 46683) and in the ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' section below.

Comment 17: We received one comment stating that core recovery areas need to be designated as critical habitat in order to ensure that recovery will occur.

Our Response: 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 outside the critical habitat designation will continue to be subject to conservation actions that may be

implemented under section 7(a)(1), the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or assisted 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 should 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.

Comments Related to Economic Issues

Comment 18: Several commenters stated that the DEA underestimated the delay in project completion resulting from Section 7 consultation.

Our Response: Delay times resulting from section 7 consultation were calculated based on a review of available biological opinions. Delay time was calculated based on the average number of days from submission of a completed application to the date of a final decision. We are provided with 90 days to complete a biological opinion and 45 days to issue the biological opinion to the consulting agency, for a total of 135 days from initiation to issuance (50 CFR 402.14(e)). According to the DEA (CRA International 2005) the average time for completion of a section 7 consultation is 111 days, well within our statutory timeframes.

Comment 19: Several comment letters stated that vernal pool mitigation costs in Sacramento and Placer Counties are higher than the figure used in the DEA.

Our Response: Mitigation costs were derived from a survey of mitigation banks, developers and consultants familiar with the permitting process. We believe that these data represent the best available information on mitigation costs in the affected counties.

Comment 20: One commenter stated that the DEA omits impacts related to the Lincoln Bypass and Placer Parkway projects.

Our Response: Placer County Transportation Planning Authority is in the process of developing the Tier 1 environmental report for the Placer Parkway project. Project alternatives have yet to be finalized but are expected to be mapped by September 2005. The Lincoln Bypass project is more advanced. The EIR document is complete and pending final approval; construction is anticipated to begin within two years.

The Lincoln Bypass project is entirely within Census Tract 06061021303. The Placer Parkway will likely be within Census Tract 06061021301. We note that these tracts are already within the most economically impacted group of census tracts, so inclusion of additional impacts is unlikely to have a meaningful effect on the relative ranking of these tracts.

Comment 21: The Sacramento Area Council of Governments (SACOG) wrote to comment on the population growth figures used in the DEA. The SACOG provided new forecasts that it believes are more applicable than the forecasts used in the DEA.

Our Response: Based on public comments offered by SACOG, Blueprint growth projections to 2025 by census tract were compared with the earlier growth forecasts furnished by SACOG. For the majority of census tracts, the projections were similar and substitution of the Blueprint forecasts would not have a material effect on the relative ranking of impacts by census tract.

We note that the Blueprint forecast differed substantially from earlier SACOG forecasts for Census Tract 06067008701 in Sacramento County. In this instance, the Blueprint forecast indicated that at least 12,000 fewer dwelling units would be constructed by 2025. Even in this case, however, use of the Blueprint data would not have a material effect on the relative ranking of this tract since it would remain the most economically impacted census tract in the sample.

Comment 22: One comment letter noted that the Placer Vineyards Specific Plan straddles two census tracts in Placer County.

Our Response: Since a single development accounts for a significant fraction of growth in this area, segregating impacts by Census Tract may be artificial. Thus, impacts for tracts 06061020902 and 06061021301 are aggregated in the final analysis. We excluded both census tracts from this final rule based on economic impacts. For a more detailed discussion, please see the section ''Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act'' below.

Comment 23: Several comment letters stated that the DEA failed to provide a balanced assessment of economic benefits and costs in relation to the proposed critical habitat designation. One commenter also included a general list of potential benefits that may be associated with the designation of critical habitat and suggested that the Service should include such effects in its economic analysis.

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. The Service's 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 reflects 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 attempt to measure the net economic impact. However, no data were found that allowed 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 the Service believes 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 recognized the social importance of such benefits through the protections of the Act.

The Service notes that as a practical matter, it is difficult to develop credible estimates of such values as they are not readily observed through typical market transactions. The Secretary places the utmost value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus considers whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area. In the case of this rule, the Secretary made the determination that the economic benefits of exclusion exceeded the benefit of inclusion in only 23 of 158 affected census tracts. This effectively recognizes the benefits of including areas beyond the minimum necessary to avoid extinction, despite significant economic costs.

Comment 24: Impacts relating to construction of UC Merced are assigned to the wrong Census tract.

Our Response: Impacts relating to conservation of vernal pools at the site of UC Merced are assigned to Census Tract 06047001901, which is the proper tract.

Comment 25: Several comments questioned the appropriateness of the impact methodology used to measure costs of critical habitat.

Our Response: The report was peer reviewed by two leading academics in the field of urban economics. Comments were strongly supportive of the method developed by Dr. Sunding and CRA, the data sources employed, and the assumptions underlying the analysis. Both reviewers noted that the method was consistent with generally accepted principles in urban economics, with one reviewer concluding that ''the results are credible and it is hard to see how the remaining uncertainties about the economic impacts of the regulations could be resolved by further or more sophisticated analyses.''

For information on previous public comments received refer to the August 6, 2003 final designation of critical habitat for the 15 vernal pool species (68 FR 46684) and the March 8, 2005 (70 FR 11140) final notice concerning the non-economic exclusions.

Summary of Changes From Proposed Rule

In developing the final designation of critical habitat for the 4 vernal pool crustaceans and 11 plants, we reviewed public comments received on the proposed designation of critical habitat published on September 24, 2004 (67 FR 59884), and during reopened comment periods on non-economic exclusions (December 28, 2004; 69 FR 77700) and on the second draft economic analysis (March 8, 2005; 70 FR 11140). In addition, we conducted further evaluation of lands proposed as critical habitat; refined our mapping methodologies; and exempted or excluded additional essential habitat from the final designation.

Specifically, we are making the following changes to the final rule from the proposed rule published on September 24, 2002: We mapped critical habitat more precisely by eliminating habitat areas that did not contain the PCEs based on specific information provided by commenters or by updated remote sensing data. Although we attempted to remove as many developed areas (areas that have no value as vernal pool habitat) as possible before publishing the proposed rule, we were not able to eliminate all developed areas. Since publication of the proposed rule, we were able to further eliminate a small amount of developed area, which has resulted in a more precise delineation of essential habitat containing one or more of the primary constituent elements. This resulted in a minor reduction in the total acreage published in the proposed rule. However, it is not possible to remove each and every one of these developed areas even at the refined mapping scale used: therefore, the maps of the designation still include areas that do not contain primary constituent elements. These areas are not being designated as critical habitat. Most of the units received some refinement, and a few were divided into subunits.

The common name for the species *Castilleja campestris* ssp. *succulenta* was changed in the final rule (from succulent owl's-clover to fleshy owl's-clover) to reflect the name used under the listing of the species (62 FR 14338). This was done to avoid confusion between the species' listing and the designation of critical habitat for it.

We exempted lands administered by the Department of Defense on Beale Air Force Base and Travis Air Force Base under section 4(a)(3)(B) of the Act (70 FR 11140). Lands we considered, but excluded from the final designation under section 4(b)(2) of the Act for noneconomic reasons included (1) lands administered by the U.S. Fish and Wildlife Service on the Kern, Sacramento, San Francisco Bay, and San Luis National Wildlife Refuges and the Colman National Fish Hatchery (70 FR 11140 and 68 FR 46684) (2) 16,033 ac (6,488 ha) of lands administered by the Bureau of Land Management within the Carrizo Plain National Monument (see Effects of Critical Habitat section below); (3) land owned and managed by the Mechoopda Tribe (70 FR 11140 and 68 FR 46684); (4) lands administered by Department of Defense at Fort Hunter Liggett and Camp Roberts (70 FR 11140 and 68 FR 46684) (5) lands owned and managed by the California Department of Fish and Game within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas, and within the Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves (70 FR 11140 and 68 FR 46684); and (4) lands within the Skunk Hollow HCP, the Western Riverside Multiple Species HCP, Santa Rosa Plateau Ecological Reserve, and San Joaquin Multiple Species Conservation Plan (70 FR 11140 and 68 FR 46684). We excluded an additional 358,699 ac (145,160 ha) of land in 23 census tracts under section 4(b)(2) of the Act for economic reasons (see Table 2 and ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'' below).

We revised the primary constituent elements (PCEs) for all species to bring them into conformance with current guidance to more clearly define essential features. The new PCEs are described below in the Primary Constituent Elements section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''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. Because we previously designated critical habitat for these 15 vernal pool species, we already determined that critical habitat pursuant to the Act and implementing regulations was both prudent and determinable (refer to our September 24, 2002, proposal (67 FR 59983))

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of such 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 adversely affect critical habitat. However, the Act prohibits unauthorized take of listed species and requires authorization under either section 7 or section 10 of the Act for actions that are likely to result in take, including habitat alterations in some instances, regardless of whether critical habitat has been designated. 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 using the best scientific and commercial data available, habitat areas on which are found those physical and biological features essential to the conservation of the species (primary constituent elements), as defined at 50 Code of Federal Regulations (CFR) 424.12(b)).

Habitat occupied at the time of listing 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).) 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 at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's 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 (Public Law (Pub. L.) 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service 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 habitats, 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 the associated Information Quality Guidelines issued by the Service.

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 recovery 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 recovery.

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, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by sections 4(b)(1)(a) and 4(b)(2) of the Act and regulations at 50 CFR 424.12, we are to use the best scientific and commercial data available to determine areas that contain the physical and biological features essential for the conservation of the 15 vernal pool species. This included data and information contained in, but not limited to, the final rule listing the 15 species addressed herein, the Vernal Pools of Southern California Final Recovery Plan (USFWS 1998), the Delta Green Ground Beetle and Solano Grass Recovery Plan (USFWS 1985), the California Vernal Pool Assessment Preliminary Report (Keeler-Wolf 1998), Report of Science Advisors for the Eastern Merced County Natural Community Conservation Plan Habitat Conservation Plan (Noss *et al.* 2002a), research and survey observations published in peer reviewed articles, vernal pool mapping and other data collected for the development of Habitat Conservation Plans (HCPs), reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to us through consultations pursuant to section 7 of the Act, data collected for the development of a Wetland Conservation Plan in Oregon, reports and documents that are on file in our field offices, and personal discussions with experts outside of our agency with extensive knowledge of vernal pool species and habitats. ArcView (Environmental Systems Research Institute, Inc.), a computer Geographic Information System (GIS) program was then used to evaluate GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals.

We then evaluated the areas, using ArcView, defined by the overlap of the combined GIS coverages (data layers) to initially focus on which areas may provide those physical and biological features essential to the conservation of the 15 vernal pool species. The areas were further refined by using satellite imagery, watershed boundaries, geologic landform coverage, elevational modeling data, soil type coverage, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, housing developments, and other areas that are unlikely to contribute to the conservation of the 15 vernal pool species. Several tools were used to assist us in delineating the specific areas that we believed to contain the primary constituent elements (PCEs) for each species and therefore essential to the species' conservation.

We excluded areas that do not contain one or more of the PCEs or were not essential for the conservation of the vernal pool species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated, and may provide little or no long-term conservation value; or (3) the area is excluded under section 4(b)(2) of the Act for national security, economic or other reasons (See ''Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act'').

For further discussion and details of the methods used to define and delineate critical habitat for the 15 vernal pool species please refer to the **Federal Register** notice on August 6, 2003, final designation (68 FR 46683).

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 and 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.

The specific characteristics of the vernal pool habitats that constitute critical habitat vary among species, and are described in the species-specific narratives below. These features contribute to the filling and drying of the vernal pool, maintain suitable periods of pool inundation, and maintain water quality and soil moisture to enable the 15 vernal pool species to carry out their lifecycles. These features include, but are not restricted to, the restrictive underlying soil layers (hardpans, claypans, volcanic flows, and non-volcanic rock) that perch water for extended periods of time, the surface soils associated with each species, and the topography that captures and delivers water to the vernal pools themselves, all of which vary by species.

We have used vernal pool complexes as the basis for determining populations of vernal pool crustaceans since the species were first proposed for listing. The final rule to list the four vernal pool crustaceans states that ''[t]he genetic characteristics of the three fairy shrimp and vernal pool tadpole shrimp, as well as ecological conditions, such as watershed contiguity, indicate that populations of these animals are defined by pool complexes rather than by individual vernal pools'' (Fugate 1992, 1998; King 1996). Therefore, the most accurate indication of the distribution and abundance of the four vernal pool crustaceans is the number of inhabited vernal pool complexes. Individual vernal pools occupied by the four species listed herein are most appropriately referred to as ''subpopulations'' (59 FR 48136).

Each of the critical habitat units likely includes some areas that are unoccupied by the vernal pool crustaceans and vernal pool plants. ''Unoccupied'' is defined here as an area that contains no hatched vernal pool crustaceans or observed above-ground vernal pool plants, and that is unlikely to contain a viable cyst or seed bank. Determining the specific areas that the vernal pool crustaceans or vernal pool plants occupy is difficult because, depending on climatic factors and other natural variations in habitat conditions, the size of the localized area in which aboveground plants or hatched crustaceans appear may fluctuate dramatically from one year to another. In some years, individuals may be observed throughout a large area, and in other years they may be observed in a smaller area or not at all. Because it is logistically difficult to determine how extensive the cyst or seed bank is at any particular site, and because hatched vernal pool crustaceans or above-ground vernal pool plants may or may not be present in all vernal pools within a site every year, we cannot quantify in any meaningful way what proportion of each critical habitat unit may actually be occupied by the vernal pool crustaceans or vernal pool plants at any one time. Therefore, areas of unoccupied habitat are probably interspersed with areas of occupied habitat in each unit. The inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of the vernal pool crustaceans and vernal pool plants.

The PCEs described for each species do not have to occur simultaneously within a unit for the unit to constitute critical habitat for any of the 15 vernal pool species. We determined the PCEs of critical habitat for the 15 species based on studies on their habitat and population biology, including but not limited to Kalin-Arroyo (1973); Ellias (1986); Corbin and Schoolcraft (1989); Jokerst (1989); Eng *et al.* (1990); Alexander and Schlising (1997); Helm (1998); Witham (1998); Eriksen and Belk (1999); Grosberg (2002). Additional information on species-specific PCEs is outlined below. For further discussion and details on the life history requirements of the 15 vernal pool species please refer back to the **Federal Register** notice on August 6, 2003, final designation (68 FR 46684) and the individual listing rules for each species (43 FR 44810; 57 FR 24192; 59 FR 48186; 62 FR 14338; 62 FR 34029).

Primary Constituent Elements for the Conservancy Fairy Shrimp

Most occurrences of Conservancy fairy shrimp are limited to large clay-bottomed pools that are rare within the vernal pool landscapes within California (Vollmar 2002). Helm (1998) observed that most Conservancy fairy shrimp occurrences were on Anita, Pescadero, or Peters Clay soils. Conservancy fairy shrimp are typically found in turbid and large (1 to 2 ac (0.4 ha to 0.8 ha)) to very large (88 ac (35 ha)) vernal pools (Helm and Vollmar 2002). However, the pools inhabited by conservancy fairy shrimp near the Montezuma Hills in Solano County and in Butte County are relatively small and have a low turbidity (Vollmar 2002). The species is found in large playa pools on Tuscan or Mehrten geologic formations and on Basin Rim landforms in Tehama, Merced, and Solano Counties (Helm 1998) on various soil types. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Smith and Verrill 1998). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The Vina Plains area in Tehama County supports occurrences of the conservancy fairy shrimp within numerous large pools throughout the area (Eriksen and Belk 1999; Helm 1998; Helm and Vollmar 2002). The pools in the Sacramento National Wildlife Refuge area in Glenn and Colusa Counties as well as in parts of the San Luis National Refuge Complex in Merced County are associated with alkaline sink areas and tend to be higher in pH and salinity than in other pools where the species is found. The PCEs of critical habitat for Conservancy fairy shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 19 days (Helm 1998), in all but the driest years; thereby providing adequate water for incubation, maturation, and

reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

Primary Constituent Elements for the Longhorn Fairy Shrimp

Longhorn fairy shrimp occurrences are highly disjunct and scarce within the geographic range in which they occur. There are fewer areas in which this species is known to occur than any other listed vernal pool crustacean. The specific pool characteristics that determine suitability for longhorn fairy shrimp reproduction and growth are not well understood. We identified critical habitat areas essential to the conservation of longhorn fairy shrimp in three areas in which it is known to occur. In determining areas that are essential to conserve longhorn fairy shrimp, we used the best scientific and commercial data available. Longhorn fairy shrimp occurrences are known from Contra Costa County to San Luis Obispo County with an elevational variation of near 50 ft (15 m) to near 2,000 ft (600 m). A broad distribution of longhorn fairy shrimp across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the three general areas of concentration of longhorn fairy shrimp differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between longhorn fairy shrimp occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a, Platenkamp 1998; Zedler *et al.* 1979). The Altamont Pass subunits (unit 1A and B) support occurrences of the species within clear depression pools in sandstone outcrops (Eriksen and Belk 1999; East Bay Regional Parks District (EBRPD) 2001; CNDDB 2002). Midway in the species' range, the alkaline pools supporting longhorn fairy shrimp are found on Edminster loam and Turlock sandy loam. In the species' southern range, they are found on shallow alkaline Northern Claypan type vernal pools within a valley saltbush scrub matrix. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The PCEs of critical habitat for longhorn fairy shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 23 days (Helm 1998), in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

Primary Constituent Elements for the Vernal Pool Fairy Shrimp

Vernal pool fairy shrimp are distributed across a large geographic range from southern Oregon to southern California (Eriksen and Belk 1999). Although the habitat of vernal pool fairy shrimp is highly fragmented and occurrences are isolated from each other by varying degrees across the species' range, the distribution of remaining extant occurrences is somewhat evenly spread throughout its range. Vernal pool fairy shrimp occur in a wide variety of habitat types from the Agate Desert area in southern Oregon, to throughout the Sacramento and San Joaquin valleys, the central Coast Range, and into Riverside County, California. Although some of the habitat characteristics of the species are known, specific pool characteristics that determine suitability for vernal pool fairy shrimp hatching, growth, and reproduction are not well understood. Vernal pool fairy shrimp occurrences are known to occur in eight general areas of concentration on basin rim, low terrace, high terrace, volcanic mudflow, valley floor, alkaline playa, and coastal mountain landforms. The elevational differences in the distribution of vernal pool fairy shrimp range from near 25 ft (8 m) in the Central and Sacramento Valleys to near 500 ft (150 m) in Shasta County. A broad distribution of vernal pool fairy shrimp across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species' range.

The vernal pool types and soils associated with the eight general areas of concentration of vernal pool fairy shrimp differ greatly across the geographic range of the species and lead to different species compositions and ecological conditions between vernal pool fairy shrimp occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Barclay and Knight 1984; Bauder and McMillan 1998; Fugate 1992, 1998; Gonzales *et al.* 1996; Noss *et al.* 2002a; Noss *et al.* 2002b; Platenkamp 1998; Zedler *et al.* 1979).

Vernal pool fairy shrimp are usually found in vernal pools although they are sometimes found in a range of natural and artificially created ephemeral habitats such as alkali pools, seasonal drainages, stock ponds, vernal swales, and rock outcrops (Vollmar 2002).

Vernal pool fairy shrimp are most frequently found in small (<2,125 ft^2 (<200 m^2)) and shallow (2 in (mean of 5 cm)) pool habitats; however, this species can be found in large (480,967 ft^2 (44,534 m^2)) and very deep (48 in (122 cm)) pool habitats as well (Helm and Vollmar 2002). The landform associations for the vernal pool fairy shrimp include alluvial fans, bedrock, bedrock escarpments, basin rim, floodplain, high terrace, stream terrace, volcanic mudflow, and low terrace formations (Helm 1998). The soils that contain occurrences of vernal pool fairy shrimp in the delineated units vary significantly throughout the species' range. In the north, the rare Northern Mudflow formation underlies vernal pools in Shasta and Tehema Counties. Tehema and Butte Counties contain Northern Basalt Flow vernal pools that are limited to ancient terraces and hilltops that comprise some of the oldest geologic formations in California. Northern Volcanic Mudflow vernal pools are delineated in Butte and Yuba Counties. Throughout the Central Valley, the habitat ranges from high terrace landforms to claypan and hardpan pool types. Northern Basalt Flow vernal pools are found in Fresno County in the low elevation foothills. In the Suisun Marsh area, vernal pool fairy shrimp are found in the saline-alkaline transition zone. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The PCEs of critical habitat for vernal pool fairy shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 18 days (Helm 1998), in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

Oregon

The vernal pool fairy shrimp is the only species addressed in this final rule that occurs in Oregon. Four units in Oregon are designated as essential to the conservation of vernal pool fairy shrimp (there are 29 units in California). The Oregon units occur approximately 125 mi (200 km) north of the nearest unit designated for this species in California. We identified critical habitat areas essential to the conservation of vernal pool fairy shrimp to reflect the species geographic distribution and varying habitat types and species associations across its range. Maintaining vernal pool fairy shrimp across their full geographic distribution would make the species less susceptible to environmental variation or negative impacts associated with human disturbances or natural catastrophic events across the species entire range at any one time (Grosberg 2002, Helm 1998; Hunter 1996, New 1995, Primack 1993; Redford and Richter 1999; Rossum *et al.* 2001).

Primary Constituent Elements for the Vernal Pool Tadpole Shrimp

Vernal pool tadpole shrimp occurrences are known from Shasta County to Tulare County, California, with an elevational variation of near 3 m (10 ft) to near 150 m (500 ft). The vernal pool types and soils associated with areas of concentration of vernal pool tadpole shrimp differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between vernal pool tadpole shrimp occurrences. Providing for a mosaic of habitat types and conditions both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Barclay and Knight 1984; Bauder and McMillan 1998; Fugate 1992 and 1998; Gonzales *et al.*1996, Noss *et al.* 2002a, Noss *et al.* 2002b; Platenkamp 1998; Zedler *et al.* 1979). The soils that contain occurrences of vernal pool tadpole shrimp in the delineated units vary significantly throughout the species' range. In the north, the rare Northern Mudflow formation underlies vernal pools in Shasta and Tehema Counties. Tehema and Butte Counties contain Northern Basalt Flow vernal pools that are limited to ancient terraces and hilltops that comprise some of the oldest geologic formations in California. Northern Volcanic Mudflow vernal pools are delineated in Butte and Yuba Counties. Throughout the Central Valley, the habitat ranges from high terrace landforms to claypan and hardpan pool types. Northern Basalt Flow vernal pools are found in Fresno County in the low elevation foothills. In the Suisun Marsh area, vernal pool tadpole shrimp are found in the saline-alkaline transition zone. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The PCEs of critical habitat for vernal pool tadpole shrimp are the habitat components that provide:

(i) Topographic features characterized by mounds and swales, and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 41 days (Helm 1998), in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools

themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding.

(iv) Structure within the pools described in PCE (ii), consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

Primary Constituent Elements for the Limnanthes Floccosa ssp. Californica (Butte County Meadowfoam)

Limnanthes floccosa ssp. *californica* is found in four general areas of concentration in a narrow band from south to north of Chico, California. The vernal pool types and soils associated with the four general areas of concentration of *L.f.* ssp. *californica* include those vernal pools on Tuscan formation or terraced-alluvials with mostly Anita, Riverbank, Redbluff, Modesto, and Redding soils. The habitat associated with *L.f.* ssp. *californica* includes saturated soils and pools with a flashy (short lived) inundation period. A vernal pool's parent material greatly influences that pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990).

Limnanthes floccosa ssp. *californica* is found more often within the swale system between vernal pools than in the pools themselves (Jokerst 1989). The swale habitat forms a branch or net-like pattern between the vernal pools and around mound topography and connects the vernal pools hydrologically. These swale systems are inundated by surface flow and post-storm runoff from adjacent areas and have a greater variability in environmental conditions than do the vernal pools. The swale systems also have different species compositions, depending on parent soil and moisture regime (Holland and Jain 1981, 1988; Jokerst 1989). *Limnanthes floccosa* ssp. *californica* at the southern extent of its range occurs on volcanic mudflows with Corning variant soils. Occurrences near Chico are on formations of eroded mudflow formations. *Limnanthes floccosa* ssp. *californica* in the northern extent of the species range occur on very shallow Tuscan formation soils (Dole 1988). All four areas designated as critical habitat have a different species composition, depending on soil and hydrologic conditions. We believe that providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Dole 1988; Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The PCEs of critical habitat for *L.f.* ssp. *californica* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Lasthenia Conjugens (Contra Costa Goldfields)

Lasthenia conjugens occurrences are found in five centers of concentration in the northern and central Coast Range and western part of the Central Valley in Solano and Contra Costa County. By far the greatest concentration of this species is in the area east of Fairfield in Solano County. *Lasthenia conjugens* normally are found in vernal pools, swales, moist flats, and depressions within open grassy areas of woodland and valley grassland habitats. However, several historical collections were from populations growing in the saline-alkaline transition zone between vernal pools and tidal marshes on the eastern margin of the San Francisco Bay (CNDDB 2002).

Although some of the habitat characteristics of the species are known, specific pool characteristics that determine suitability for *L. conjugens* germination, growth, reproduction, and dispersal are not well understood. *Lasthenia conjugens* normally is observed in only a few of the pools within the vernal pool complexes in which it is found, and the pool characteristics that determine suitability for *L. conjugens* germination and growth are unknown. By overlapping known occurrences of *L. conjugens* with appropriate soil types, elevations, slopes, vegetation community associations, and vernal pool types, where we know *L. conjugens* to occur, we have designated what we believe is the likely distribution of the seed bank around *L. conjugens* occurrences. Due to the species' highly restricted nature and disjunct distribution, the long-term survival of L. conjugens depends upon the protection and management of all extant populations and their associated seed banks, and the maintenance of ecological functions within and between these populations. The PCEs of critical habitat for *Lasthenia conjugens* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Chamaesyce Hooveri (Hoover's Spurge)

Chamaesyce hooveri is found in naturally occurring widely scattered vernal pool complexes in a narrow zone of rolling topography and remnant alluvial fans and stream terraces at the base of the Sierra Nevada foothills and two locations in alkali sink areas at the Sacramento National Wildlife Refuge and San Luis National Wildlife Refuge Complex in three general areas of concentration in Tehama, Butte, Glenn, Colusa, Stanislaus, Merced, and Tulare Counties in the Sacramento and San Joaquin Valleys (CNDDB 2002, Stone *et al.* 1988). The elevation of these areas of

concentration varies from near 50 ft (15 m) to near 500 ft (150 m). Conserving a broad geographic range of *C. hooveri* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species' range. The vernal pool types and soils associated with the six areas of concentration of *C. hooveri* differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between C. hooveri occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would help insure the inclusion of the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979).

The distribution of *C. hooveri* reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include three different physiographic and edaphic settings: old high and lower old stream terrace areas with soils having an iron-silica hardpan and sites with shallow soils underlain by cemented tufaceous alluvium. The Tehama County occurrences of *C. hooveri* are associated with slightly-to-medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan (Broyles 1987). The Glenn and Colusa County occurrences at the Sacramento National Wildlife Refuge are associated with alkaline vernal pools on Willows and Riz soil types (Holland 1998; Silveira 2000; CNDDB 2002). The Stanislaus County occurrences are associated with neutral to slightly alkaline claypan soils of the Meikle series that formed in small drainages of Pleistocene alluvium. The Merced County occurrences in the Arena Plains are within saline-alkaline vernal pools on Lewis soils (USDA 2001; CNDDB 2002). The Tulare County occurrences are associated with lime-silica cemented hardpan and low-terrace neutral to slightly alkaline soils of the Madera soil series. Not all areas of *C. hooveri* have been identified as to the specific soil series or soil mapping units on which they occur. Many of the occupied vernal pools vary in size from 20,520 ft5 (1,900 m5) to 618 ac (250 ha). A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). Field observations suggest that *C. hooveri* is restricted to specific microsites within the vernal pools and may behave somewhat independently, depending on environmental and edaphic conditions and are likely locally adapted (Alexander and Schlising 1997; Stone *et al.* 1988; Vollmar 2002). The PCEs of critical habitat for *C. hooveri* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Castilleja campestris ssp. succulenta (Fleshy owl's-clover)

Castilleja campestris ssp. *succulenta* is found usually in low plant numbers in seven naturally occurring widely scattered vernal pool complex areas in Fresno, Madera, San Joaquin, Stanislaus, and Tuolumne Counties in the San Joaquin Valley. *Castilleja campestris* ssp. *succulenta* has a sporadic distribution within vernal pools, between vernal pools and between vernal pool complexes. The specific vernal pool characteristics that determine the suitability for *C. c.* ssp. *succulenta* germination and growth are unknown; however, it appears that the species seems to favor somewhat smaller, somewhat acidic vernal pools as compared to other vernal pool plants.

Castilleja campestris ssp. *succulenta* occurrences are known from within an elevational variation of near 160 ft (50 m) to near 1,800 ft (550 m). Conserving a broad distribution of *C. c.* ssp. *succulenta* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of its range. The vernal pool types and soils associated with the six areas of concentration of *C. c.* ssp. *succulenta* differ across the geographic range of the species; these differences lead to different species compositions and environmental conditions between *C. c.* ssp. *succulenta* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of *C. c.* ssp. *succulenta* reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. We are uncertain about specific soils that may correlate with the presence of this species, although the species is irregularly found on Redding soil series. Vernal pool complexes that provide suitable habitat for this species include pools ranging in depth from 6.0 in (15 cm) to 10.0 in (25 cm), but the species is also found less frequently in shallower and deeper pools. Soil pH values for some of the vernal pools in Merced County occupied by *C. c.* ssp. *succulenta* range from 4.3 to 6.2. Although no comprehensive study has been conducted in Merced County, some vernal pools occupied by *C. c.* ssp. *succulenta* vary in size from 0.02 ac (80 m^2) to 0.12 ac (486 m^2). Merced County contains the largest aggregations of *C. c.* ssp. *succulenta*, and the occurrences of the species are found on mild to strongly acidic soils on Laguna, Mehrten, North Merced Gravels, and Riverbank Formations as well as Ione, Merthen, and Valley Springs' geological formations. The parent material of vernal pools greatly influences species' composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Although *C. c.* ssp. *succulenta* appears to prefer the more weathered acidic, higher-terrace vernal pool complexes that are composed of volcanic tuff sand quartzite parent materials, soils beneath vernal pools are extremely variable and are often not the same as soils mapped

by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The PCEs of critical habitat for *C. c.* ssp. *succulenta* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Neostapfia colusana (Colusa grass)

Neostapfia colusana occurrences are known from eight areas of concentration with an elevational variation of near 16 ft (5 m) to near 350 ft (100 m). Conserving a broad distribution of *N. colusana* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the eight areas of concentration of *N. colusana* differ greatly across the geographic range of the species; these difference lead to different species compositions and environmental conditions between *N. colusana* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of *N. colusana* reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include two different physiographic and edaphic settings: claypan soils of saline-alkali basins and remnant alluvial fans and old stream terrace areas with strongly acidic, gravelly, and cobbly soils having an iron-silica cemented hardpan, and shallow, slightly acidic residual soils of the Pentz series underlain by cemented tuffaceous alluvium. Additional settings for *N. colusana* are found in vernal pool complexes where resistant beds of tuffaceous deposits are exposed along intermittent drainages and, in Stanislaus County, neutral to slightly alkaline claypan soils on dissected alluvial fans. Not all areas of *N. colusana* have been identified as to the specific soil series or soil mapping units where they occur. However, in Merced County, *N. colusana* occurs on clay soils on Mehrten Formation and also on Riverbank, North Merced Gravels, and Laguna Formations. Of the Orcuttieae grasses, *N. colusana* inhabits the widest range of vernal pool sizes, with the smallest being 1,075 ft^2 (100 m^2 and the largest at 618 ac (250 ha). The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The PCEs of critical habitat for *N. colusana* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Tuctoria Greenei (Greene's Tuctoria)

Tuctoria greenei occurrences are known from eight general areas of concentration from Shasta County to Madera County with an elevational variation of from near 100 ft (30 m) to near 3,500 ft (1,067 m). Conserving a broad distribution of *T. greenei* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the its range. The vernal pool types and soils associated with the eight areas of concentration of *T. greenei* differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between *T. greenei* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.*1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The wide-ranging distribution of *T. greenei* reflects a diversity of vernal pool habitat types that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include four different physiographic and edaphic settings—old high stream terrace, lower old stream terrace areas with soils having an iron-silica hardpan, sites with shallow soils underlain by cemented tuffaceous alluvium, and vernal pool complexes on claypan soils that are slightly acid to slightly alkaline. Not all areas of *T. greenei* have been identified as to the specific soil series or soil mapping units where they occur. The Butte County occurrences of *T. greenei* are associated with soils underlain by tuffaceous alluvium, are considered to occur in Northern Basalt Flow and Northern Volcanic Mudflow type vernal pool complexes, and one occurrence is found on Tuscan soils. The Tehama County occurrences are associated with slightly-to-medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan occurring vernal pools and are the only area where vernal pools are associated with this type of landform. Many of these pools are a fraction of an acre and have a short inundation period (until April or May) and fewer number of shallower larger pool sizes well over an acre with a comparatively longer inundation period

(until June or July). A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981; 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary by location (Holland and Dain 1990). The PCEs of critical habitat for *T. greenei* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Orcuttia Pilosa (Hairy Orcutt Grass)

Orcuttia pilosa occurrences are known from southern Tehama County in the Sacramento Valley to southern Madera County in the San Joaquin Valley with a predominate elevational variation of from near 180 ft (55 m) to near 405 ft (123 m). Conserving a broad distribution of *O. pilosa* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of its range. The vernal pool types and soils associated with the six areas of concentration of *O. pilosa* differ greatly across the geographic range of the species; these differences lead to different species compositions and environmental conditions between *O. pilosa* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species' conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992; Fugate 1998; Gonzales *et al.* 1996; Ikeda and Schlising 1990; Noss *et al.* 2002a; Platenkamp 1998; Zedler *et al.* 1979). The distribution of *O. pilosa* reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include mostly three different physiographic and edaphic settings—old high and lower old stream terrace areas with soils having an iron-silica hardpan and sites with shallow soils underlain by cemented tuffaceous alluvium. The Tehama County occurrences of *O. pilosa* are associated with slightly to medium acid soils of the Tuscan and Anita soil series that are underlain by an iron-silica cemented hardpan. Not all areas of *O. pilosa* have been identified as to the specific soil series or soil mapping units on which they occur. Many of the occupied vernal pools vary in size from 36,600 ft^2 (3,400 m^2) to 618 ac (250 ha). A vernal pool's parent material greatly influences the pool's species composition and hydrologic functioning (Hanes and Stromberg 1998; Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The PCEs of critical habitat for *O. pilosa* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands

Primary Constituent Elements for the Orcuttia Viscida (Sacramento Orcutt Grass)

Orcuttia viscida is found in naturally occurring scattered vernal pool complexes in Sacramento County, California, and is the most geographically restricted Orcuttieae species. The specific vernal pool characteristics that determine the suitability for *O. viscida* germination, growth and reproduction are not well understood. *Orcuttia viscida* occurrences are known only from eastern Sacramento County in the Sacramento Valley with a predominate elevational variation of 150 ft (45 m) to 375 ft (114 m). Conserving a broad distribution of *O. viscida* across its rather relatively narrow geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the three areas of concentration of *O. viscida* differ across the geographic range of the species and leads to different species compositions and environmental conditions between *O. viscida* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.*1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The distribution of *O. viscida* reflects a relatively smaller diversity of vernal pool habitat types that provide habitat for the species on the old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include one physiographic and edaphic settings: remnant depositional stream terraces at the base of the Sierran foothills. The Sacramento County occurrences of *O. viscida* are associated with Redding soils that are strongly acidic underlain by an iron-silica cemented hardpan and with soils mapped in the Pentz-Pardee-Red Bluff association. Not all areas of *O. viscida* have been identified as to the specific soil series or soil mapping units where they occur. Many of the occupied vernal pools vary in size from 0.3 ac (1,000 m^2) to 2 ac (8,260 m^2). The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils

beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The PCEs of critical habitat for *O. viscida* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Orcuttia inaequalis (San Joaquin Valley Orcutt grass)

Orcuttia inaequalis is found in naturally occurring widely scattered vernal pool complexes in Fresno, Madera, Merced, Stanislaus, and Tulare Counties in the northeastern San Joaquin Valleys. *Orcuttia inaequalis* is the only species found just in the San Joaquin Valley. The specific vernal pool characteristics that determine the suitability for *O. inaequalis* germination, growth, and successful reproduction are unknown. However, *O. inaequalis* is a strict endemic to usually larger vernal pools that range in area from 1,500 ft^2 (140 m^2) to 12.1 ac (4.9 ha) in size and 12 in (30.5 cm) to 22 in (55.9 cm) deep but can be found in both smaller and larger and shallower and deeper vernal pools (Stone *et al.* 1988, Volmar 2002). *Orcuttia inaequalis* is found in vernal pool complexes on a variety of geological surfaces including Ione, Laguna, Merthen, Modesto, North Merced Gravels, Riverbank, Turlock Lake, and Valley Springs in the northeastern San Joaquin Valley.

Orcuttia inaequalis occurrences are known from central Merced County to northern Tulare County in the northeastern San Joaquin Valley with a predominate elevational variation of near 155 ft (47 m) to near 1,870 ft (570 m). Conserving a broad distribution *O. inaequalis* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the six areas of concentration of *O. inaequalis* differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between *O. inaequalis* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.* 1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The distribution of *O. inaequalis* reflects a diversity of vernal pool habitat types that provide habitat for the species on the alluvial fans and old stream terraces of the Sierra Nevada foothills. Vernal pool complexes that provide suitable habitat for this species include several different physiographic and edaphic settings including; old high old stream terrace areas with Redding and related soil series, lower old stream terraces with San Joaquin and related soil series having an iron-silica hardpan but less strongly acidic sites with shallow, residual soils of the Pentz and related soil series underlain by a well-cemented tuffaceous alluvium. One occurrence in Fresno County is found in a rather shallow stony moderately to strongly acidic vernal pool complex on residual soils of the Hideaway series at a relatively high elevation. Not all areas of *O. inaequalis* have been identified as to the specific soil series or soil mapping units on which they occur. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The PCEs of critical habitat for *O. inaequalis* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Orcuttia tenuis (Slender Orcutt grass)

Orcuttia tenuis is found in five general areas of concentration from south Sacramento County to the Modoc Plateau and west to Lake County with an elevational variation of near 200 ft (61 m) to near 3,500 ft (1,067 m). A broad distribution of *O. tenuis* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range.

The vernal pool types and soils associated with the five general areas of concentration of *O. tenuis* differ greatly across the geographic range of the species and leads to different species compositions and environmental conditions between *O. tenuis* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species is essential because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.* 1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The wide ranging distribution of *O. tenuis* has lead to a large diversity of vernal pool habitat types for the species. The Modoc Plateau occurrences are associated mostly with Northern Basalt Flow and Northern Volcanic Mudflow type vernal pools. These pools range in size from a fraction of an acre to well over an acre with smaller pools having a short inundation period. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998,

Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions which vary upon location (Holland and Dain 1990). The Lake County occurrences are associated with Ashflow type vernal pools and are the only area where vernal pools are associated with this type of landform. The Redding area vernal pools in the Northeastern Sacramento Valley Vernal Pool Region occur on volcanic Tuscan Formation or terrace-alluvial Redding soils. The hydrology within the terrace-alluvial pools tends to be less flashy than those with a volcanic origin (Keeler-Wolf *et al.* 1998). The soils associated with the Sacramento County occurrences include those occurring on old terrace formations. The PCEs of critical habitat for *O. tenuis* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Primary Constituent Elements for the Tuctoria mucronata (Solano grass)

Tuctoria mucronata is found in two naturally occurring scattered vernal pool complex areas in Solano and Yolo Counties in the Sacramento Valley. The specific vernal pool characteristics that determine the suitability for *T. mucronata* germination and growth are unknown; however, it appears that the species seems to favor somewhat larger and deeper vernal pools as compared to other vernal pool plants.

Tuctoria mucronata occurrences are known from with an elevational variation of near 15 ft (5 m) to near 35 ft (11 m). Conserving the distribution of *T. mucronata* across its geographical and elevational distribution protects the natural environmental processes for the species and provides the best chance for retaining the species across the full extent of the species range. The vernal pool types and soils associated with the two areas of concentration of *T. mucronata* differ across the geographic range of the species and leads to different species compositions and environmental conditions between *T. mucronata* occurrences. Providing for a mosaic of habitat types both between and among vernal pool species occurrences is essential to the species conservation because it would include the full extent of the physical and environmental conditions for the species (Fugate 1992, Fugate 1998, Gonzales *et al.* 1996, Ikeda and Schlising 1990, Noss *et al.* 2002a, Platenkamp 1998, Zedler *et al.* 1979). The distribution of *T. mucronata* reflects a diversity of vernal pool habitat types and sizes that provide habitat for the species. Vernal pool complexes that provide suitable habitat for this species include similar physiographic and edaphic settings-claypan soils of saline-alkali flood basin rims basins soils. The parent material of vernal pools greatly influences species composition and hydrologic functioning of the vernal pool (Hanes and Stromberg 1998, Holland and Jain 1981, 1988). Soils beneath vernal pools are extremely variable and are often not the same as soils mapped by soil surveys, but are usually undescribed hydric inclusions that vary upon location (Holland and Dain 1990). The PCEs of critical habitat for *T. mucronata* are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in PCE (ii), providing for dispersal and promoting hydroperiods of adequate length in the pools.

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and non-native upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

Criteria Used To Identify Critical Habitat

We are designating critical habitat on lands that are occupied contain sufficient PCEs and which we have determined essential to the conservation of the 15 vernal pool species. These areas have the PCEs described below for each species. Based on the best scientific information available, all areas identified as critical habitat for the 15 vernal pool species addressed by this rule are within the historical and current ranges of each of the species and contain the specific PCEs identified below. Rather than designate every area containing PCEs, however, we designated only those areas which available evidence clearly demonstrated were essential to the conservation of each species. Areas for which the evidence available at this time was less certain were not included in this designation, although we believe these areas to be important to the species and may include them in future recovery plans. Areas essential to the conservation of the species are those that are necessary to advance at least one of the following conservation criteria:

(1) The conservation of areas representative of the geographic distribution of the species. Species that are protected across their ranges have lower chances of extinction (Soule and Simberloff 1986; Murphy *et al.* 1990; Primack 1993; Given 1994; Hunter 1996; Pavlik 1996; Noss *et al.* 1999; Grosberg 2002);

(2) The conservation of areas representative of the ecological distribution of the species. Each of the 15 vernal species is associated with various combinations of soil types, vernal pool chemistry, geomorphic surfaces (landforms), and vegetation community associations. Maintaining the full range of varying habitat types and characteristics for a species is essential because it would include the full extent of the physical and environmental conditions necessary for the species (Zedler and Ebert 1979; Ikeda and Schlising 1990; Fugate 1992; Gonzales *et al.* 1996; Fugate 1998; Platenkamp 1998; Bainbridge 2002; Noss *et al.* 2002a);

(3) The conservation of areas necessary to allow movement of cysts, pollen, and seeds between areas representative of the geographic and ecological distribution of the species. As a result of dispersal events within and between vernal pool complexes, and environmental conditions that may

prevent the emergence of dormant cysts and seeds for up to several decades, the presence of vernal pool species is dynamic in both space and time (Eriksen and Belk 1999; Noss *et al.* 2002a);

(4) In cases where more occupied areas were present than were needed for the conservation of the geographic or ecological distribution of the species, we gave priority to areas which already possessed a measure of protection or which possessed the largest unfragmented vernal pool complexes.

When determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, boat ramps and other structures that lack the PCEs for the 15 vernal pool species. Any such structures inadvertently left inside critical habitat boundaries are not considered part of the unit. This also applies to land on which 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. Additional information concerning the essential nature of these areas can be found in the previous final designation of critical habitat for these 15 vernal pool species (68 FR 46684; August 6, 2003) and also in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. 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 designating critical habitat, we also have considered how this designation highlights habitat that needs special management considerations or protection. For example, we have many regional HCPs under development, and this designation will be useful in helping applicants determine what vernal pool habitat areas should be highest priority for special management or protection, and where there may be more flexibility in conservation options. This designation will guide them and us in ensuring that all local habitat conservation planning efforts are consistent with conservation objectives for these species.

Once a vernal pool habitat has been protected from direct filling, it is still necessary to ensure that the habitat is not rendered unsuitable for vernal pool species because of factors such as altered hydrology, contamination, nonnative species invasions, or other incompatible land uses. Many of the factors that cause the decline and localized extirpation of vernal pool species can be avoided. Actions that should be avoided include the following:

(1) Actions that increase competition from invasive species as many of the species addressed in this rule are threatened by invasion of nonnative species (CNDDB 2001).

(2) Alteration of natural hydrology such as construction of dams or other structures that artificially increase the length of vernal pool inundation or construction of ditches that artificially drain vernal pools.

(3) Human degradation of vernal pools such as off-road vehicle use, dumping, and vandalism that threatens many of the species addressed in this rule.

Critical Habitat Designation

We are designating 858,846 ac (347,563 ha) of critical habitat for the 15 vernal pool species. The critical habitat areas described below constitute our best assessment at this time of areas we have determined are occupied at the time of listing, contain the primary constituent elements and that may require special management and those additional areas found to be essential to the conservation of the 15 vernal pool species.

Relationship of This Final Rule to the March 8, 2005 Final Rule Confirmation (70 FR 11140)

On March 8, 2005 (70 FR 11140), we confirmed 136,358 ac (55,182 ha) of non-economic exclusions made to our previous final rule of August 6, 2003 (68 FR 46683). This included exclusion under section 4(b)(2) of the Act for 42,914 ac (17,369 ha) of National Wildlife Refuge and National Fish Hatchery lands; 50,520 ac (20,444 ha) of Department of Defense lands; 644 ac (261 ha) of tribal lands belonging to the Mechoopda Tribe; 12,373 ac (5,007 ha) of State Wildlife Areas and Ecological Reserves owned and managed by the California Department of Fish and Game; and 10,224 ac (4,138 ha) of lands in Habitat Conservation Plans or cooperative management areas. In our re-evaluation of March 8, 2005, we exempted 19,684 ac (7,966) acres of Department of Defense lands on Beale and Travis Air Force Bases under section 4(a)(3)(B) of the Act. As noted in that rule, the reported acreages were additive individual totals of each of the 15 species. Because many of the critical habitat boundaries overlap among species, the actual total acreage excluded is less than reported in that rule.

When we reopened the comment period on noneconomic exclusions (December 28, 2004; 69 FR 77700), we requested comments and information related to amount and distribution of habitat that should be included in the designation, what habitat should be considered essential to the conservation of the species, rationale for including or excluding such habitat from the designation, benefits associated with including or excluding habitat from the designation, current or planned activities in proposed critical habitat, and requested public participation in the process of designating critical habitat. This final rule addresses all remaining non-economic exclusions not addressed in the March 8, 2005 (70 FR 11140) confirmation of exclusions made to our previous final rule, and all economic exclusions made under section 4(b)(2) based on comments received during the reopened comment periods of December 28, 2004 (69 FR 77700) and June 30, 2005 (70 FR 37739). In contrast to the March 8, 2005 final rule confirmation (70 FR 11140), the acreages published with the maps in this final rule have eliminated all overlap among species and represent the actual extent of the designation and the economic exclusions across the 15 species. As a result, acreages reported in previous notices are not always comparable to those reported in this notice.

In this rule, we have considered, but are excluding from critical habitat, a total of approximately 374,732 ac (151,648 ha) of essential habitat for one or more of the fifteen listed vernal pool species in the following areas under section 4(b)(2): lands within the boundaries of Carrizo Plain National Monument administered by the Bureau of Land Management (16,033 ac (6,488 ha)), and lands with significant economic impacts to landowners (358,699 ac (145,160 ha) within 23 census tracts in Sacramento, Butte, Placer, Solano, Monterey, Fresno, Stanislaus, Madera, Merced, Shasta, and Tehama Counties.

Description of Critical Habitat

We are designating critical habitat for the four vernal pool crustaceans and 11

vernal pool plants within the units and subunits shown in Table 1. Although all of the units are within the geographic range of the included species, we are not designating all of the areas known to be occupied by any of the four vernal pool crustaceans or 11 vernal pool plants.

TABLE 1.—SUBUNITS AND ASSOCIATED SPECIES WITHIN THE FINAL CRITICAL HABITAT DESIGNATION FOR 4 VERNAL POOL CRUSTACEANS AND 11 VERNAL POOL PLANTS IN CALIFORNIA AND SOUTHERN OREGON

Conservancy fairy shrimp	Longhorn fairy shrimp	Vernal pool fairy shrimp	Vernal pool tadpole shrimp	*Limnanthes floccosa* ssp. *californica*	*Lasthenia conjugens*	*Chamaesyce hooveri*	*Castilleja campestris* ssp. *succulenta*	*Neostapfia colusana*	*Tuctoria greenei*	*Orcuttia pilosa*	*O. viscida*	*O. inaequalis*	*O. tenuis*	*Tuctoria mucronata*
7C	13C	1A	6C	7F	8A	7C	11G	10B	5F	7C	11D	14M	5A	10B
7D	13D	1B	7A	7G	9C	7J	15E	14D	7C	7J	11E	15J	5B	
7E	14B	1C	7B	7H	10D	14C	15H	14E	7J	15G	11G	15K	5C	
7F	20A	1D	7C	7I	10E	14D	15J	14F	15B	15H		15L	5D	
7G		1E	7D	7M	10F	14E	15L	14G	15C	15I		15M	5E	
10F		1F	7E	7N	10G	14F	15M	14I	15D	15L		15N	5G	
14A		1G	7F		10H	14G	15N	14J	15E			15O	5H	
14B		2A	7G		12A	14M	15O	14K	15F			15P	5I	
14C		2B	7H		12C	15E	15Q	15B	15J			15S	15J	
14D		2C	7I		13B	15G		15C	15K			15T	5K	
14E		2D	7J		16A	15H		15D	15L			15U	5L	
14F		2E	7K		16B	15I		15E				15W	6A	
14G		3A	7L			15R		15F					6B	
15J		3B	7M			15S		15G					6C	
22A		3C	7N			15T		15H					6D	
		4A	10A			15U		15I					7A	
		4B	10B			15V		15J					7B	
		6C	10C			15W							7C	
		6E	10D										9A	
		6F	10E										9B	
		7C	10F										11E	
		7D	11A											
		7E	11E											
		7F	11F											
		7G	11G											
		7H	14B											
		7I	14C											
		10C	14D											
		10D	14E											
		10E	14F											
		10F	14G											
		11A	14H											
		11B	14I											
		11C	14J											
		11D	14K											
		11F	14L											
		11G	14M											
		11H	15C											
		12B	15D											
		13A	15F											
		13B	15J											
		13E	15N											
		14A	15R											
		14B	15U											
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		20A												
		21A												
		22A												

We have determined that each subunit is essential for the conservation of its associated species because it is occupied by each of the associated species, it contains one or more of the PCEs for each of its associated species, and it meets one or more of the criteria used to identify essential areas (see ''Criteria Used to Identify Critical Habitat'' section). Within each subunit will therefore be found habitat with the features that are essential for reproduction, germination, hatching, maturation, feeding, shelter, and dispersal of the associated species, as described in the Primary Constituent Elements section for each species and supporting information on the life history and ecology of each of the 15 listed species found in previous rules (68 FR 46684, 43 FR 44810; 57 FR 24192; 59 FR 48186; 62 FR 14338; 62 FR 3402). In addition, that subunit also will provide for one or more of the following: (1) Areas representative of the geographic distribution of the species; (2) areas representative of the various combinations of soils, vernal pool chemistry, geomorphic surfaces, vegetation community associations, and other environmental conditions in which the species occurs; (3) areas that provide for dispersal; and (4) areas with the best conservation potential, e.g., lands already fully or partially protected, the largest unfragmented vernal pool complexes for each of its associated species.

Lands within each subunit require special management because each of the associated species is variously threatened by one or more of the following: habitat destruction, fragmentation, and degradation associated with residential, commercial, and industrial development (including associated infrastructure); highway construction; agricultural conversion; water conveyance or storage construction; incompatible human recreational use; incompatible grazing practices; nonnative plant species; sedimentation or chemical pollution from roadway or other urban runoff, or from herbicide application on adjacent lands; or small population size.

As a result, each area designated as critical habitat may require some level of management and/or protection to address the current and future threats to each of the 15 vernal pool species to ensure that they may recover. Such management considerations and protections would benefit the target species in many ways, including but not limited to the following: protecting the species from range reduction, and maintaining the ability of the species to persist at a given location by reducing habitat fragmentation, edge effects, and alteration of hydrologic regimes of occupied vernal pool complexes through establishment of conservation easements, fee title conveyance to a conservation organization, or simple avoidance of habitat destruction and degradation; preventing, reducing, or eliminating competition with invasive species that may ''crowd out'' a listed species; restoring the hydrology of vernal pool complexes that have been impacted by construction of dams and ponds that artificially increase the length of inundation, ditches that artificially drain vernal pools, or construction of berms or culverts that divert water from a vernal pool complex; enhance or restore hydrology and native species through appropriate use of fire and grazing management; reduce or eliminate human degradation of vernal pools by managing off-road vehicle use, constructing fences, and establishing education programs; and restoring historic pool and swale topography and hydrology in degraded habitats. Designation of critical habitat does not carry with it any requirement that landowners or land managers implement any special management or protection programs.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' The Service uses the guidance issued in the Director's December 9, 2004, memorandum when making adverse modification determinations under section 7 of the Act.

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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with 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 jeopardy of a listed species or 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 Secretary 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 the 15 vernal pool species or their 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 (e.g., Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to 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 15 vernal pool species. Federal activities that, when carried out, may adversely affect critical habitat for the 15 vernal pool species include, but are not limited to:

(1) Activities regulated by the Corps, Environmental Protection Agency (EPA), or NRCS under the Clean Water Act and other acts or regulations, including but not limited to, discharge of fill into waters of the U.S., and promulgation of water quality standards;

(2) Construction and maintenance of roads, highways, and rights-of way by Caltrans which may modify vernal pool habitat or affect their hydrologic functions;

(3) Sale or exchange of lands by a Federal agency to a non-Federal entity;

(4) Airport construction, improvement, or maintenance activities funded or authorized by the Federal Aviation Administration;

(5) Licensing of construction of communication sites by the Federal Communications Commission;

(6) Funding of construction or development activities by the U.S. Department of Housing and Urban Development;

(7) Military training and maneuvers on DOD lands;

(8) Execution of new water service by the BOR;

(9) Promulgation and implementation of a land use plan by a Federal agency such as the BLM, USFS, or DOD that may alter management practices for critical habitat; and

(10) Registration of pesticides by EPA.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). If the critical habitat occurs in Oregon, contact the Field Supervisor, Oregon Fish and Wildlife Office, 2600 S.E. 98th Avenue, Portland, OR 97266. Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

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 that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there 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 two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has reasonable expectation the management, protection or enhancement actions will continue for the foreseeable future.

Section 318 of fiscal year 2004 the National Defense Authorization Act (Pub. L. 108–136) amended the Endangered Species Act to address the relationship of Integrated Natural Resources Management Plans (INRMPs) to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.

This provision was added subsequent to our final designation of critical habitat in 2003. However, this provision does apply to this designation. Accordingly the Service does not have the authority to designate Beale AFB or Travis AFB as those facilities have existing INRMPs that provide a benefit to the species.

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 proposing to designate as 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 and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat if the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

Relationship of Critical Habitat to the Carrizo Plain National Monument

The Bureau of Land Management (BLM) has a draft management plan for the Carrizo Plain National Monument. The draft Carrizo Plain Resource Management Plan (CPRMP) outlines management goals and conservation measures for the vernal pool fairy shrimp and the longhorn fairy shrimp, both of which occur in vernal pools within the Carrizo Plain. Goals and Implementation Guidelines of the CPRMP include management for the long-term conservation and recovery of listed plants and animals and the natural communities on which they depend, and to improve and sustain populations of federally listed species to meet conservation and recovery goals. The BLM land overlaps portions of vernal pool fairy shrimp unit 30 (16,033 ac (6,488 ha)) and longhorn fairy shrimp unit 3 (16,033 ac (6,488 ha)) in San Luis Obispo County. The BLM has initiated section 7 consultation with the Service on the CPRMP; we expect to complete the consultation by September 2005. BLM expects to finalize the draft RMP in September or October 2005 and complete all environmental compliance by June, 2006, with implementation to immediately follow. In the interim, BLM is actively managing public lands within the monument in accordance with existing biological opinions and for the recovery of federally listed species (S. Larsen, BLM., pers. comm.). We are excluding all essential habitat for the vernal pool fairy shrimp and longhorn fairy shrimp on BLM lands within the Carrizo Plain National Monument pursuant to section 4(b)(2) of the Act. Our analysis for excluding these units from proposed critical habitat is outlined below.

(1) Benefits of Inclusion

As stated previously in this rule and the March 8, 2005, confirmation (70 CFR 11140), the benefits of designating critical habitat on lands within the boundaries of areas with approved management plans are small. The Carrizo Plain National Monument is cooperatively managed by BLM, the Service, and the Department of Fish and Game and provides habitat for other listed species in addition to the two crustaceans mentioned above. The CPRMP includes management measures and designed to protect, restore, monitor, manage, and enhance the habitat of the two crustacean species, and is thereby expected to aid in the conservation of the species. The CPRMP seeks to accomplish these goals for the two species through the implementation of specific conservation objectives. The principal benefit of designating critical habitat is that federally authorized or funded activities on BLM administered lands in the Carrizo Plain National Monument that may affect a species' critical habitat would require consultation with us under section 7 of the Act using a conservation standard for adverse modification based on the Ninth Circuit's decision in *Gifford Pinchot*.

(2) Benefits of Exclusion

The benefits of excluding lands within the CPRMP from critical habitat designation include relieving the agencies managing the area of the burden of engaging in any additional regulatory process that might be imposed by the designation of critical habitat. Many management plans, particularly large regional plans, take many years to develop and, upon completion, become regional conservation plans that are both consistent with, and promote, the recovery objectives for listed species that are covered within the plan area. Additionally, many of these plans provide conservation benefits to unlisted sensitive species or State listed species. Imposing an additional regulatory review after a plan is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if resources are diverted from substantive resource protection to procedural regulatory efforts.

A related benefit of excluding lands within planned management areas from critical habitat designation is the unhindered, continued ability to seek new partnerships with potential future participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within a planning area are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships that involve numerous participants and address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

The cooperatively developed CPRMP is based on a conservation standard of long-term conservation and recovery for ''listed plants and animals and the natural communities on which they depend.'' Specific measures and goals outlined in the CPRMP include: (1) Improve and sustain populations of federally and State listed plant and animal species to meet conservation and recovery goals; (2) implementation of agency-approved protocols for listed species surveys, take avoidance and conservation measures; (3) Surveys for sensitive resources would be completed prior to conducting any activities that have the potential to affect natural communities and species of management concern; (3) areas supporting the longhorn fairy shrimp and vernal pool fairy shrimp would be avoided to the greatest extent possible; (4) personnel familiar with the sensitive resource may be required to be present during activities which may affect sensitive resources to ensure that activities are conducted in such a way as to avoid and minimize disruption and disturbance of these resources; and (5) compensation for unavoidable adverse effects (BLM in litt. 2005). Thus, the CPRMP is based on a conservation standard. The development and implementation of the CPRMP provides other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, public education through participation in the planning process, and the creation of innovative solutions to conserve species while still allowing a variety of land uses managed in a compatible manner.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We have evaluated the draft CPRMP as it applies to the areas being designated as critical habitat for two of the 15 vernal pool species. The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local cooperators in the development of the CPRMP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species are still accomplished through the BLM's land use planning processes and associated outreach and public participation. Both the longhorn fairy shrimp and the vernal pool fairy shrimp will be managed on BLM administered lands under a conservation standard. We would likely lose the benefits that accrue from the partnerships that have been developed while realizing no additional conservation benefit, should critical habitat be designated for the two listed crustacean species in the area covered by the CPRMP. For these reasons, we believe that the benefits of exclusion exceed the benefits of designating critical habitat on lands administered by BLM within the Carrizo Plain National Monument within unit 3 for longhorn fairy shrimp and unit 30 for vernal pool fairy shrimp.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of vernal pool fairy shrimp or longhorn fairy shrimp, as they are considered occupied habitat. Any actions which might adversely affect these two crustaceans would have a Federal nexus and must undergo a consultation with the Service under the requirements of section 7 of the Act. The jeopardy standard of section 7, and routine implementation of habitat conservation through the section 7 process as discussed in the economic analysis, provide assurance that the species will not go extinct. In addition, the two crustacean species are protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

As discussed above, the excluded lands will be managed with explicit objectives to enhance and recover listed species populations. The CPRMP includes numerous conservation measures that provide conservation benefits at least equal to those that would result from a critical habitat designation. Objectives of the CPRMP include (1) conserving and protecting listed plants and animals and their natural communities including the vernal pool fairy shrimp and longhorn fairy shrimp in the Carrizo Plain; (2) incorporating a range of habitat and population management and enhancement measures; (3) fully mitigating the impacts of covered species; (4) maintaining ecosystem processes; and, (5) contributing to the recovery of covered species.

Additionally, critical habitat is being designated for both species in other areas that will be accorded the protection from adverse modification by federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Vernal pool fairy shrimp are also protected on lands such as conservation banks covered by perpetual conservation easements and managed specifically for listed vernal pool species and their habitat *e.g.*, the following conservation banks: Arroyo Seco, Bryte Ranch, Clay Station, Laguna Creek, Sunrise Douglas, Aqua Fria, Viera Sandy Mush, Kennedy Table, Dolan Ranch, Dove Ridge, Wildlands '' Sheridan, Stillwater Plains, and Fitzgerald Ranch; National Wildlife Refuges, *e.g.*, Sacramento NWR and San Francisco NWR; and also on a variety of natural areas managed primarily for natural values, *e.g.*, Vina Plains Ecological Reserve, Jepson Plains, Grasslands Ecological Area, Stone Corral Ecological Preserve.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if she determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In general, we have considered in making the following exclusions that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, due to the fact that all but three of the areas in question are currently occupied by one or more of the listed crustacean species and there will be requirements for consultation under Section 7 of the Act, or for permits under section 10 (henceforth ''consultation''), for any take of these species, which should also serve to protect the habitat of the plant species in the same pools, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, ''regardless of whether those impacts are attributable co-extensively to other causes.'' As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs.

Conversely, the Ninth Circuit has recently ruled (''Gifford Pinchot'', 378 F.3d at 1071) that the Service's regulations defining ''adverse modification'' of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

In addition, we have received several credible comments on the economic analysis contending that it underestimates, perhaps significantly, the costs associated with this critical habitat designation. Both of these factors are a balancing consideration against the possibility that some of the costs shown in the economic analysis might be attributable to other factors, or are overly high, and so would not necessarily be avoided by excluding the area for which the costs are predicted from this critical habitat designation.

We recognize that we have excluded a significant portion of the proposed critical habitat. Congress expressly

contemplated that exclusions under this section might result in such situations when it enacted the exclusion authority. House Report 95–1625, stated on page 17: ''Factors of recognized or potential importance to human activities in an area will be considered by the Secretary in deciding whether or not all or part of that area should be included in the critical habitat * * * In some situations, no critical habitat would be specified. In such situations, the Act would still be in force prevent any taking or other prohibited act * * *.'' (emphasis supplied). We accordingly believe that these exclusions, and the basis upon which they are made, are fully within the parameters for the use of section 4(b)(2) set out by Congress.

The draft economic analysis published on June 30, 2005 (70 FR 37739) reanalyzed the economic effects to the 35 counties in which we had proposed designating critical habitat. The counties most impacted by the critical habitat designation to the new housing industry include Sacramento ($374 million), Butte ($145 million), Placer ($120 million), Solano ($87 million), Fresno ($43 million), Stanislaus ($33 million), Madera ($32 million), Monterey ($29 million), Shasta ($20 million), Tehama ($19 million) and Merced ($16 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision compared to our previous economic analysis (March 14, 2003; 68 FR 12336), in which economic effects could not be deconstructed below the county level.

In the base scenario where critical habitat reduces the amount of new housing, designation of vernal pool critical habitat results in nearly $1.0 billion in losses to consumers and producers between the present and 2025. In the event that on-site avoidance can be accomplished through density increases alone, welfare losses from vernal pool critical habitat would be $820 million over the same time period.

Sacramento County is expected to experience the largest economic impacts from critical habitat ''nearly $375 million in consumer and producer surplus losses. As shown in the map of impacts in Sacramento County, these impacts are concentrated in census tracts close to downtown Sacramento. Economic impacts generally decline in those census tracts which are progressively further from the city center. This pattern is generally repeated in other counties.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section).

Application of Section 4(b)(2)—Economic Exclusion to 23 Census Tracts

We have considered, but are excluding from critical habitat for three of the four listed vernal pool crustaceans and 11 listed vernal pool plants, essential habitat in the 23 census tracts and counties listed in Table 2. No critical habitat for longhorn fairy shrimp is contained within any of the 23 census tracts. Therefore, critical habitat for 14 of the 15 listed vernal species is affected by exclusion of critical habitat for economic reasons.

TABLE 2.—EXCLUDED CENSUS TRACTS, ASSOCIATED SPECIES, AND COSTS

Census tract	Species	County	Welfare impact in draft EA ($)	Adjustments after public comment and review	Total adjusted cost
06067008701	Vernal pool tadpole shrimp, Vernal pool fairy shrimp, *Orcuttia viscida, Orcuttia tenuis*.	Sacramento	304,224,384	−70,565,264	233,659,120
06007000900	Vernal pool tadpole shrimp, Vernal pool fairy shrimp, *Limnanthes floccosa* ssp. *californica*.	Butte	88,974,848	0	88,974,848
06061021301	Vernal pool fairy shrimp	Placer	74,583,712	0	74,583,712
06061021303	Vernal pool fairy shrimp	Placer	37,184,144	0	37,184,144
06095252309	*Lasthenia conjugens*, Vernal pool tadpole shrimp, Vernal pool fairy shrimp.	Solano	28,771,992	0	28,771,992
06095253500	Vernal pool tadpole shrimp, Vernal pool fairy shrimp, Conservancy fairy shrimp, *Tuctoria mucronata, Lasthenia conjugens, Neostapfia colusana*.	Solano	27,448,252	0	27,448,252
06053014103	*Lasthenia conjugens*	Monterey	26,854,790	0	26,854,790
06067009315	*Orcuttia viscida, Orcuttia tenuis*, Vernal pool tadpole shrimp, Vernal pool fairy shrimp.	Sacramento	24,236,570	0	24,236,570
06019005515	Vernal pool fairy shrimp, *Orcuttia inaequalis, Castilleja campestris* ssp. *succulenta*.	Fresno	22,912,350	0	22,912,350
06067009200	Vernal pool tadpole shrimp, Vernal pool fairy shrimp, *Orcuttia viscida, Orcuttia tenuis*.	Sacramento	21,195,492	0	21,195,492
06099000102	Vernal pool fairy shrimp, *Castilleja campestris* ssp. *succulenta, Chamaesyce hooveri, Tuctoria greenei, Neostapfia colusana*.	Stanislaus	16,931,104	0	16,931,104
06007000101	Vernal pool fairy shrimp	Butte	16,364,906	0	16,364,906

TABLE 2.—EXCLUDED CENSUS TRACTS, ASSOCIATED SPECIES, AND COSTS—Continued

Census tract	Species	County	Welfare impact in draft EA ($)	Adjustments after public comment and review	Total adjusted cost
06067008600	Vernal pool tadpole shrimp, Vernal pool fairy shrimp *Orcuttia tenuis*.	Sacramento	16,254,806	0	16,254,806
06019005511	*Orcuttia inaequalis, Castilleja campestris* ssp. *succulenta,* Vernal pool fairy shrimp.	Fresno	13,001,144	0	13,001,144
06039000105	Vernal pool tadpole shrimp, Vernal pool fairy shrimp, *Tuctoria greenei, Orcuttia pilosa, Castilleja campestris* ssp. *succulenta Orcuttia inaequalis*.	Madera	12,117,652	0	12,117,652
06007001400	Conservancy fairy shrimp, Vernal pool tadpole shrimp, Vernal pool fairy shrimp, *Limnanthes floccosa* ssp. *californica, Tuctoria greenei, Orcuttia pilosa, Chamaesyce hooveri, Orcuttia tenuis*.	Butte	11,405,310	+2,436,015	13,841,325
06089010802	*Orcuttia tenuis*	Shasta	10,167,456	0	10,167,456
06099000101	Vernal pool fairy shrimp, *Neostapfia colusana*.	Stanislaus	9,925,463	0	9,925,463
06007002200	Vernal pool tadpole shrimp, *Limnanthes floccosa* ssp. *californica, Tuctoria greenei, Orcuttia pilosa, Chamaesyce hooveri*.	Butte	8,825,428	0	8,825,428
06095252502	*Lasthenia conjugens*	Solano	7,993,725	0	7,993,725
06047001901	.....	Merced	5,759,870	+10,000,000	15,759,870
06103000900	.....	Tehama	5,359,834	+6,093,965	11,453,799
06061020902	.....	Placer	2,462,844	***	74,583,712
Total	.....	.....	779,373,528		740,920,792

*** Placer Vineyards straddles two census tracts; impacts for tracts 06061020902 and 06061021301 were aggregated in the final analysis. See ''Summary of Comments and Recommendations Section.''

The Notice of Availability of the revised draft economic analysis (70 FR 37739) solicited public comment on the potential exclusion of the 20 highest cost areas. As we finalized the economic analysis, we identified high costs associated with the critical habitat designation to public projects in Tehama and Merced County. These public projects were the development of the UC Merced campus and the widening of Highway 99 in Tehama County. The final economic analysis indicates additional costs in census tracts in which these projects were located were $10,000,000 for UC Merced and $6,093,965 for Highway 99. On the basis of the significance of these costs, we determined these two census tracts also should be excluded. In addition, information received during the comment period indicated that the Placer Vineyards Specific Plan was located in two census tracts in Placer County, one of which was identified in the Draft Economic Analysis as being in one of the 20 highest cost areas, and one of which was not. As a result, impacts for the two affected census tracts were aggregated in the final analysis, which significantly increased the costs in the second census tract (See ''Summary of Comments and Recommendations Section''). For this reason, it too, is being excluded from the final critical habitat designation.

(1) Benefits of Inclusion of the 23 Excluded Census Tracts

The areas excluded are currently occupied by one or more of the three listed vernal pool crustaceans or the 11 listed vernal pool plants, as shown in Table 2. If these areas were designated as critical habitat, any actions with a Federal nexus which may adversely affect the critical habitat would require a consultation with us, as explained above in the section of this notice entitled ''Effects of Critical Habitat Designation''. Primary constituent elements in these areas would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. However, inasmuch as all but three of these units are currently occupied by one or more of the crustacean species, consultation for activities which may adversely affect the species, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act. For the three units occupied only by one or more of the plant species, there is still a requirement for a jeopardy analysis to ensure Federal actions are note likely to jeopardize the continued existence of the species.

We determined, however, in the economic analysis that designation of critical habitat could result in approximately $800,000,000 in costs in these 23 census tracts, the majority of which are directly related to residential development impacts. We believe that

the potential decrease in residential housing development that could be caused by this designation of critical habitat for the 15 vernal pool species would minimize impacts to and potentially provide some protection to the species, the vernal pool complexes where they reside, and the physical and biological features essential to their conservation (*i.e.*, their primary constituent elements). Thus, this decrease in residential housing development would directly translate into a potential benefit to the species that would result from this designation.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this education benefit has largely been achieved, or is being achieved in equal measure by other means. As explained above, this is the second iteration of the critical habitat process for these lands, which has included both public comment periods and litigation, all with accompanying publicity. In addition, we published the *Draft Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon* in October, 2004, and are working to finalize this plan by the court-ordered deadline of December 15, 2005. The draft recovery plan identifies areas that are important for the conservation of each of the 15 listed vernal pool species. Upon publication of the draft recovery plan, we held numerous workshops throughout the state to educate the public about recovery strategies for the species covered by the plan, including all 15 of the listed vernal pool species considered in this final rule. In addition to identifying specific areas that are important for the conservation of the 15 listed vernal pool species, the recovery plan details the actions necessary to achieve self-sustaining populations of each listed species in the wild so they will no longer require protection under the Act. The recovery plan provides information geared to the general public, landowners, and agencies about areas that are important for the conservation of each listed vernal pool species and what actions they can implement to further the conservation of vernal pool species within their own jurisdiction and capabilities, and contains provisions for ongoing public outreach and education as part of the recovery process.

In summary, we believe that inclusion of the 23 census tracts as critical habitat would provide some additional Federal regulatory benefits for the species. However, that benefit is limited to some degree by the fact that the proposed critical habitat is occupied by the species, and therefore there must, in any case, be consultation with the Service over any Federal action which may affect one or more of the 14 listed vernal pool species within those 23 census tracts. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple opportunities for public notice and comments which accompanied the development of this regulation, publicity over the prior litigation, and public outreach associated with the development of the draft and, ultimately, the implementation of the final recovery plan for vernal pool species.

(2) Benefits of Exclusion of the 23 Excluded Census Tracts

The economic analysis conducted for this proposal estimates that the costs associated with designating these 23 census tracts would be approximately $740,920,792. These costs would be associated with each of the 14 listed vernal pool species in amounts shown in Table 2 above. By excluding these census tracts, some or all of these costs will be avoided. Two important public-sector projects, UC Merced and the widening of Highway 99, will avoid the costs associated with critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion of the 23 Census Tracts

We believe that the benefits from excluding these lands from the designation of critical habitat—avoiding the potential economic and human costs, both in dollars and jobs, predicted in the economic analysis—exceed the educational and regulatory benefits which could result from including those lands in this designation of critical habitat.

We have evaluated and considered the potential economic costs on the residential development industry relative to the potential benefit for the 15 vernal pool species and their primary constituent elements derived from the designation of critical habitat. We believe that the potential economic impact of up to approximately $800 million on the development industry significantly outweighs the potential conservation and protective benefits for the species and their primary constituent elements derived from the residential development not being constructed as a result of this designation.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-*Gifford Pinchot* environment—which requires only that the there be no adverse modification resulting from actions with a Federal nexus. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

We believe that the ongoing recovery planning process provides at least equivalent value to the public, State and local governments, scientific organizations, and Federal agencies in providing information about habitat that is essential to the conservation of the three vernal pool crustacean species and 11 vernal pool plants, and in facilitating conservation efforts through heightened public awareness of the plight of the listed species. The draft recovery plan contains explicit objectives for ongoing public education, outreach, and collaboration at local, state, and federal levels, and between the private and public sectors, in recovering the four listed crustaceans.

(4) Exclusion Will Not Result in Extinction of the Species

Conservancy Fairy Shrimp, Vernal Pool Fairy Shrimp, Vernal Pool Tadpole Shrimp

We believe that exclusion of these lands will not result in the extinction of Conservancy fairy shrimp, vernal pool fairy shrimp or vernal pool tadpole shrimp, as they are considered occupied habitat. Actions which might adversely affect these four crustaceans are expected to have a Federal nexus, and would thus undergo a section 7 consultation with the Service. The jeopardy standard of section 7, and routine implementation of habitat preservation through the section 7 process, as discussed in the economic analysis, provide assurance that the species will not go extinct. In addition, the three crustaceans are protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for all three species in other areas that will

be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Additionally, all species occur on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this provides protection from extinction while recovery measures are being implemented. For example, Conservancy fairy shrimp is protected on lands such as conservation banks and other natural areas protected by perpetual conservation easements and managed specifically for the species *e.g.*, Viera-Sandy Mush, Vina Plains. The species also occurs on lands managed to protect and enhance wetland values under the Wetlands Reserve Program of the Natural Resource Conservation Service. Vernal pool fairy shrimp are protected on lands such as conservation banks protected by perpetual conservation easements and managed specifically for the species and its habitat, *e.g.*, Arroyo Seco, Bryte Ranch, Clay Station, Laguna Creek, Sunrise Douglas, Aqua Fria, Viera Sandy Mush, Kennedy Table, Dolan Ranch, Dove Ridge, Wildlands—Sheridan, Stillwater Plains, Campbell Ranch and Fitzgerald Ranch; National Wildlife Refuges, *e.g.*, Sacramento NWR Complex, San Francisco NWR, and San Luis NWR Complex; and also on a variety of natural areas managed to maintain and enhance natural values, *e.g.*, Vina Plains Ecological Reserve, Jepson Plains, Grasslands Ecological Area, Stone Corral Ecological Preserve, Howard Ranch. Vernal pool tadpole shrimp occur on lands with perpetual conservation easements managed explicitly for the species on conservation banks, *e.g.*, Stillwater Plains, Campbell Ranch, Arroyo Seco, Bryte Ranch, Clay Station, Laguna Creek, Sunrise Douglas, Viera Sanda Mush, Kennedy Table, Dolan Ranch, Dove Ridge, Wildlands—Sheridan, and Fitzgerald Ranch; National Wildlife Refuges, *e.g.*, Sacramento NWR Complex, San Francisco NWR, and San Luis NWR Complex; and a variety of natural areas managed to maintain and enhance natural values, *e.g.*, Nature Conservancy easements, Vina Plains Ecological Reserve, Jepson Plains, Grasslands Ecological Area, Dale's Lake Ecological Reserve, Stone Corral Ecological Preserve, Big Table Mountain Ecological Preserve.

We believe that exclusion of the 23 census tracts will not result in extinction of any of the 11 listed vernal pool plants, as they are considered occupied habitat. Federal Actions which might adversely affect these 11 listed plants would thus undergo a consultation with the Service under the requirements of section 7 of the Act. The jeopardy standard of section 7, and routine implementation of habitat preservation as part of the section 7 process, as discussed in the draft economic analysis, provide insurance that the species will not go extinct. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for all 11 species in other areas that will be accorded the protection from adverse modification by federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Additionally, all species occur on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this factor acting in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acting in concert with protections afforded each species by the remaining critical habitat designation for each species, lead us to find that exclusion of these 23 census tracts will not result in extinction of any of these 11 listed vernal pool plants. *Limnanthes floccosa* ssp. *californica* occurs on land protected by conservation easements on several small reserves in Butte County and at the Dove Ridge Conservation Bank. *Lasthenia conjugens* exists on protected lands on San Francisco Bay National Wildlife Refuge, Fort Ord, and Travis Air Force Base, and the State Route 4 Preserve. *Chamaesyce hooveri* occurs on the Sacramento NWR Complex, the Vina Plains Ecological Preserve, Stone Corral Ecological Reserve, and the Bert King Ranch. *Castilleja campestris* spp. *succulenta* occurs on protected lands within the Big Table Mountain Ecological Reserve and the Big Table Mountain Preserve, the Kennedy Table Conservation Bank, and the Flying M Ranch. *Neostapfia colusana* occurs on protected lands within the Jepson Prairie Preserve and the Flying M Ranch. *Tuctoria greenei* occurs on protected lands within the Vina Plains Preserve and on the Sacramento NWR Complex. *Orcuttia pilosa* occurs on protected lands within the Vina Plains Preserve and the Sacramento NWR Complex. *Orcuttia viscida* occurs on protected lands within the Phoenix Field Ecological Reserve, the Arroyo Seco Conservation Bank, and the Sunrise Douglas preserve. *Orcuttia inaequalis* occurs on protected lands on the Flying M Ranch and on an ecological reserve managed by the California Department of Fish and Game. *Orcuttia tenuis* occurs on protected lands at the Boggs Lake Preserve, the Vina Plains Preserve, the Dale's Lake Ecological Reserve, the Stillwater Plains Conservation Banks, the Arroyo Seco Conservation Bank, and the Sunrise Douglas preserve. *Tuctoria mucronata* occurs on protected land on the Jepson Prairie Preserve.

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. The 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. The 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 bull trout. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

Small Business Impacts

Small businesses represent a substantial share of firms in the new home construction sector. Critical habitat is not expected to result in significant small business impacts since revenue losses are less than one percent of total small business revenues in affected areas.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on the 15 vernal pool species and their habitats. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final CHUs, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(4) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(5) Activities funded by the EPA, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect the 15 vernal pool species. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result

in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, Federal Housing Administration funding for road improvements, hydropower licenses issued by FERC, and regulation of timber harvest, grazing, mining, and recreation by the USFS and BLM. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.) (SBREFA)

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 designated critical habitat for the 15 vernal pool species 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, 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 Family 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 who receive Federal funding, assistance, permits or 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 on to 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, 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 Department of Interior 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 and Oregon. The designation of critical habitat in areas currently occupied by the 15 vernal pool species 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 PCEs of the habitat necessary to the survival 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 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 PCEs within the designated areas to assist the public in understanding the habitat needs of the 15 vernal pool species.

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

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA 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 the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have excluded Tribal trust lands of the Mechoopda Indian Tribe of Chico Rancheria, California, from this final critical habitat designation pursuant to section 4(b)(2) of the Act. Please refer to Relationship of Critical Habitat to Tribal Lands for further discussion of our exclusion of these Tribal trust lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Author(s)

Primary authors of this package are the staff of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h) by revising the entries for ''Fairy shrimp, Conservancy'', ''Fairy shrimp, longhorn'', ''Fairy shrimp, vernal pool'', and ''Tadpole shrimp, vernal pool'' under CRUSTACEANS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
CRUSTACEANS							
*	*	*	*	*	*	*	
Fairy shrimp, Conservancy.	*Branchinecta conservatio.*	U.S.A. (CA)	Entire	E	552	17.97	NA
Fairy shrimp, longhorn.	*Branchinecta longiantenna.*	U.S.A. (CA)	Entire	E	552	17.97	NA
*	*	*	*	*	*	*	
Fairy shrimp, vernal pool.	*Branchinecta lynchi*	U.S.A. (CA, OR)	Entire	E	552	17.97	NA
*	*	*	*	*	*	*	
Tadpole shrim, vernal pool.	*Lepidurus packardi*	U.S.A. (CA)	Entire	E	552	17.97	NA

■ 3. Amend § 17.12(h) by revising the entries for *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Lasthenia conjugens* (Contra Costa goldfields), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass) under FLOWERING PLANTS in the List of Endangered and Threatened 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							
*	*	*	*	*	*		*
Castilleja campestris ssp. *succulenta.*	Fleshy owl's-clover	U.S.A. (CA)	Scrophulariaceae	T	611	17.97	NA
*	*	*	*	*	*		*
Chamaesyce hooveri	Hoover's spurge	U.S.A. (CA)	Euphorbiaceae	T	611	17.97	NA
*	*	*	*	*	*		*
Lasthenia conjugens	Contra Costa goldfields.	U.S.A. (CA)	Asteraceae	E	619	17.97	NA
*	*	*	*	*	*		*
Limnanthes floccosa ssp. *californica.*	Butte County meadowfoam.	U.S.A. (CA)	Limnanthaceae	E	471	17.97	NA
*	*	*	*	*	*		*
Neostapfia colusana	Colusa grass	U.S.A. (CA)	Poaceae	T	611	17.97	NA
*	*	*	*	*	*		*
Orcuttia inaequalis ...	San Joaquin Valley Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.97	NA
Orcuttia pilosa	Hairy Orcutt grass ..	U.S.A. (CA)	Poaceae	T	611	17.97	NA
Orcuttia tenuis	Slender Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.97	NA
Orcuttia viscida	Sacramento Orcutt grass.	U.S.A. (CA)	Poaceae	T	611	17.97	NA
*	*	*	*	*	*		*
Tuctoria greenei	Greene's tuctoria	U.S.A. (CA)	Poaceae	T	611	17.97	NA
Tuctoria mucronata ..	Solano grass	U.S.A. (CA)	Poaceae	T	44	17.97	NA
*	*	*	*	*	*		*

■ 4. In § 17.95(h), remove the critical habitat entries for Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardi*).

■ 5. In § 17.96(a), remove the critical habitat entries for Family Asteraceae: *Lasthenia conjugens* (Contra Costa goldfields), Family Euphorbiaceae: *Chamaesyce hooveri* (Hoover's spurge), Family Limnanthaceae: *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), Family Poaceae: *Neostapfia colusana* (Colusa grass), Family Poaceae: *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), Family Poaceae: *Orcuttia pilosa* (hairy Orcutt grass), Family Poaceae: *Orcuttia tenuis* (slender Orcutt grass), Family Poaceae: *Orcuttia viscida* (Sacramento Orcutt grass), Family Poaceae: *Tuctoria greenei* (Greene's tuctoria), Family Poaceae: *Tuctoria mucronata* (Solano grass), and Family Scrophulariaceae: *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover).

■ 6. Add a new § 17.97 to read as follows:

§ 17.97 Critical habitat; 15 vernal pool species in California and southern Oregon.

(a) The paragraphs in this section provide maps and legal descriptions of general critical habitat areas designated for the following 15 species: Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Lasthenia conjugens* (Contra Costa goldfields), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Neostapfia colusana* (Colusa grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Tuctoria greenei* (Greene's tuctoria), and *Tuctoria mucronata* (Solano grass).

(b) Critical habitat units are depicted for Jackson County, Oregon, and the following counties in California: Alameda, Amador, Butte, Colusa, Contra Costa, Fresno, Glenn, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Placer, Plumas, Sacramento, San Benito, San Joaquin, San Luis Obispo, Santa Barbara, Shasta, Siskiyou, Solano, Stanislaus, Tehama, Tulare, Tuolumne, Ventura, Yolo, and Yuba.

(c) Within the areas designated as critical habitat for the 15 vernal pool species, the primary constituent elements are as follows:

(1) The primary constituent elements of critical habitat for Conservancy fairy shrimp (*Branchinecta conservatio*) are the habitat components that provide:

(i) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in paragraph (c)(1)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools;

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 19 days, in all but the driest years; thereby providing adequate water for

incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands;

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding; and

(iv) Structure within the pools described in paragraph (c)(1)(ii) of this section, consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

(2) The primary constituent elements of critical habitat for longhorn fairy shrimp (*Branchinecta longiantenna*) are the habitat components that provide:

(i) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in paragraph (c)(2)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools;

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 23 days, in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands;

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding; and

(iv) Structure within the pools described in paragraph (c)(2)(ii) of this section, consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

(3) The primary constituent elements of critical habitat for vernal pool fairy shrimp (*Branchinecta lynchi*) are the habitat components that provide:

(i) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in paragraph (c)(3)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools;

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 18 days, in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands;

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding; and

(iv) Structure within the pools described in paragraph (c)(3)(ii) of this section, consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

(4) The primary constituent elements of critical habitat for vernal pool tadpole shrimp (*Lepidurus packardi*) are the habitat components that provide:

(i) Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in paragraph (c)(4)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools;

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water for a minimum of 41 days, in all but the driest years; thereby providing adequate water for incubation, maturation, and reproduction. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands;

(iii) Sources of food, expected to be detritus occurring in the pools, contributed by overland flow from the pools' watershed, or the results of biological processes within the pools themselves, such as single-celled bacteria, algae, and dead organic matter, to provide for feeding; and

(iv) Structure within the pools described in paragraph (c)(4)(ii) of this section, consisting of organic and inorganic materials, such as living and dead plants from plant species adapted to seasonally inundated environments, rocks, and other inorganic debris that may be washed, blown, or otherwise transported into the pools, that provide shelter.

(5) The primary constituent elements of critical habitat for *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(5)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(6) The primary constituent elements of critical habitat for *Lasthenia conjugens* (Contra Costa goldfields) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described

in paragraph (c)(6)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools;

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands; and

(7) The primary constituent elements of critical habitat for *Chamaesyce hooveri* (Hoover's spurge) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(7)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(8) The primary constituent elements of critical habitat for *Castilleja campestris* ssp. *succulenta* (Fleshy owl's-clover) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(8)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(9) The primary constituent elements of critical habitat for *Neostapfia colusana* (Colusa grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(9)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(10) The primary constituent elements of critical habitat for *Tuctoria greenei* (Greene's tuctoria) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(10)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(11) The primary constituent elements of critical habitat for *Orcuttia pilosa* (hairy Orcutt grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(11)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(12) The primary constituent elements of critical habitat for *Orcuttia viscida* (Sacramento Orcutt grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(12)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and

nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(13) The primary constituent elements of critical habitat for *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(13)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(14) The primary constituent elements of critical habitat for *Orcuttia tenuis* (slender Orcutt grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(14)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(15) The primary constituent elements of critical habitat for *Tuctoria mucronata* (Solano grass) are the habitat components that provide:

(i) Topographic features characterized by isolated mound and intermound complex within a matrix of surrounding uplands that result in continuously, or intermittently, flowing surface water in the depressional features including swales connecting the pools described in paragraph (c)(15)(ii) of this section, providing for dispersal and promoting hydroperiods of adequate length in the pools; and

(ii) Depressional features including isolated vernal pools with underlying restrictive soil layers that become inundated during winter rains and that continuously hold water or whose soils are saturated for a period long enough to promote germination, flowering, and seed production of predominantly annual native wetland species and typically exclude both native and nonnative upland plant species in all but the driest years. As these features are inundated on a seasonal basis, they do not promote the development of obligate wetland vegetation habitats typical of permanently flooded emergent wetlands.

(d) Maps of the critical habitat for Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Lasthenia conjugens* (Contra Costa goldfields), *Chamaesyce hooveri* (Hoover's spurge), *Castilleja campestris* ssp. *succulenta* (fleshy (or succulent) owl's-clover), *Neostapfia colusana* (Colusa grass), *Tuctoria greenei* (Greene's tuctoria), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), and *Tuctoria mucronata* (Solano grass) follow. The legal descriptions of these critical habitat units are provided in paragraph (e) of this section.

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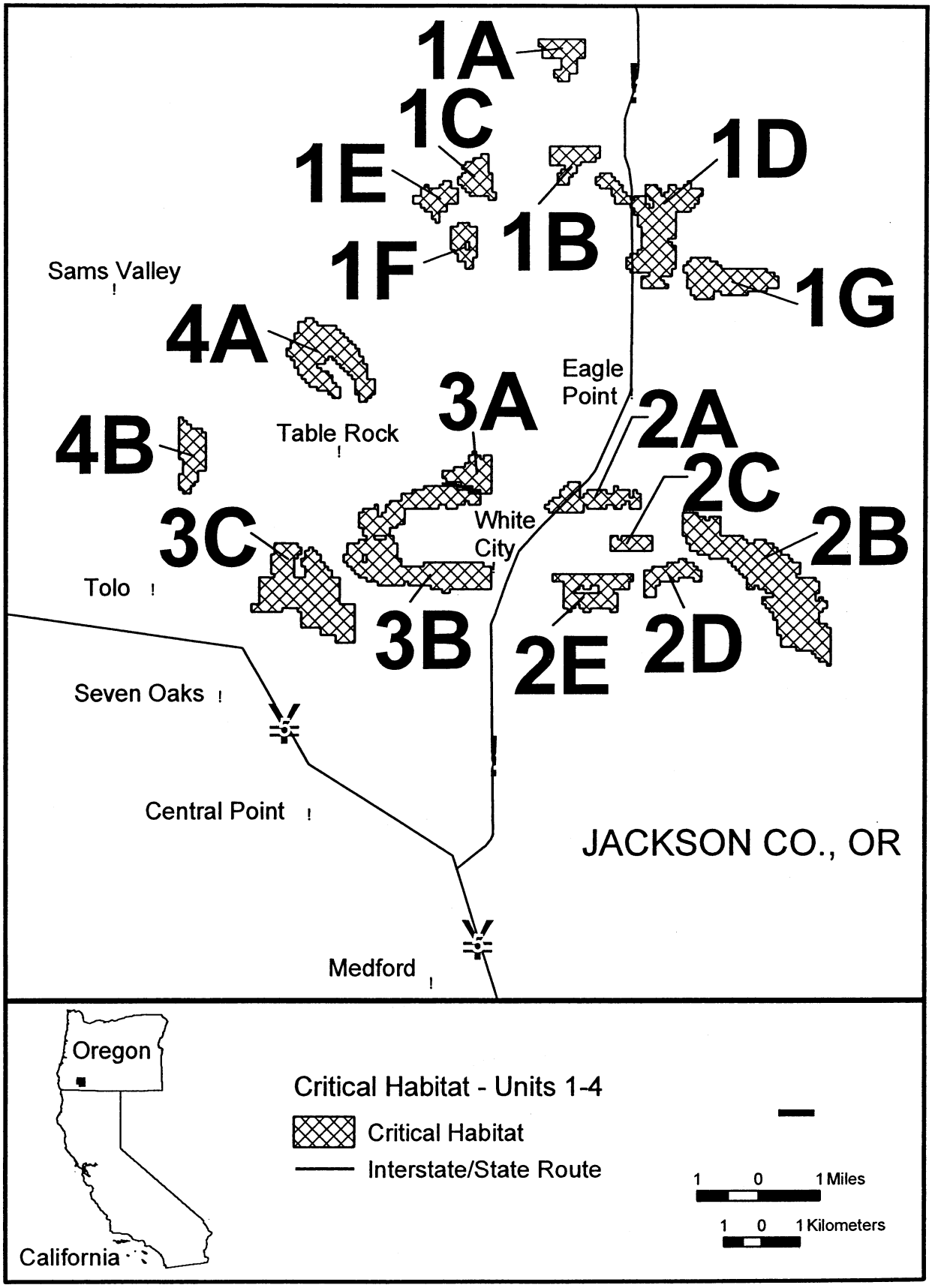
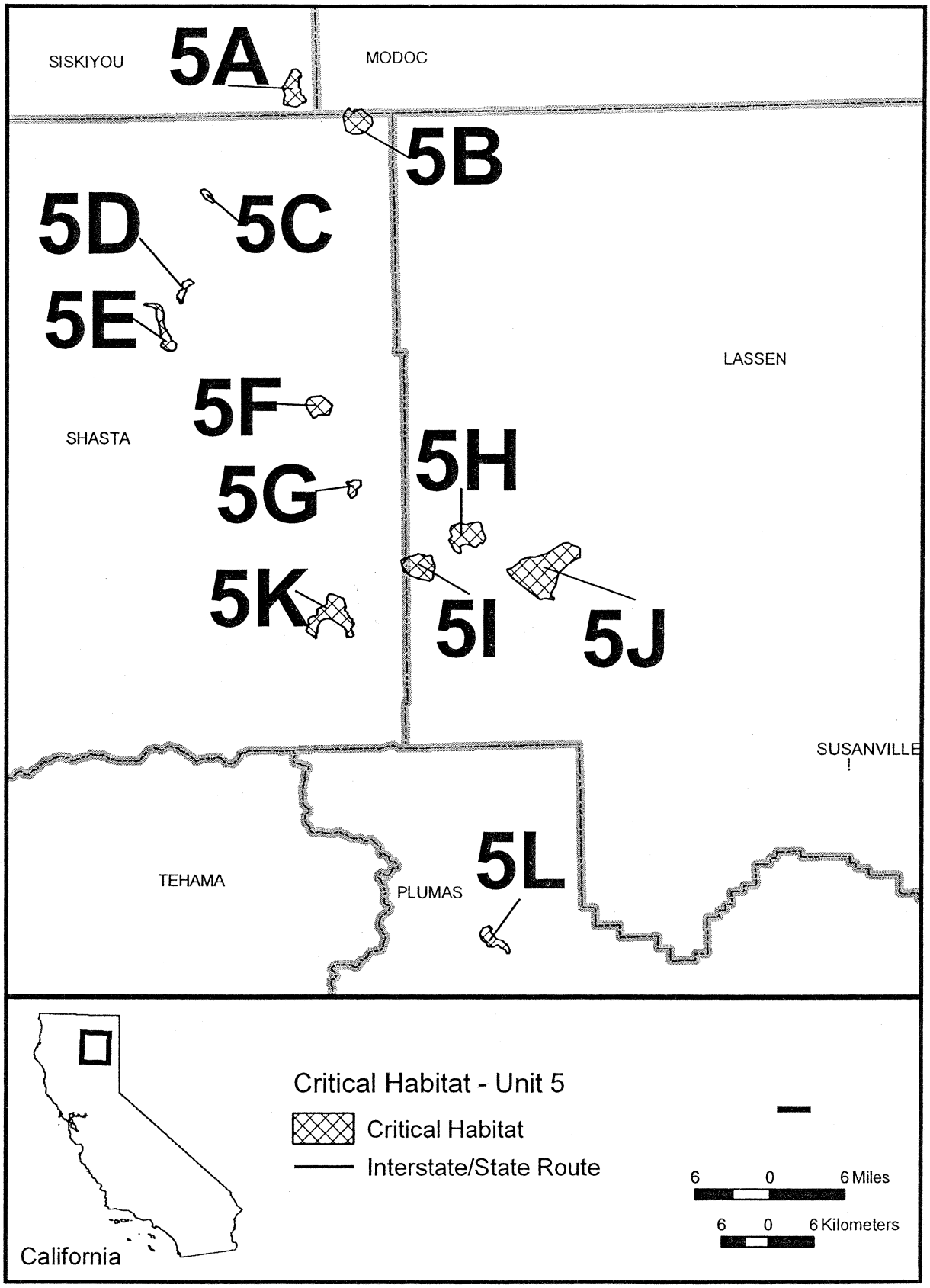
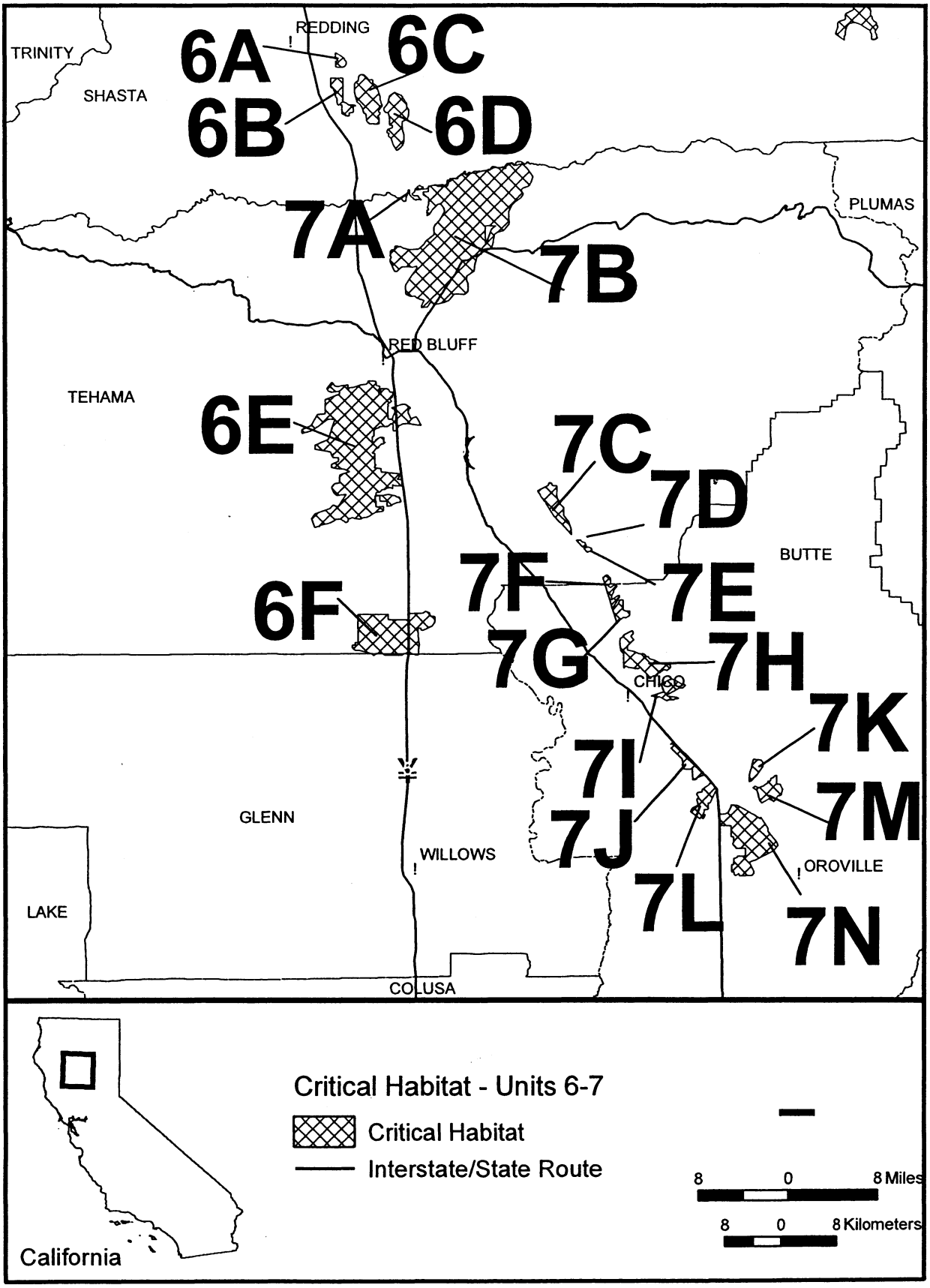
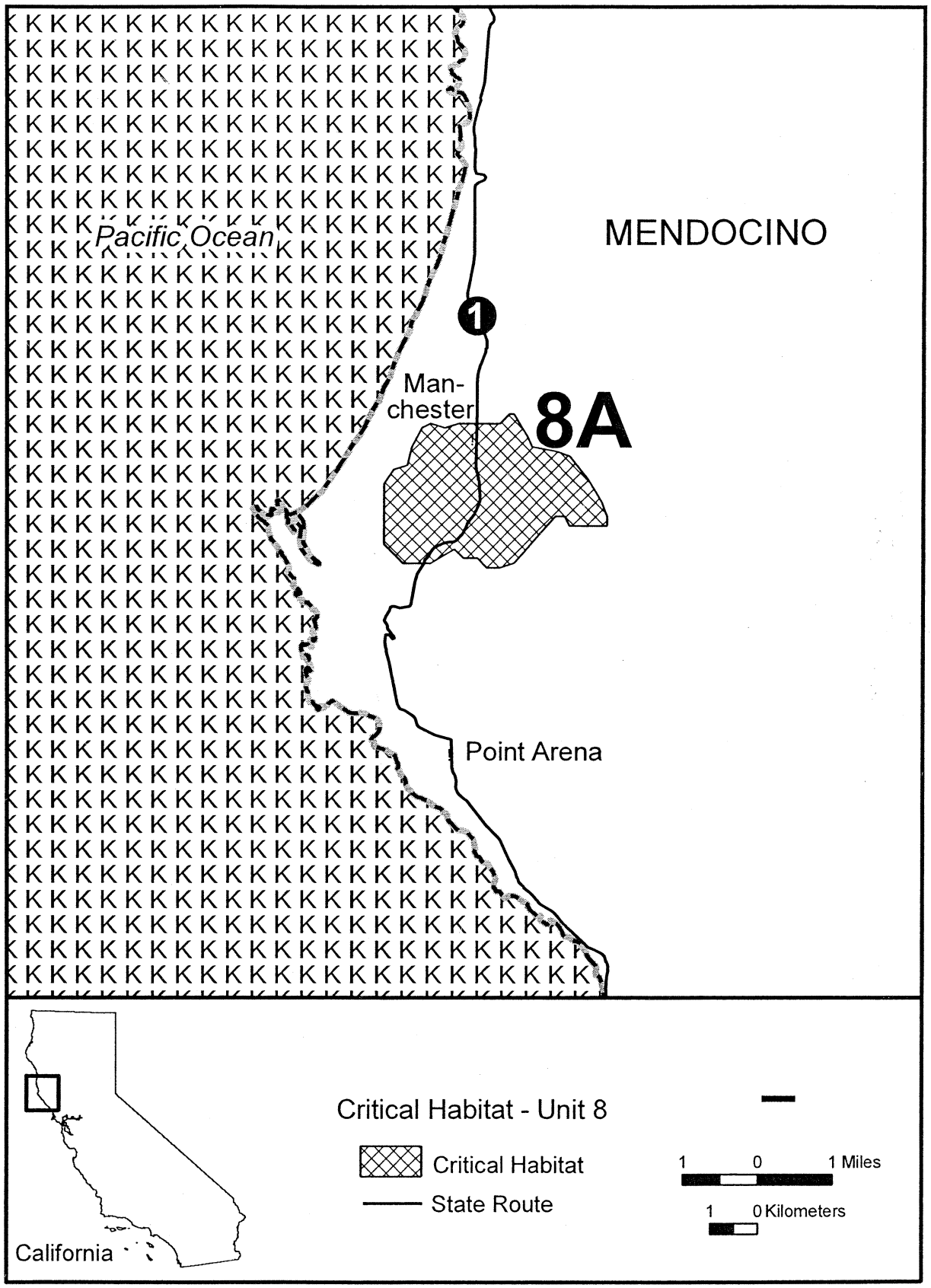
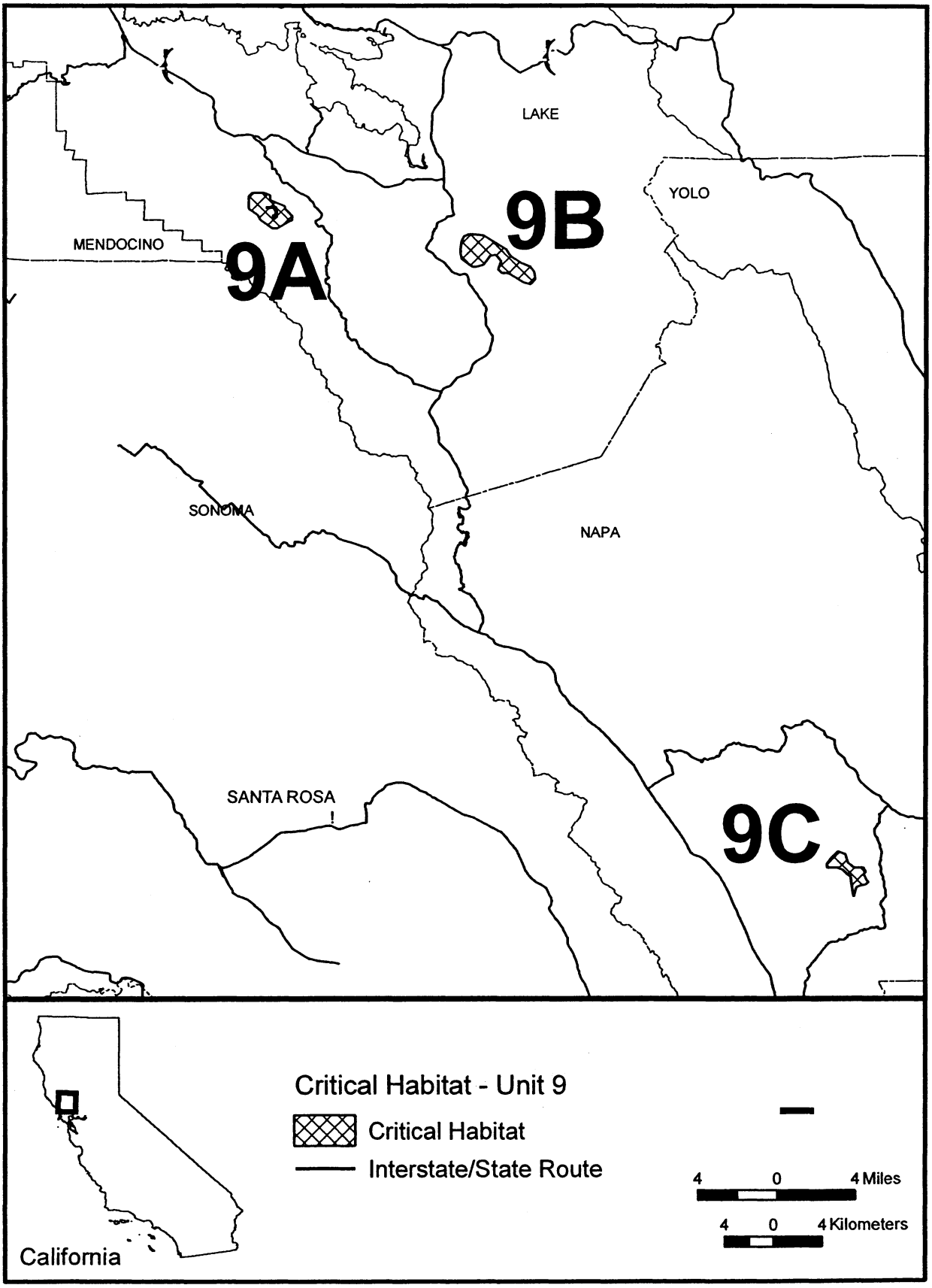
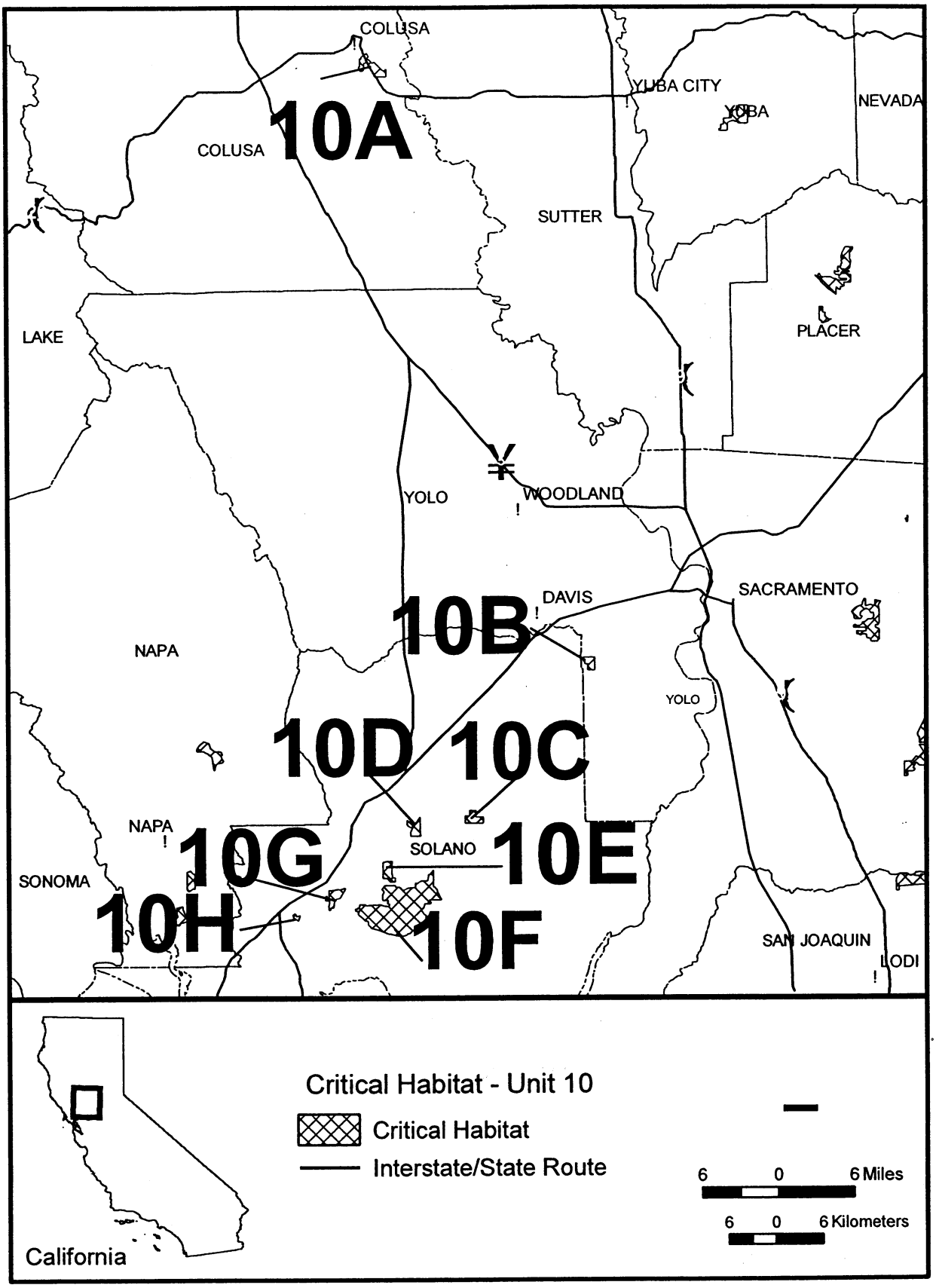

1A
1C
1E
1D
1B
1F
1G
Sams Valley
4A
Eagle Point
3A
2A
4B
Table Rock
2C
2B
3C
White City
Tolo
3B
2E
2D
Seven Oaks
Central Point
JACKSON CO., OR
Medford
Oregon
California
Critical Habitat - Units 1-4
Critical Habitat
Interstate/State Route
1 0 1 Miles
1 0 1 Kilometers

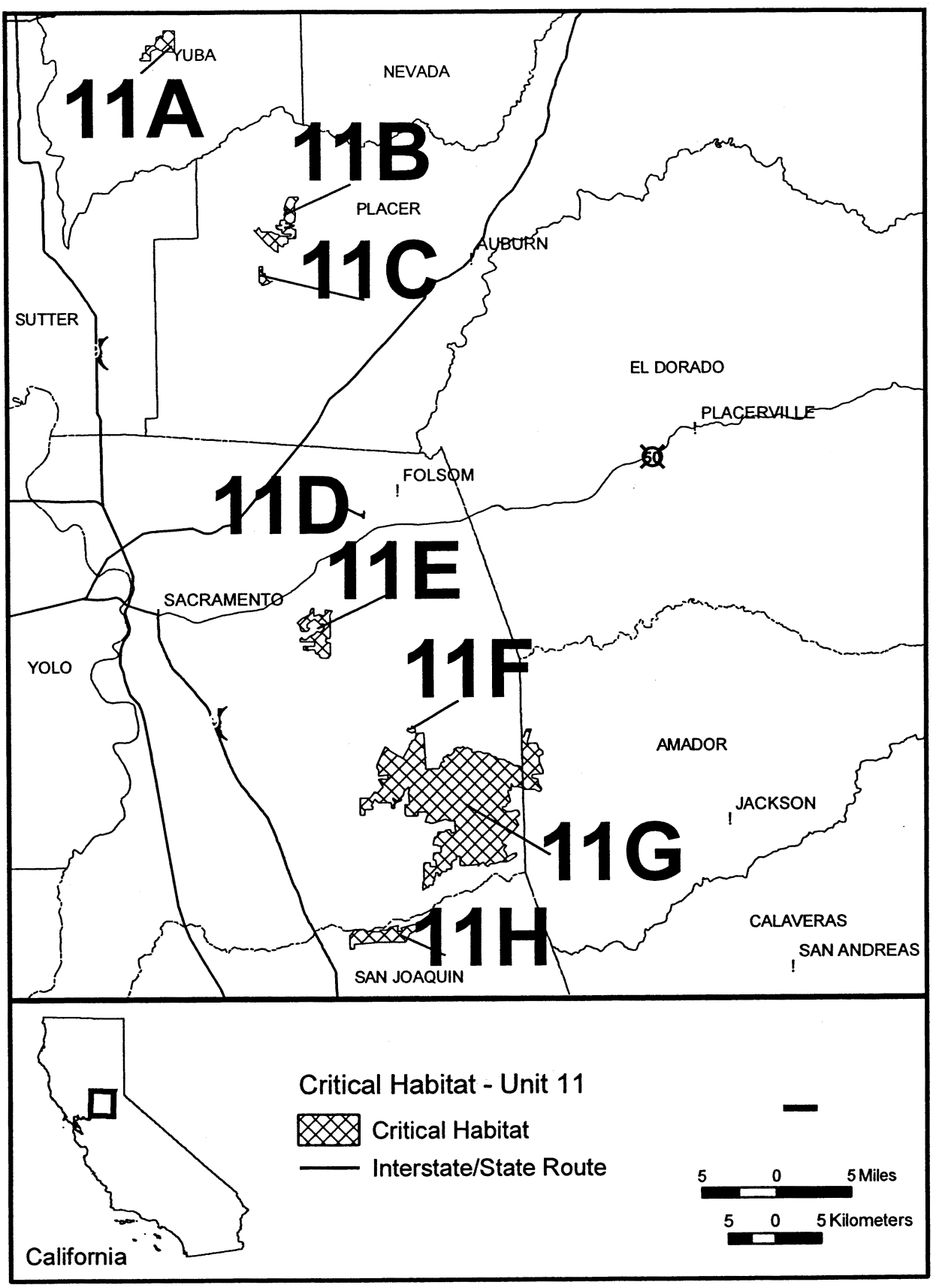

SISKIYOU
5A
MODOC
5B
5D
5C
5E
LASSEN
5F
SHASTA
5H
5G
5K
5I
5J
SUSANVILLE
TEHAMA
PLUMAS
5L
California
Critical Habitat - Unit 5
Critical Habitat
Interstate/State Route
6 0 6 Miles
6 0 6 Kilometers

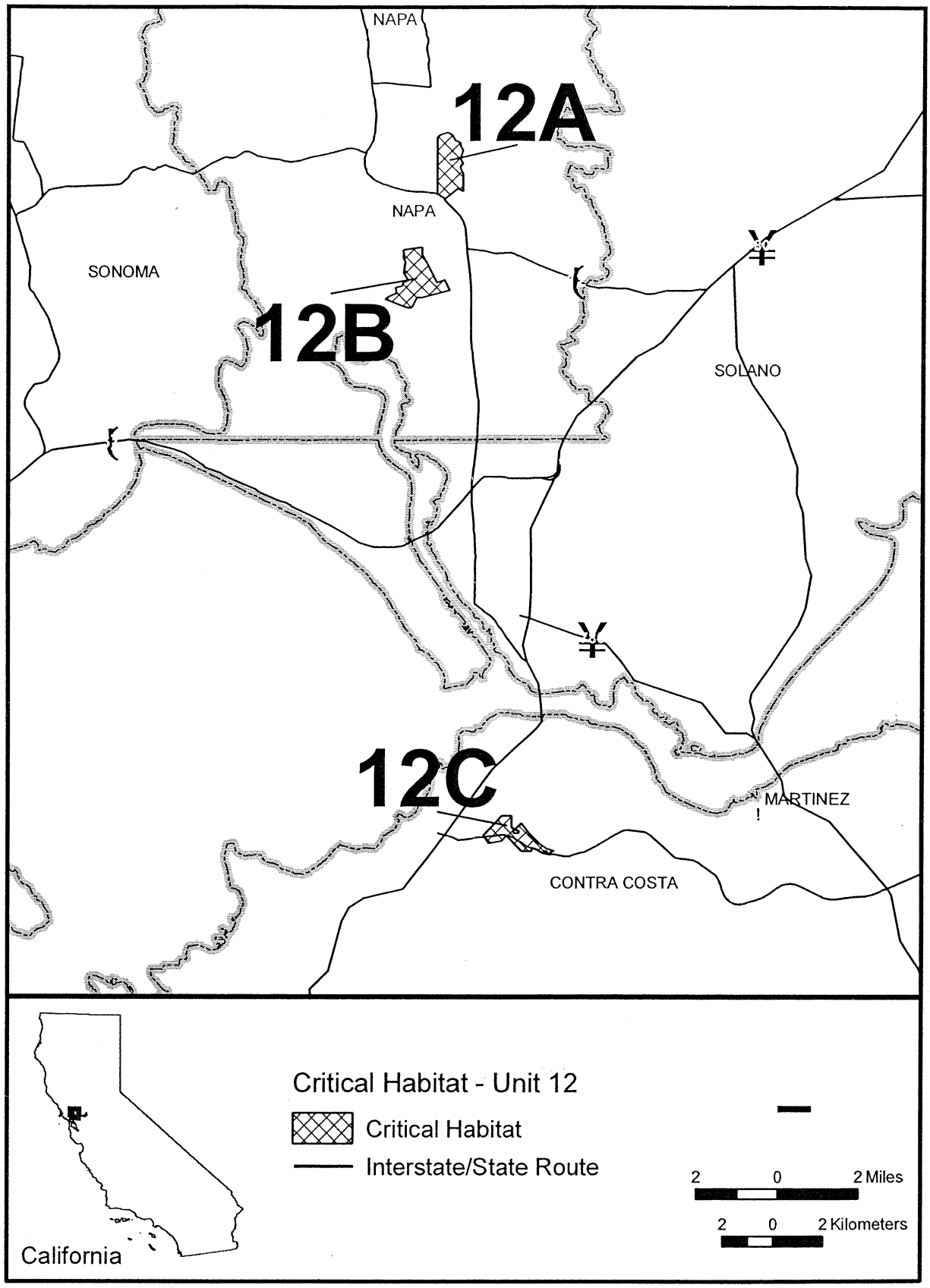

TRINITY
SHASTA
REDDING
6A
6C
6B
6D
7A
7B
PLUMAS
RED BLUFF
TEHAMA
6E
7C
7D
BUTTE
7F
7E
6F
7G
7H
CHICO
7K
7I
7M
7J
GLENN
WILLOWS
OROVILLE
7L
LAKE
7N
COLUSA
Critical Habitat - Units 6-7
Critical Habitat
Interstate/State Route
8 0 8 Miles
8 0 8 Kilometers
California

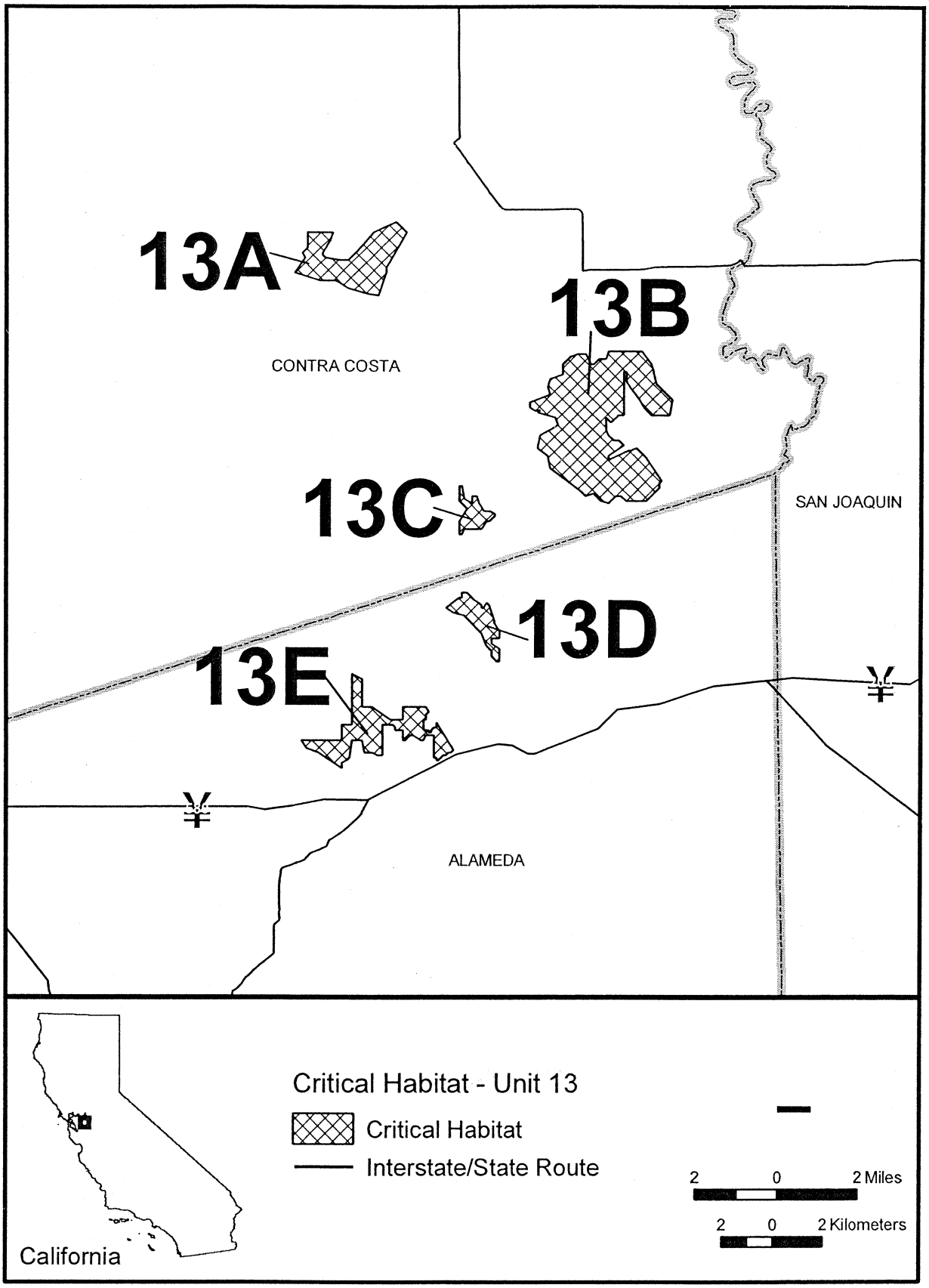

Pacific Ocean
MENDOCINO
1
Man-
chester
8A
Point Arena
California
Critical Habitat - Unit 8
Critical Habitat
State Route
1 0 1 Miles
1 0 Kilometers

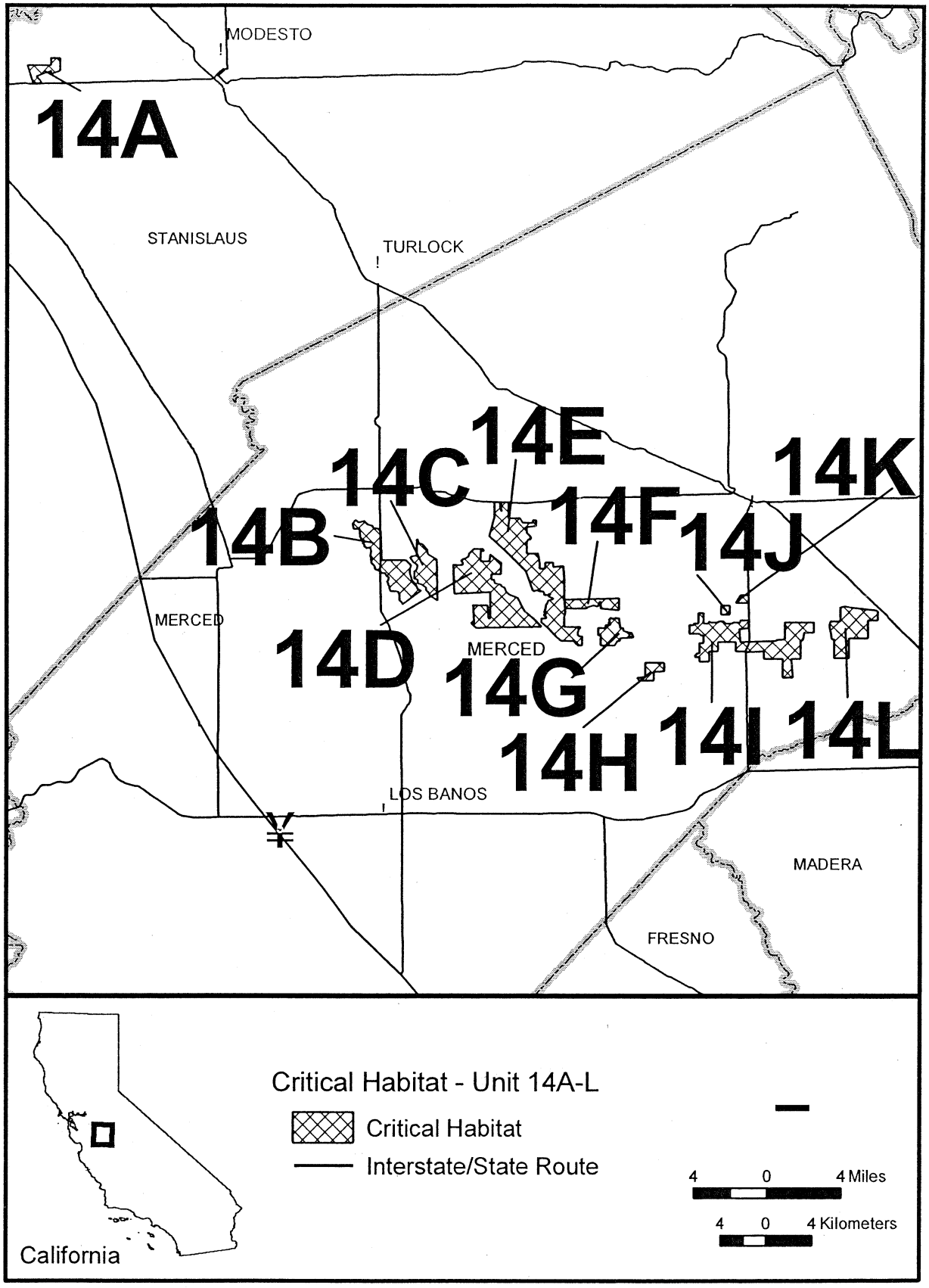

LAKE
YOLO
MENDOCINO
9A
9B
SONOMA
NAPA
SANTA ROSA
9C
California
Critical Habitat - Unit 9
Critical Habitat
Interstate/State Route
4 0 4 Miles
4 0 4 Kilometers

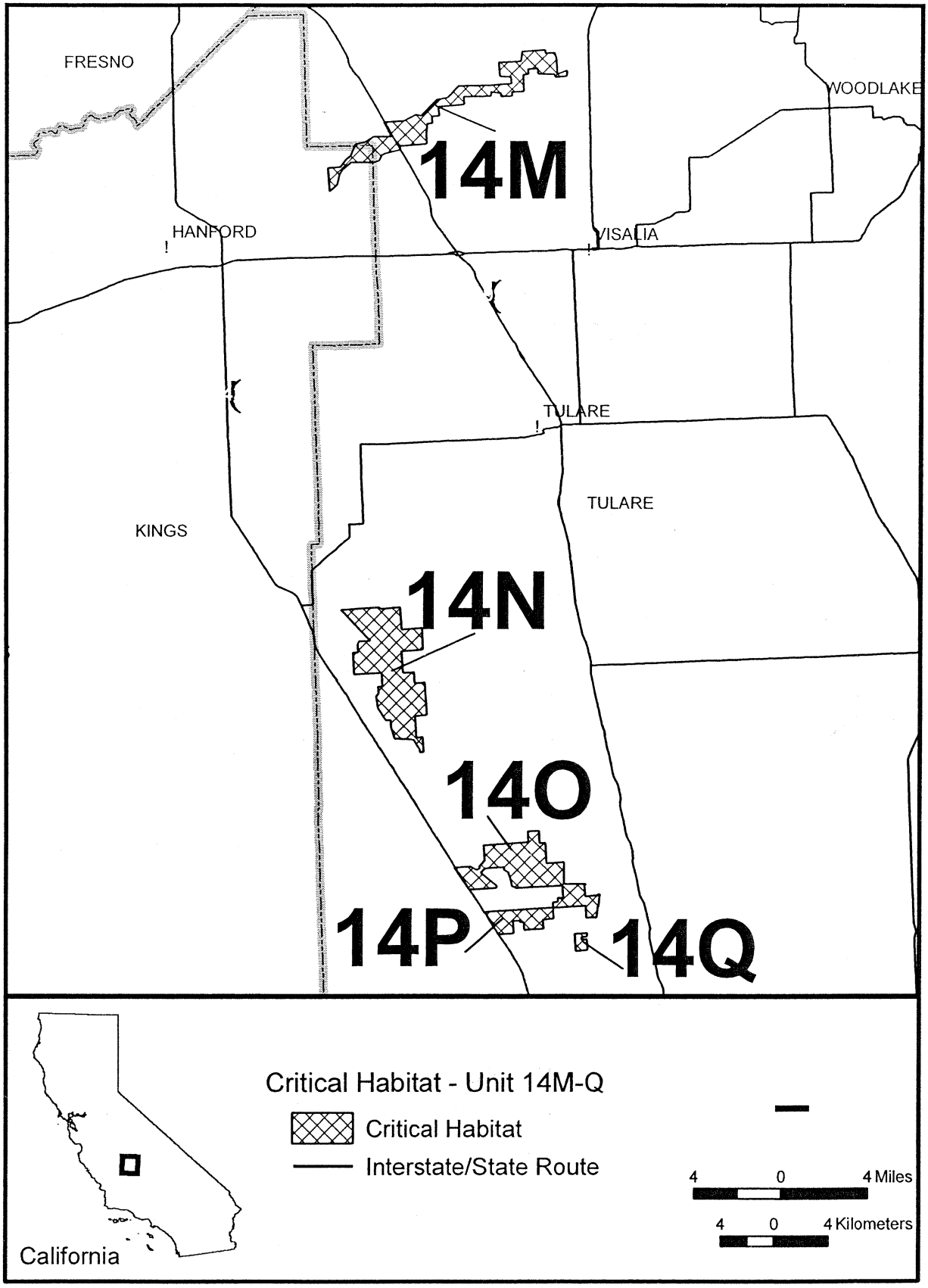

COLUSA
YUBA CITY
YUBA
NEVADA
COLUSA
10A
SUTTER
PLACER
LAKE
YOLO
WOODLAND
DAVIS
SACRAMENTO
10B
NAPA
YOLO
10D
10C
NAPA
10G
SOLANO
10E
SONOMA
10H
10F
SAN JOAQUIN
LODI
Critical Habitat - Unit 10
Critical Habitat
Interstate/State Route
6 0 6 Miles
6 0 6 Kilometers
California

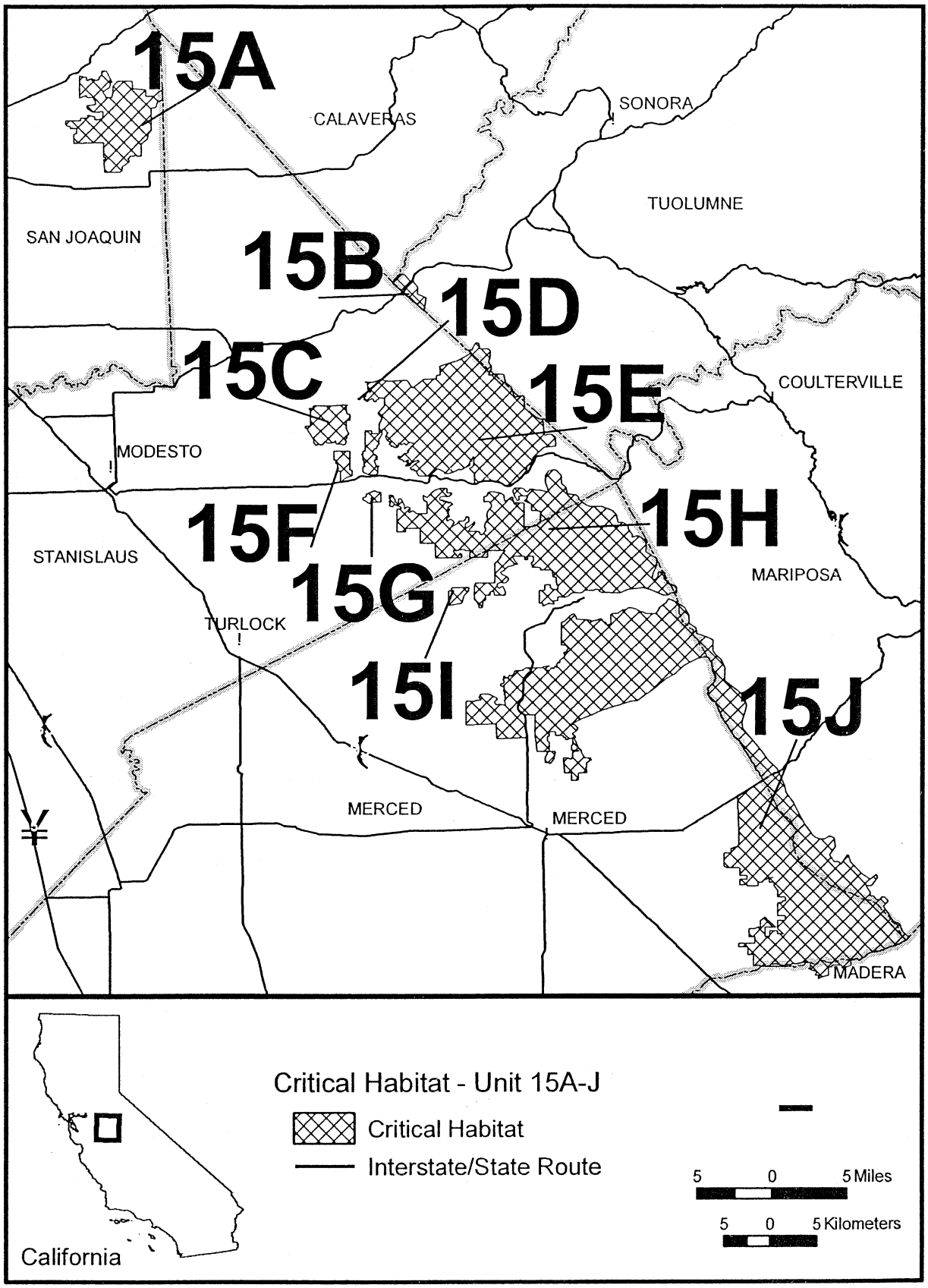

YUBA
NEVADA
11A
11B
PLACER
11C
AUBURN
SUTTER
EL DORADO
PLACERVILLE
50
FOLSOM
11D
11E
SACRAMENTO
YOLO
11F
AMADOR
JACKSON
11G
11H
CALAVERAS
SAN ANDREAS
SAN JOAQUIN
Critical Habitat - Unit 11
Critical Habitat
Interstate/State Route
5 0 5 Miles
5 0 5 Kilometers
California

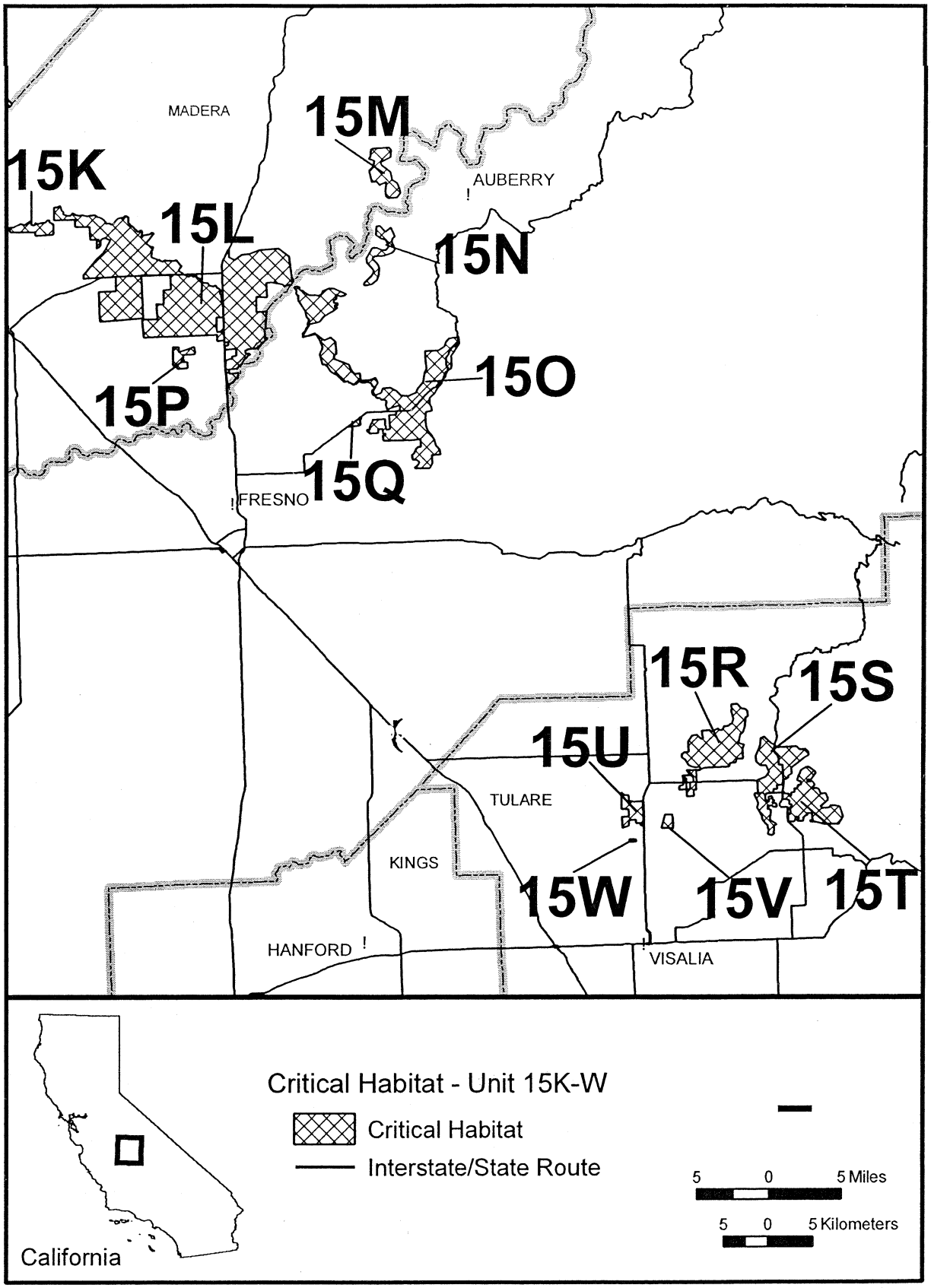

NAPA
12A
NAPA
SONOMA
12B
SOLANO
12C
MARTINEZ
CONTRA COSTA
California
Critical Habitat - Unit 12
Critical Habitat
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers

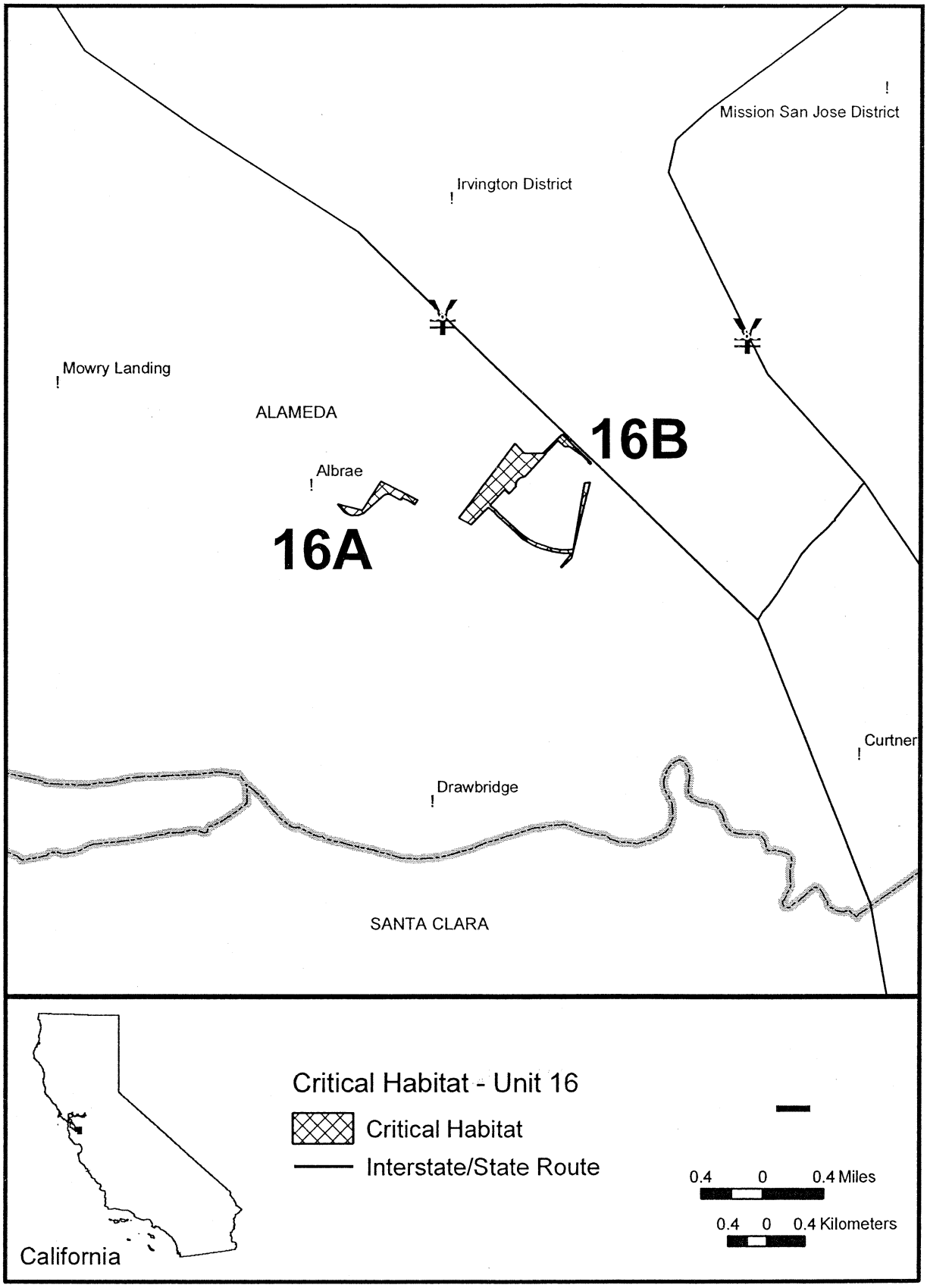

13A
13B
13C
13D
13E
CONTRA COSTA
SAN JOAQUIN
ALAMEDA
Critical Habitat - Unit 13
Critical Habitat
Interstate/State Route
2 0 2 Miles
2 0 2 Kilometers
California

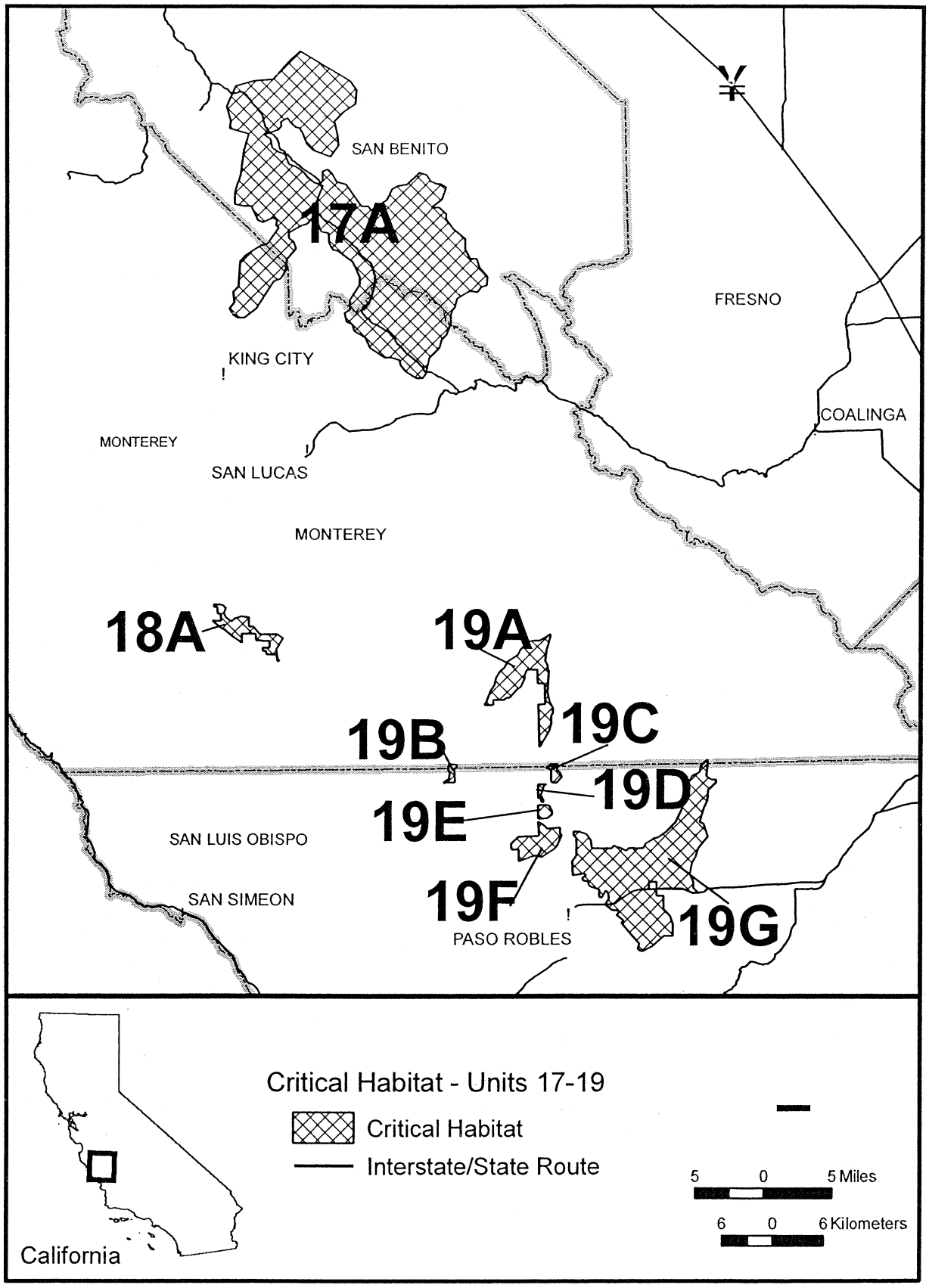

MODESTO
14A
STANISLAUS
TURLOCK
14C
14E
14K
14B
14F
14J
MERCED
14D
MERCED
14G
14I
14L
14H
LOS BANOS
MADERA
FRESNO
Critical Habitat - Unit 14A-L
Critical Habitat
Interstate/State Route
4 0 4 Miles
4 0 4 Kilometers
California

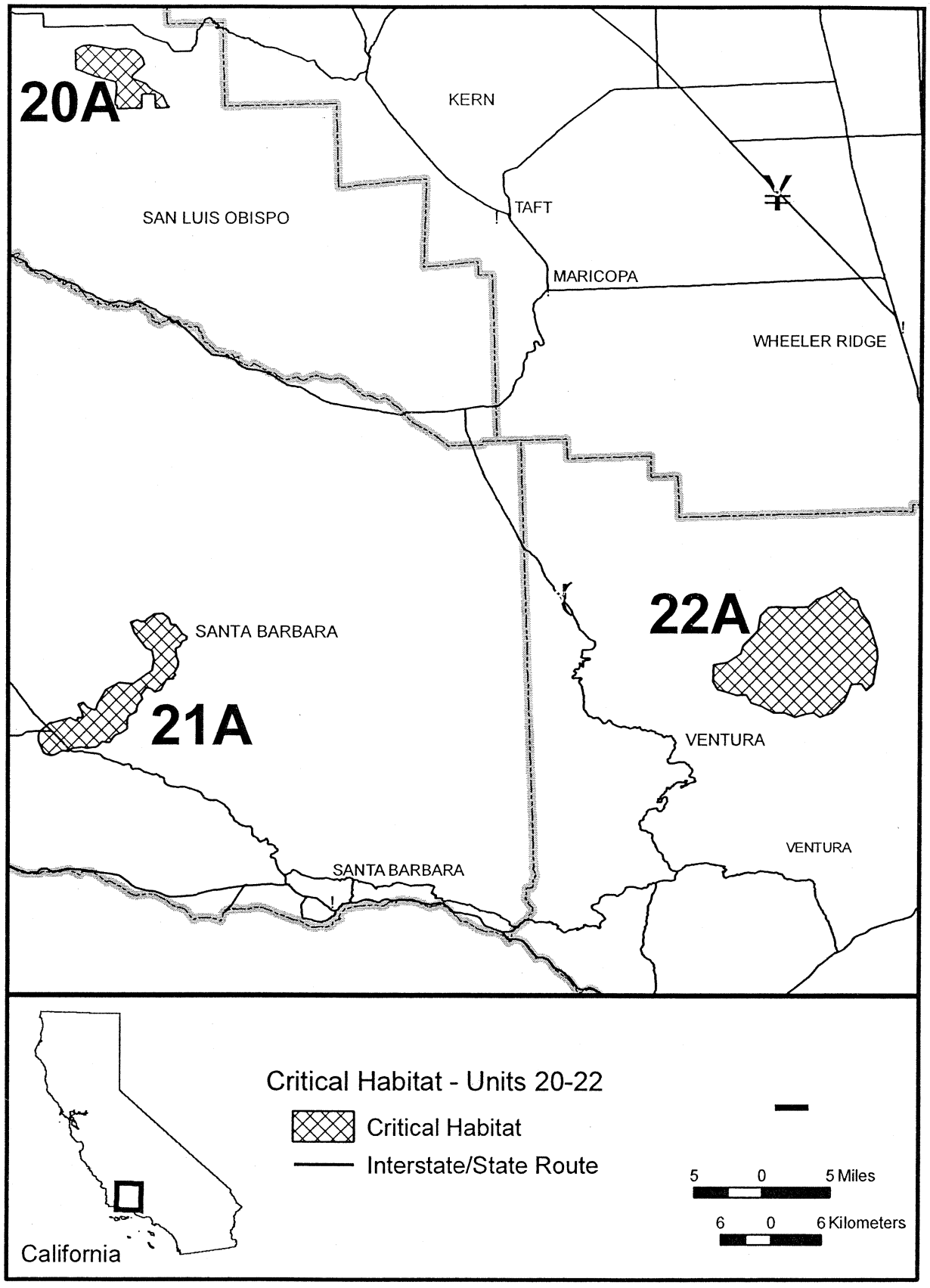

FRESNO
WOODLAKE
14M
HANFORD
VISALIA
TULARE
TULARE
KINGS
14N
14O
14P
14Q
Critical Habitat - Unit 14M-Q
Critical Habitat
Interstate/State Route
4 0 4 Miles
4 0 4 Kilometers
California


15A
CALAVERAS
SONORA
TUOLUMNE
SAN JOAQUIN
15B
15D
15C
15E
COULTERVILLE
MODESTO
15F
15H
STANISLAUS
MARIPOSA
15G
TURLOCK
15I
15J
MERCED
MERCED
MADERA
Critical Habitat - Unit 15A-J
Critical Habitat
Interstate/State Route
5 0 5 Miles
5 0 5 Kilometers
California


MADERA
15M
15K
AUBERRY
15L
15N
15O
15P
15Q
FRESNO
15R
15S
15U
TULARE
KINGS
15W
15V
15T
HANFORD
VISALIA
Critical Habitat - Unit 15K-W
Critical Habitat
Interstate/State Route
5 0 5 Miles
5 0 5 Kilometers
California


Mission San Jose District
Irvington District
Mowry Landing
ALAMEDA
16B
Albrae
16A
Curtner
Drawbridge
SANTA CLARA
California
Critical Habitat - Unit 16
Critical Habitat
Interstate/State Route
0.4 0 0.4 Miles
0.4 0 0.4 Kilometers


SAN BENITO
17A
FRESNO
KING CITY
COALINGA
MONTEREY
SAN LUCAS
MONTEREY
18A
19A
19B
19C
19D
19E
SAN LUIS OBISPO
SAN SIMEON
19F
19G
PASO ROBLES
Critical Habitat - Units 17-19
Critical Habitat
Interstate/State Route
5 0 5 Miles
6 0 6 Kilometers
California



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(e) Critical habitat for Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardi*), *Limnanthes floccosa* ssp. *californica* (Butte County meadowfoam), *Lasthenia conjugens* (Contra Costa goldfields), *Chamaesyce hooveri* (Hoover's spurge), *Castilleja campestris* ssp. *succulenta* (fleshy (or succulent) owl's-clover), *Neostapfia colusana* (Colusa grass), *Tuctoria greenei* (Greene's tuctoria), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia tenuis* (slender Orcutt grass), and *Tuctoria mucronata* (Solano grass), consists of the following areas:

(1) Subunit 1A; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 514395, 4710603; 514395, 4710103; 514195, 4710103; 514195, 4709703; 513995, 4709703; 513995, 4709503; 513695, 4709503; 513695, 4709603; 513595, 4709603; 513595, 4709803; 513795, 4709803; 513795, 4710103; 513295, 4710103; 513295, 4710403; 513195, 4710403; 513195, 4710603; returning to 514395, 4710603.

(2) Subunit 1B; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 514195, 4707303; 514195, 4707103; 514095, 4707103; 514095, 4707003; 513995, 4707003; 513995, 4706803; 513695, 4706803; 513695, 4707103; 513795, 4707103; 513795, 4707203; 513895, 4707203; 513895, 4707303; 513495, 4707303; 513495, 4707803; 514795, 4707803; 514795, 4707503; 514695, 4707503; 514695, 4707403; 514295, 4707403; 514295, 4707303; returning to 514195, 4707303.

(3) Subunit 1C; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 511895, 4707603; 511895, 4707103; 511995, 4707103; 511995, 4706603; 512095, 4706603; 512095, 4706403; 511895, 4706403; 511895, 4706503; 511395, 4706503; 511395, 4706603; 511295, 4706603; 511295, 4706703; 511195, 4706703; 511195, 4706803; 511095, 4706803; 511095, 4707003; 511195, 4707003; 511195, 4707103; 511295, 4707103; 511295, 4707203; 511195, 4707203; 511195, 4707303; 511295, 4707303; 511295, 4707403; 511495, 4707403; 511495, 4707503; 511695, 4707503; 511695, 4707603; returning to 511895, 4707603.

(4) Subunit 1D; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point and Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 515995, 4706503; 515995, 4706303; 516095, 4706303; 516095, 4706203; 516195, 4706203; 516195, 4706403; 516095, 4706403; 516095, 4706503; 515995, 4706503; 515995, 4706803; 516295, 4706803; 516295, 4706703; 516395, 4706703; 516395, 4706503; 516495, 4706503; 516495, 4706603; 516595, 4706603; 516595, 4706803; 516795, 4706803; 516795, 4706703; 516995, 4706703; 516995, 4706803; 517095, 4706803; 517095, 4706903; 517195, 4706903; 517195, 4706703; 517495, 4706703; 517495, 4706503; 517395, 4706503; 517395, 4706303; 517295, 4706303; 517295, 4706203; 517195, 4706203; 517195, 4706103; 516795, 4706103; 516795, 4705403; 516595, 4705403; 516595, 4705303; 516695, 4705303; 516695, 4705203; 516795, 4705203; 516795, 4704603; 516695, 4704603; 516695, 4704403; 516395, 4704403; 516395, 4704303; 516495, 4704303; 516495, 4704203; 516595, 4704203; 516595, 4704103; 515895, 4704103; 515895, 4704403; 516095, 4704403; 516095, 4704503; 515595, 4704503; 515595, 4704603; 515495, 4704603; 515495, 4704903; 515595, 4704903; 515595, 4705003; 515795, 4705003; 515795, 4705103; 515895, 4705103; 515895, 4705703; 515795, 4705703; 515795, 4706003; 515695, 4706003; 515695, 4706203; 515595, 4706203; 515595, 4706303; 515195, 4706303; 515195, 4706503; 515095, 4706503; 515095, 4706703; 514795, 4706703; 514795, 4706803; 514695, 4706803; 514695, 4707003; 514795, 4707003; 514795, 4707103; 515095, 4707103; 515095, 4707003; 515195, 4707003; 515195, 4706903; 515295, 4706903; 515295, 4706803; 515395, 4706803; 515395, 4706603; 515495, 4706603; 515495, 4706503; 515595, 4706503; 515595, 4706403; 515695, 4706403; 515695, 4706503; returning to 515995, 4706503.

(5) Subunit 1E; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Boswell Mountain and Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 510895, 4706903; 510895, 4706703; 511095, 4706703; 511095, 4706303; 510795, 4706303; 510795, 4706103; 510595, 4706103; 510595, 4705803; 510495, 4705803; 510495, 4705903; 510395, 4705903; 510395, 4706103; 510195, 4706103; 510195, 4706203; 510095, 4706203; 510095, 4706303; 509895, 4706303; 509895, 4706503; 510095, 4706503; 510095, 4706703; 510195, 4706703; 510195, 4706803; 510295, 4706803; 510295, 4706703; 510595, 4706703; 510595, 4706803; 510695, 4706803; 510695, 4706903; returning to 510895, 4706903.

(6) Subunit 1F; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point and Shady Cove. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 511395, 4705803; 511395, 4705703; 511595, 4705703; 511595, 4704903; 511495, 4704903; 511495, 4704603; 511295, 4704603; 511295, 4704803; 511095, 4704803; 511095, 4705003; 510995, 4705003; 510995, 4705103; 510895, 4705103; 510895, 4705703; 511095, 4705703; 511095, 4705803; 511395, 4705803; and excluding land bound by 511295, 4705303; 511295, 4705103; 511395, 4705103; 511395, 4705303; returning to 511295, 4705303.

(7) Subunit 1G; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 517695, 4704903; 517695, 4704803; 517895, 4704803; 517895, 4704703; 517995, 4704703; 517995, 4704603; 519195, 4704603; 519195, 4704503; 519395, 4704503; 519395, 4704403; 519495, 4704403; 519495, 4704103; 519195, 4704103; 519195, 4704003; 518695, 4704003; 518695, 4703903; 517995, 4703903; 517995, 4704003; 517795, 4704003; 517795, 4703803; 517295, 4703803; 517295, 4703903; 517195, 4703903; 517195, 4704103; 517095, 4704103; 517095, 4704503; 516995, 4704503; 516995, 4704703; 517095, 4704703; 517095, 4704803; 517195, 4704803; 517195, 4704903; returning to 517695, 4704903.

(8) Subunit 2A; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 514295, 4699003; 514295, 4698603; 514395, 4698603; 514395, 4698703; 514495, 4698703; 514495, 4698803; 514995, 4698803; 514995, 4698703; 515195, 4698703; 515195, 4698903; 515295, 4698903; 515295, 4698803; 515595, 4698803; 515595, 4698603; 515695, 4698603; 515695, 4698803; 515795, 4698803; 515795, 4698703; 515895, 4698703; 515895, 4698303; 515595, 4698303; 515595, 4698503; 515495, 4698503; 515495, 4698403; 515395, 4698403; 515395, 4698303; 515195, 4698303; 515195, 4698403; 514995, 4698403; 514995, 4698303; 514495, 4698303; 514495, 4698403; 514395, 4698403; 514395, 4698203; 513495, 4698203; 513495, 4698303; 513395, 4698303;

513395, 4698403; 513495, 4698403; 513495, 4698503; 513595, 4698503; 513595, 4698603; 513795, 4698603; 513795, 4698803; 513895, 4698803; 513895, 4698903; 513995, 4698903; 513995, 4699003; returning to 514295, 4699003.

(9) Subunit 2B; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Brownsboro and Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 517395, 4698203; 517395, 4698103; 517595, 4698103; 517595, 4698003; 517695, 4698003; 517695, 4698103; 517995, 4698103; 517995, 4697603; 518595, 4697603; 518595, 4697503; 518695, 4697503; 518695, 4697403; 518895, 4697403; 518895, 4697503; 519195, 4697503; 519195, 4697403; 519395, 4697403; 519395, 4697303; 519495, 4697303; 519495, 4697203; 519595, 4697203; 519595, 4697103; 519795, 4697103; 519795, 4697003; 519895, 4697003; 519895, 4696903; 520095, 4696903; 520095, 4696603; 519995, 4696603; 519995, 4696503; 520495, 4696503; 520495, 4696403; 520595, 4696403; 520595, 4696103; 520495, 4696103; 520495, 4695903; 520595, 4695903; 520595, 4696003; 520695, 4696003; 520695, 4695903; 520795, 4695903; 520795, 4695703; 520695, 4695703; 520695, 4695603; 520595, 4695603; 520595, 4695303; 520795, 4695303; 520795, 4695203; 520895, 4695203; 520895, 4694203; 520795, 4694203; 520795, 4694303; 520595, 4694303; 520595, 4694403; 520495, 4694403; 520495, 4694503; 520395, 4694503; 520395, 4694603; 519995, 4694603; 519995, 4694703; 519595, 4694703; 519595, 4695003; 519495, 4695003; 519495, 4695403; 519395, 4695403; 519395, 4695603; 519295, 4695603; 519295, 4695703; 519195, 4695703; 519195, 4695803; 519095, 4695803; 519095, 4696003; 519395, 4696003; 519395, 4696103; 519195, 4696103; 519195, 4696203; 518995, 4696203; 518995, 4696303; 518895, 4696303; 518895, 4696203; 518695, 4696203; 518695, 4696503; 518595, 4696503; 518595, 4696603; 518495, 4696603; 518495, 4696703; 518395, 4696703; 518395, 4696803; 518295, 4696803; 518295, 4696903; 518195, 4696903; 518195, 4697003; 517695, 4697003; 517695, 4697103; 517395, 4697103; 517395, 4697203; 517195, 4697203; 517195, 4697403; 517095, 4697403; 517095, 4697603; 516995, 4697603; 516995, 4698203; returning to 517395, 4698203.

(10) Subunit 2C; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 516195, 4697603; 516195, 4697203; 515095, 4697203; 515095, 4697603; 515295, 4697603; 515295, 4697503; 515395, 4697503; 515395, 4697603; returning to 516195, 4697603.

(11) Subunit 2D; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 517095, 4697003; 517095, 4696903; 517295, 4696903; 517295, 4696803; 517395, 4696803; 517395, 4696703; 517495, 4696703; 517495, 4696403; 517295, 4696403; 517295, 4696503; 516895, 4696503; 516895, 4696403; 516395, 4696403; 516395, 4696303; 516295, 4696303; 516295, 4696003; 515995, 4696003; 515995, 4696703; 516195, 4696703; 516195, 4696803; 516595, 4696803; 516595, 4696903; 516895, 4696903; 516895, 4697003; returning to 517095, 4697003.

(12) Subunit 2E; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 515595, 4696403; 515595, 4696203; 515195, 4696203; 515195, 4696103; 515295, 4696103; 515295, 4695603; 515095, 4695603; 515095, 4695703; 514595, 4695703; 514595, 4695603; 514395, 4695603; 514395, 4695703; 514295, 4695703; 514295, 4695803; 514195, 4695803; 514195, 4695703; 514095, 4695703; 514095, 4695603; 513995, 4695603; 513995, 4695703; 513895, 4695703; 513895, 4696403; 513595, 4696403; 513595, 4696603; 515695, 4696603; 515695, 4696403; 515595, 4696403; and excluding land bound by 514595, 4696303; 514595, 4696203; 514395, 4696203; 514395, 4696303; 514295, 4696303; 514295, 4696203; 514195, 4696203; 514195, 4696103; 514795, 4696103; 514795, 4696303; returning to 514595, 4696303.

(13) Subunit 3A; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 511695, 4698703; 511695, 4698803; 511495, 4698803; 511495, 4698903; 511195, 4698903; 511195, 4699003; 510795, 4699003; 510795, 4699103; 510695, 4699103; 510695, 4699303; 510995, 4699303; 510995, 4699403; 511295, 4699403; 511295, 4699503; 511395, 4699503; 511395, 4699703; 511495, 4699703; 511495, 4699803; 511595, 4699803; 511595, 4699703; 511695, 4699703; 511695, 4699603; 511795, 4699603; 511795, 4699703; 511995, 4699703; 511995, 4698703; returning to 511695, 4698703.

(14) Subunit 3B; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Eagle Point and Sams Valley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 511695, 4698703; 511695, 4698403; 511395, 4698403; 511395, 4698503; 511295, 4698503; 511295, 4698403; 511095, 4698403; 511095, 4698303; 510795, 4698303; 510795, 4698403; 510595, 4698403; 510595, 4698303; 509695, 4698303; 509695, 4697903; 509495, 4697903; 509495, 4697803; 509295, 4697803; 509295, 4697603; 509395, 4697603; 509395, 4697403; 509495, 4697403; 509495, 4697003; 509595, 4697003; 509595, 4696803; 510195, 4696803; 510195, 4696903; 511795, 4696903; 511795, 4696803; 511995, 4696803; 511995, 4696203; 510895, 4696203; 510895, 4696103; 510695, 4696103; 510695, 4696203; 510395, 4696203; 510395, 4696303; 509795, 4696303; 509795, 4696403; 509695, 4696403; 509695, 4696303; 508995, 4696303; 508995, 4696403; 508695, 4696403; 508695, 4696503; 508495, 4696503; 508495, 4696603; 508395, 4696603; 508395, 4696703; 508295, 4696703; 508295, 4696803; 508195, 4696803; 508195, 4696903; 508095, 4696903; 508095, 4697103; 508195, 4697103; 508195, 4697403; 508495, 4697403; 508495, 4697503; 508695, 4697503; 508695, 4697603; 508595, 4697603; 508595, 4697803; 508495, 4697803; 508495, 4698203; 508595, 4698203; 508595, 4698303; 508895, 4698303; 508895, 4698403; 508995, 4698403; 508995, 4698103; 509095, 4698103; 509095, 4698203; 509195, 4698203; 509195, 4698403; 509295, 4698403; 509295, 4698503; 509595, 4698503; 509595, 4698703; 509895, 4698703; 509895, 4698803; 510195, 4698803; 510195, 4698903; 511095, 4698903; 511095, 4698803; 511395, 4698803; 511395, 4698703; 511695, 4698703; and excluding land bound by 508895, 4697603; 508895, 4697503; 509195, 4697503; 509195, 4697603; returning to 508895, 4697603; and excluding land bound by 508595, 4697103; 508595, 4696903; 508695, 4696903; 508695, 4697103; returning to 508595, 4697103.

(15) Subunit 3C; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Sams Valley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 506895, 4697403; 506895, 4697303; 506995, 4697303; 506995, 4697103; 506895, 4697103; 506895, 4697003; 506795, 4697003; 506795, 4696503; 507095, 4696503; 507095, 4696803; 506995, 4696803; 506995, 4697003; 507095, 4697003; 507095, 4697203; 507195, 4697203; 507195, 4697303; 507295, 4697303; 507295, 4697203; 507395, 4697203;

507395, 4697103; 507495, 4697103; 507495, 4696903; 507595, 4696903; 507595, 4696803; 507695, 4696803; 507695, 4696703; 507795, 4696703; 507795, 4696503; 507995, 4696503; 507995, 4695803; 508395, 4695803; 508395, 4694803; 507895, 4694803; 507895, 4695003; 507495, 4695003; 507495, 4695203; 506995, 4695203; 506995, 4695603; 506895, 4695603; 506895, 4695703; 506495, 4695703; 506495, 4695603; 505695, 4695603; 505695, 4695803; 505895, 4695803; 505895, 4696503; 506295, 4696503; 506295, 4696603; 506195, 4696603; 506195, 4697103; 506295, 4697103; 506295, 4697403; returning to 506895, 4697403.

(16) Subunit 4A; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Sams Valley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 507295, 4703303; 507295, 4703203; 507395, 4703203; 507395, 4703103; 507895, 4703103; 507895, 4703003; 507995, 4703003; 507995, 4702903; 508095, 4702903; 508095, 4702803; 508195, 4702803; 508195, 4702703; 508295, 4702703; 508295, 4702603; 508395, 4702603; 508395, 4702503; 508495, 4702503; 508495, 4702303; 508595, 4702303; 508595, 4702103; 508695, 4702103; 508695, 4701703; 508895, 4701703; 508895, 4701303; 508795, 4701303; 508795, 4701203; 508695, 4701203; 508695, 4701103; 508495, 4701103; 508495, 4701303; 508395, 4701303; 508395, 4701703; 508295, 4701703; 508295, 4701803; 508195, 4701803; 508195, 4701903; 508095, 4701903; 508095, 4702003; 507995, 4702003; 507995, 4702103; 507895, 4702103; 507895, 4702203; 507795, 4702203; 507795, 4702303; 507695, 4702303; 507695, 4702203; 507595, 4702203; 507595, 4702103; 507395, 4702103; 507395, 4702003; 507495, 4702003; 507495, 4701903; 507695, 4701903; 507695, 4701803; 507795, 4701803; 507795, 4701603; 507895, 4701603; 507895, 4701503; 507995, 4701503; 507995, 4701203; 507795, 4701203; 507795, 4701303; 507695, 4701303; 507695, 4701403; 507395, 4701403; 507395, 4701503; 507195, 4701503; 507195, 4701603; 507095, 4701603; 507095, 4701703; 506995, 4701703; 506995, 4701803; 506895, 4701803; 506895, 4702003; 506795, 4702003; 506795, 4702203; 506695, 4702203; 506695, 4702303; 506595, 4702303; 506595, 4702503; 506695, 4702503; 506695, 4702703; 506795, 4702703; 506795, 4702903; 506895, 4702903; 506895, 4703203; 507095, 4703203; 507095, 4703303; returning to 507295, 4703303.

(17) Subunit 4B; Jackson County, Oregon. From USGS 1:24,000 scale quadrangle Sams Valley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 503895, 4700703; 503895, 4700603; 503995, 4700603; 503995, 4700503; 504095, 4700503; 504095, 4700403; 504395, 4700403; 504395, 4700303; 504495, 4700303; 504495, 4699303; 504295, 4699303; 504295, 4699003; 504195, 4699003; 504195, 4698903; 504095, 4698903; 504095, 4698703; 503895, 4698703; 503895, 4698803; 503795, 4698803; 503795, 4699203; 503895, 4699203; 503895, 4699603; 503795, 4699603; 503795, 4700703; returning to 503895, 4700703.

(18) Subunit 5A; Siskiyou County, California. From USGS 1:24,000 scale quadrangle Timbered Crater. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 627995, 4565802; 628095, 4565602; 628295, 4565602; 628295, 4565402; 628395, 4565002; 628095, 4564802; 627995, 4564502; 628095, 4564202; 627995, 4564002; 627995, 4563802; 627995, 4563602; 628195, 4563502; 628295, 4563402; 628195, 4563102; 628295, 4563002; 628295, 4562802; 628395, 4562702; 628695, 4562602; 628695, 4562402; 628795, 4562302; 628995, 4562102; 628995, 4561802; 628795, 4561702; 628595, 4561602; 628495, 4561602; 628195, 4561502; 628095, 4561402; 627995, 4561302; 627895, 4561202; 627695, 4561202; 627625, 4561132; 626095, 4561402; 626095, 4562002; 626295, 4562702; 625906, 4563713; 626095, 4563902; 626195, 4564102; 626295, 4564202; 626395, 4564402; 626495, 4564502; 626495, 4564702; 626595, 4564902; 626795, 4564902; 626795, 4565202; 626895, 4565402; 627095, 4565502; 627095, 4565802; 627195, 4565902; 627395, 4566002; 627595, 4566002; 627795, 4566002; 627895, 4565902; returning to 627995, 4565802.

(19) Subunit 5B; Modoc and Shasta County, California. From USGS 1:24,000 scale quadrangle Day, Timbered Crater. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 633974, 4560278; 634095, 4560602; 634595, 4561102; 634695, 4560702; 635095, 4560502; 635195, 4560802; 635795, 4560802; 636091, 4560901; 636747, 4560348; 637395, 4559802; 637495, 4559102; 637395, 4558702; 636995, 4558502; 636795, 4558102; 636195, 4557802; 634995, 4557702; 634195, 4558102; 633995, 4558802; 633795, 4559802; returning to 633974, 4560278.

(20) Subunit 5C; Shasta County, California. From USGS 1:24,000 scale quadrangle Dana, Burney Falls. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 616995, 4548802; 616895, 4548802; 615995, 4549302; 615795, 4549602; 615695, 4549702; 615695, 4549802; 615595, 4549902; 615495, 4550002; 615395, 4550202; 615395, 4550402; 615695, 4550502; 615995, 4550502; 616295, 4550302; 616495, 4550102; 616795, 4549902; 616895, 4549602; 617095, 4549202; 617195, 4548902; returning to 616995, 4548802.

(21) Subunit 5D; Shasta County, California. From USGS 1:24,000 scale quadrangle Burney. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 613095, 4536303; 613095, 4536003; 612895, 4535803; 612795, 4535803; 612695, 4535903; 612695, 4536003; 612595, 4536103; 612595, 4536303; 612395, 4536303; 612395, 4536503; 612395, 4536903; 612595, 4537203; 612595, 4537403; 612695, 4537503; 612795, 4537503; 612995, 4537603; 613095, 4537703; 613095, 4537903; 612995, 4538103; 612995, 4538303; 613095, 4538403; 613195, 4538603; 613495, 4538703; 613695, 4538803; 613795, 4538903; 613895, 4538903; 613995, 4538903; 614095, 4538803; 614195, 4538703; 614295, 4538603; 614495, 4538503; 614495, 4538403; 614395, 4538303; 614195, 4538203; 614095, 4538203; 613895, 4538103; 613695, 4537903; 613495, 4537703; 613495, 4537503; 613495, 4537303; 613295, 4537203; 613295, 4536903; 613195, 4536603; returning to 613095, 4536303.

(22) Subunit 5E; Shasta County, California. From USGS 1:24,000 scale quadrangle Burney. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 609795, 4535803; 610395, 4535303; 610595, 4534803; 610695, 4534403; 610595, 4533503; 610895, 4532503; 611095, 4532303; 611095, 4532203; 611195, 4531903; 611395, 4531703; 611595, 4531403; 611595, 4531203; 611695, 4531003; 611895, 4530903; 612095, 4530803; 612295, 4530603; 612295, 4530303; 612195, 4529903; 611995, 4529703; 611795, 4529703; 611595, 4529703; 611095, 4529703; 610595, 4530003; 610495, 4530103; 610295, 4530203; 610295, 4530403; 610395, 4530703; 610695, 4530903; 610595, 4531203; 610295, 4531403; 610295, 4531603; 610195, 4532003; 610195, 4532403; 610095, 4532603; 610095, 4532803; 609995, 4533003; 609995, 4533303; 609795, 4533703; 609695, 4533903; 609695, 4534103; 609695, 4534403; 609695, 4534603; 609695, 4535003; 609595, 4535103; 609395, 4535203; 609195, 4535303; 608895, 4535403; 608695, 4535403; 608395, 4535503; 608295, 4535603; 608095, 4535603;

608195, 4535803; returning to 609795, 4535803.

(23) Subunit 5F; Shasta County, California. From USGS 1:24,000 scale quadrangle Merken Bench. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 632495, 4522703; 632095, 4521403; 631295, 4521403; 631195, 4521503; 630995, 4521403; 630595, 4521403; 630395, 4521103; 630195, 4521003; 629995, 4521003; 628995, 4522603; 629295, 4523303; 629695, 4523703; 631095, 4523903; 631895, 4523303; returning to 632495, 4522703.

(24) Subunit 5G; Shasta County, California. From USGS 1:24,000 scale quadrangle Murken Bench, Old Station. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 636095, 4512903; 636095, 4512603; 636095, 4512203; 635695, 4511903; 635595, 4511503; 635595, 4511203; 635495, 4511003; 635195, 4510703; 634895, 4510603; 634695, 4511003; 634495, 4511203; 634695, 4512203; 634295, 4512603; 634395, 4512803; 634495, 4512703; 634895, 4512703; 635195, 4513003; 635895, 4513003; returning to 636095, 4512903.

(25) Subunit 5H; Lassen County, California. From USGS 1:24,000 scale quadrangle Poison Lake, Swains Hole. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 651595, 4507403; 651895, 4506303; 652295, 4505503; 651795, 4504703; 651595, 4504903; 650895, 4504203; 650395, 4504503; 649595, 4504703; 648895, 4504403; 648995, 4503603; 648795, 4503403; 648195, 4503803; 647495, 4505203; 647895, 4505703; 647595, 4506403; 647795, 4507003; 648895, 4507403; 649595, 4507203; 650395, 4507403; 651295, 4507503; returning to 651595, 4507403.

(26) Subunit 5I; Lassen and Shasta County, California. From USGS 1:24,000 scale quadrangle Swains Hole. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 641929, 4502903; 642195, 4502903; 642195, 4503003; 642595, 4503103; 642795, 4503103; 643095, 4503203; 643295, 4503303; 643495, 4503403; 644095, 4503303; 644195, 4503303; 644295, 4503203; 644495, 4503103; 645095, 4503203; 645295, 4503003; 645295, 4502703; 645595, 4502003; 645595, 4501503; 645395, 4501103; 645395, 4500403; 645295, 4500003; 644895, 4499903; 644395, 4500103; 643595, 4500203; 642495, 4500603; 641957, 4501022; 641595, 4501303; 641295, 4502503; 641395, 4502703; 641695, 4502703; 641795, 4502903; returning to 641929, 4502903.

(27) Subunit 5J; Lassen County, California. From USGS 1:24,000 scale quadrangle Harvey Mtn., Poison Lake, Pine Creek Valley, Bogard Buttes. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 662895, 4502103; 661695, 4500903; 661395, 4499403; 660895, 4498603; 660795, 4498403; 660795, 4498003; 660895, 4497803; 661095, 4497803; 661195, 4497503; 659995, 4497703; 659395, 4497503; 657595, 4498803; 655595, 4500503; 655095, 4501003; 654995, 4501503; 655195, 4501403; 655695, 4501603; 656695, 4502403; 656795, 4502603; 657795, 4503003; 658795, 4503003; 660095, 4503403; 661395, 4504203; 662295, 4504803; 662995, 4504903; 663695, 4504503; 664295, 4504303; 664495, 4504103; 664495, 4502903; 664195, 4502803; returning to 662895, 4502103.

(28) Subunit 5K; Shasta County, California. From USGS 1:24,000 scale quadrangle Old Station, West Prospect Peak. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 634695, 4495403; 634695, 4495203; 634895, 4495203; 635095, 4495003; 635095, 4494703; 635295, 4494603; 635295, 4494303; 635195, 4494203; 634895, 4493803; 635195, 4493304; 635095, 4493204; 635295, 4492904; 634995, 4492704; 634395, 4492704; 634395, 4493504; 634195, 4493704; 634195, 4493904; 633695, 4494203; 632595, 4494903; 631995, 4495104; 631395, 4495004; 631095, 4494804; 630795, 4494304; 630595, 4493804; 630595, 4493204; 630495, 4493104; 630495, 4492504; 629995, 4492904; 629395, 4493304; 629195, 4493504; 629395, 4494004; 629595, 4494504; 629495, 4494604; 629495, 4495004; 629795, 4495304; 630595, 4495504; 630595, 4496303; 631795, 4496903; 631795, 4497403; 631895, 4497803; 631995, 4498003; 632095, 4498203; 632195, 4498203; 632495, 4498203; 633995, 4497703; 634295, 4496603; 634295, 4496503; 634195, 4496403; 634195, 4496103; 634495, 4495903; 634495, 4495603; returning to 634695, 4495403.

(29) Subunit 5L; Plumas County, California. From USGS 1:24,000 scale quadrangle Almanor. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 654995, 4453204; 655395, 4452704; 655495, 4452404; 655495, 4451904; 655095, 4451904; 654995, 4452304; 654495, 4452504; 654195, 4452804; 653995, 4453004; 653795, 4453004; 653495, 4452804; 652695, 4452804; 652395, 4453304; 651995, 4453504; 651695, 4454204; 651695, 4454504; 652095, 4455204; 652495, 4455304; 652795, 4455504; 653295, 4455104; 653095, 4454904; 653095, 4454604; 653395, 4454204; 653595, 4453904; 653995, 4453704; 654595, 4453504; returning to 654995, 4453204.

(30) Subunit 6A; Shasta County, California. From USGS 1:24,000 scale quadrangle Enterprise. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 559296, 4490004; 559296, 4489804; 559496, 4489604; 559496, 4489104; 559296, 4488804; 558896, 4488704; 558596, 4488704; 558096, 4488804; 558096, 4489604; 558196, 4489604; 558396, 4489704; 558296, 4489904; 558096, 4489904; 558096, 4490304; 558096, 4490819; 558411, 4490625; 558419, 4490621; 558770, 4490407; 558813, 4490381; 558887, 4490336; 559083, 4490215; 559096, 4490208; 559096, 4490204; returning to 559296, 4490004.

(31) Subunit 6B; Shasta County, California. From USGS 1:24,000 scale quadrangle Enterprise, Cottonwood. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 559096, 4486604; 559096, 4483804; 559396, 4483804; 559396, 4483704; 559596, 4483704; 559896, 4483404; 560796, 4483404; 560996, 4483304; 560596, 4483304; 560596, 4482404; 560196, 4482304; 559996, 4482304; 559996, 4481804; 559496, 4481804; 558996, 4482204; 558996, 4482704; 558996, 4483404; 558396, 4483404; 558296, 4483704; 558296, 4484304; 558096, 4484604; 558096, 4484904; 558096, 4485104; 557896, 4485404; 557696, 4485704; 557396, 4485904; 557396, 4487204; 559096, 4487204; returning to 559096, 4486604.

(32) Subunit 6C; Shasta County, California. From USGS 1:24,000 scale quadrangles Balls Ferry, Cottonwood, Enterprise, and Palo Cedro. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 562596, 4487204; 562796, 4486904; 562996, 4487004; 563296, 4487004; 563396, 4486804; 563396, 4486504; 563896, 4486204; 564396, 4484504; 564396, 4484204; 564596, 4483904; 564596, 4483604; 564696, 4483504; 564696, 4483204; 564496, 4482904; 564196, 4482604; 564196, 4482404; 564396, 4482404; 564396, 4482204; 564396, 4482104; 564296, 4482004; 564196, 4481904; 564096, 4481904; 564296, 4481604; 564296, 4480704; 563696, 4480704; 563396, 4480804; 563196, 4480704; 562996, 4480704; 562596, 4481004; 562496, 4481304; 562496, 4481504; 562396, 4482204; 562096, 4482304; 561996, 4482604; 561896, 4483104; 561596, 4483504; 561096, 4483804; 560796, 4485204; 560796, 4486304; 560896, 4486504; 561096, 4486704; 561296, 4486804; 561396, 4487404; 561696, 4487704; 562096, 4487704; returning to 562596, 4487204.

(33) Subunit 6D; Shasta County, California. From USGS 1:24,000 scale quadrangle Palo Cedro, Balls Ferry. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 566996, 4477104; 566796, 4477104; 566196, 4478004; 565996, 4478704; 565596, 4479004; 565596, 4479104; 565696, 4479404; 565396, 4479504; 565396, 4479704; 565496, 4480004; 566196, 4480204; 566196, 4480504; 565796, 4480604; 565796, 4480804; 565796, 4481104; 565796, 4481504; 565596, 4482304; 565196, 4482404; 564996, 4482704; 564996, 4482904; 565096, 4483104; 565496, 4483604; 565796, 4484704; 566496, 4485204; 567496, 4484804; 568196, 4483604; 568196, 4483104; 568496, 4482804; 568496, 4481904; 568296, 4481404; 567596, 4481104; 567596, 4480004; 567796, 4479204; 567796, 4478204; 567596, 4477604; returning to 566996, 4477104.

(34) Subunit 6E; Tehama County, California. From USGS 1:24,000 scale quadrangle Henleyville, Corning, West of Gerber, Gerber, Red Bluff West, Red Bluff East. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 563496, 4444304; 563496, 4444204; 563596, 4444204; 563796, 4444204; 563896, 4443604; 564296, 4443604; 564396, 4443404; 564296, 4443204; 564196, 4443004; 564096, 4443004; 564096, 4442804; 564196, 4442804; 564196, 4442604; 564196, 4442504; 564196, 4442404; 564296, 4442404; 564396, 4442704; 564496, 4442904; 564496, 4443204; 564796, 4443204; 565296, 4443204; 565596, 4443104; 565896, 4442704; 566196, 4442704; 566296, 4442304; 566196, 4442204; 566196, 4441904; 565896, 4441704; 566096, 4441404; 566096, 4441304; 565496, 4441004; 565596, 4440804; 565496, 4440604; 565496, 4440004; 565496, 4438804; 566196, 4438804; 566196, 4439104; 566596, 4439704; 566496, 4440204; 566096, 4440404; 567596, 4441004; 567996, 4441004; 568769, 4440386; 568496, 4440204; 568396, 4439704; 568796, 4438904; 569596, 4439204; 569946, 4438554; 570290, 4437905; 569496, 4438004; 569096, 4438104; 568696, 4438204; 567896, 4438204; 567696, 4438204; 567496, 4438004; 567096, 4437904; 567096, 4437804; 566896, 4437504; 566896, 4437204; 566296, 4437204; 566296, 4438004; 565996, 4438204; 565496, 4437804; 564296, 4437804; 564296, 4437604; 563996, 4437604; 563696, 4437404; 563496, 4437204; 563496, 4436704; 563496, 4436404; 563296, 4436404; 563296, 4436004; 563296, 4435604; 563596, 4435604; 563796, 4435904; 564296, 4436204; 564596, 4436304; 564796, 4436304; 564996, 4436204; 564996, 4436004; 564896, 4435604; 565196, 4435604; 564896, 4435304; 564596, 4435304; 564496, 4435204; 564296, 4435004; 564196, 4434804; 563896, 4434704; 563696, 4434504; 563596, 4434304; 563496, 4434304; 563296, 4434004; 563696, 4434004; 563696, 4432404; 563796, 4432404; 563596, 4431904; 564596, 4431773; 564596, 4431304; 565496, 4431304; 565496, 4431204; 567096, 4431104; 567096, 4430504; 566896, 4430304; 567496, 4430304; 567596, 4429404; 566896, 4429404; 566396, 4429404; 566196, 4429504; 566196, 4428904; 566096, 4429004; 565896, 4429104; 565596, 4429004; 565396, 4429004; 565196, 4428804; 564696, 4428804; 564396, 4428504; 564096, 4428504; 563796, 4428304; 563796, 4428004; 564196, 4428004; 564696, 4428004; 565596, 4428104; 566696, 4427904; 566696, 4427804; 567096, 4427804; 567196, 4427704; 567396, 4427004; 566996, 4427004; 566196, 4426704; 566096, 4426504; 565596, 4426504; 565496, 4426404; 565392, 4426404; 565403, 4427187; 564372, 4427175; 564365, 4427817; 564375, 4427959; 564039, 4427941; 563783, 4427939; 563691, 4427935; 563702, 4427185; 563784, 4427182; 563785, 4426344; 564036, 4426357; 564896, 4426380; 564896, 4426004; 564896, 4425704; 563796, 4425604; 562696, 4424904; 562396, 4424804; 562196, 4424804; 562096, 4424804; 561896, 4424704; 561796, 4424604; 561696, 4424604; 561596, 4424604; 561396, 4424604; 561296, 4424604; 560996, 4424704; 560796, 4424704; 560496, 4424804; 560196, 4424704; 559896, 4424604; 559896, 4424304; 559796, 4424204; 559496, 4424104; 559396, 4424204; 559296, 4424304; 559196, 4424304; 558996, 4424504; 558796, 4424604; 558396, 4424604; 558196, 4424604; 557996, 4424404; 557796, 4424304; 557396, 4424104; 557096, 4424004; 556896, 4423904; 556696, 4423904; 556196, 4423804; 555996, 4423804; 555896, 4423704; 555896, 4423604; 555596, 4423604; 555496, 4423604; 555396, 4423504; 555296, 4423404; 555196, 4423404; 555096, 4423404; 554696, 4424704; 555196, 4425404; 557296, 4426104; 557896, 4426604; 558396, 4426304; 559596, 4428104; 558296, 4428004; 557896, 4428304; 557496, 4429104; 558096, 4429704; 558696, 4429804; 558696, 4430904; 560096, 4431404; 559296, 4431704; 558396, 4431804; 557496, 4432004; 557496, 4432404; 558496, 4432904; 558496, 4433404; 557896, 4433404; 557596, 4433604; 557396, 4434204; 555196, 4434604; 555196, 4435204; 557096, 4436004; 557996, 4438804; 557096, 4438804; 554696, 4437204; 553296, 4436804; 553296, 4437404; 554596, 4437904; 555496, 4439504; 556596, 4439604; 556596, 4441604; 558596, 4442404; 558596, 4442804; 557496, 4442704; 557096, 4442804; 556896, 4443204; 557596, 4444104; 558096, 4443504; 558496, 4443504; 559896, 4443704; 559896, 4443504; 559796, 4443304; 559796, 4443004; 559996, 4443204; 560096, 4443304; 560596, 4443304; 560796, 4443404; 561096, 4443504; 561796, 4443704; 562496, 4443804; 562596, 4443904; 562696, 4443904; 562696, 4444304; 562996, 4444304; returning to 563496, 4444304.

(35) Subunit 6F; Glenn and Tehama Counties, California. From USGS 1:24,000 scale quadrangle Black Butte Dam and Kirkwood. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 563310, 4405483; 563296, 4405505; 562896, 4405605; 561496, 4406005; 560996, 4406005; 560696, 4406105; 560596, 4406205; 560496, 4406405; 560496, 4406704; 560896, 4406705; 560896, 4407104; 561296, 4407104; 561296, 4411104; 565596, 4411104; 565596, 4410304; 568496, 4410304; 568496, 4410404; 568496, 4411204; 570596, 4411204; 570896, 4411504; 571496, 4411304; 571596, 4410804; 572196, 4410704; 572196, 4409904; 571896, 4409404; 570596, 4408804; 570296, 4408804; 570296, 4409104; 569796, 4409104; 569796, 4408804; 569896, 4407505; 569996, 4406805; 569896, 4405905; 569896, 4405447; 569896, 4405305; 569496, 4405305; 569203, 4405451; 568696, 4405705; 568396, 4405705; 567904, 4405459; 567596, 4405305; 567296, 4405305; 565096, 4405305; 564865, 4405478; 564696, 4405605; 564196, 4405605; 563956, 4405485; 563796, 4405405; 563496, 4405205; returning to 563310, 4405483.

(36) Subunit 7A; Shasta County, Tehama County, California. From USGS 1:24,000 scale quadrangle Balls Ferry. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 569496, 4471491; 569496, 4471604; 569696, 4471704; 569696, 4471804; 569996, 4472004; 570296, 4471904; 570544, 4471821; 570555, 4471529; 570555, 4471529; 570555, 4471528; 570504, 4471512; 570478, 4471518; 570452, 4471544; 570431, 4471571; 570400, 4471571; 570393, 4471576; 570375, 4471572; 570336, 4471562; 570306, 4471565; 570292, 4471547; 570279, 4471542; 570268, 4471538; 570256, 4471509; 570252, 4471484; 570252, 4471482; 570246, 4471475; 570235, 4471460; 570235, 4471458;

570235, 4471449; 570214, 4471432; 570188, 4471428; 570185, 4471428; 570167, 4471427; 570150, 4471427; 570102, 4471428; 570071, 4471445; 570048, 4471443; 570009, 4471442; 569989, 4471429; 569962, 4471427; 569948, 4471428; 569917, 4471401; 569906, 4471378; 569885, 4471377; 569857, 4471378; 569853, 4471379; 569831, 4471347; 569818, 4471378; 569772, 4471385; 569754, 4471385; 569740, 4471388; 569721, 4471387; 569701, 4471389; 569653, 4471389; 569630, 4471397; 569613, 4471402; 569590, 4471410; 569561, 4471419; 569534, 4471426; 569511, 4471433; 569496, 4471433; returning to 569496, 4471491.

(37) Subunit 7B; Shasta and Tehama County, California. From USGS 1:24,000 scale quadrangles Tuscan Buttes NE, Balls Ferry, Shingletown, Dales, Bend, Red Bluff East. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 571332, 4471716; 571334, 4471766; 571340, 4471796; 571333, 4471846; 571340, 4471873; 571343, 4471927; 571345, 4471968; 571367, 4471968; 571459, 4471969; 571501, 4471942; 571556, 4471947; 571556, 4471947; 571563, 4471948; 571620, 4471970; 571637, 4471970; 571637, 4471970; 571731, 4471970; 571743, 4471975; 571810, 4472002; 571819, 4472004; 571835, 4472004; 571996, 4472004; 572250, 4472089; 572250, 4472087; 572252, 4472088; 572254, 4472031; 572258, 4472029; 572264, 4472031; 572277, 4472030; 572304, 4472029; 572315, 4472027; 572327, 4472023; 572337, 4472021; 572378, 4472019; 572403, 4472019; 572421, 4472017; 572428, 4472016; 572596, 4471904; 573996, 4471904; 574247, 4472594; 574303, 4472618; 574308, 4472620; 574315, 4472618; 574334, 4472612; 574351, 4472608; 574367, 4472604; 574389, 4472602; 574417, 4472601; 574438, 4472602; 574456, 4472606; 574465, 4472611; 574480, 4472615; 574499, 4472619; 574523, 4472627; 574546, 4472632; 574565, 4472634; 574579, 4472636; 574585, 4472638; 574584, 4472727; 574584, 4472736; 574584, 4472745; 574583, 4472755; 574583, 4472755; 574583, 4472755; 574555, 4472750; 574538, 4472746; 574521, 4472744; 574507, 4472742; 574493, 4472740; 574486, 4472738; 574475, 4472733; 574469, 4472731; 574461, 4472728; 574452, 4472724; 574449, 4472724; 574438, 4472723; 574442, 4472729; 574454, 4472759; 574561, 4472824; 574544, 4472824; 574541, 4472841; 574431, 4472775; 574422, 4472751; 574393, 4472724; 574374, 4472726; 574357, 4472744; 574349, 4472755; 574327, 4472779; 574318, 4472791; 574396, 4473004; 574850, 4473004; 575035, 4473004; 575196, 4473004; 575552, 4473217; 575696, 4473304; 575720, 4473327; 576096, 4473704; 576203, 4473704; 576555, 4473704; 576696, 4473704; 576979, 4473704; 577165, 4473704; 577396, 4473704; 577440, 4473737; 577447, 4473742; 577796, 4474004; 578696, 4474004; 578781, 4474028; 578899, 4474062; 578899, 4474062; 579396, 4474204; 579733, 4474204; 580096, 4474204; 580696, 4474504; 581086, 4474504; 581543, 4474504; 581996, 4474504; 582027, 4474541; 582496, 4475104; 583096, 4475204; 583296, 4475204; 583706, 4474876; 583796, 4474804; 584296, 4475004; 584696, 4475004; 585496, 4474304; 586096, 4473404; 586196, 4473204; 585896, 4472404; 585596, 4471904; 584896, 4471704; 584596, 4471404; 584596, 4471204; 584796, 4470904; 584796, 4470604; 584596, 4470304; 583496, 4469504; 583196, 4469204; 582696, 4468304; 582696, 4467404; 582796, 4466704; 582796, 4466504; 581996, 4465604; 581096, 4465304; 580696, 4465004; 580496, 4463804; 580296, 4463104; 578996, 4462504; 578596, 4462104; 578196, 4461804; 577896, 4460704; 577796, 4459804; 576796, 4459104; 576696, 4458604; 576896, 4458104; 576896, 4456904; 576496, 4456504; 575596, 4456604; 574996, 4456604; 574196, 4455704; 573596, 4455404; 572396, 4455104; 572096, 4455104; 571696, 4455404; 571496, 4455204; 571196, 4454704; 570696, 4454704; 570296, 4454604; 570296, 4454804; 570696, 4455704; 570096, 4455904; 569596, 4456104; 569396, 4456304; 568996, 4456304; 568696, 4456304; 568096, 4456604; 567996, 4456904; 567996, 4457804; 568496, 4458604; 569196, 4459604; 569696, 4460304; 569596, 4460604; 569096, 4460404; 568396, 4460504; 567596, 4460504; 566896, 4459804; 566496, 4459804; 565996, 4460904; 565896, 4461204; 565896, 4461504; 566096, 4461804; 565896, 4462104; 565996, 4462204; 565896, 4462304; 565996, 4462404; 565896, 4462604; 565996, 4462704; 565996, 4462804; 566096, 4462904; 566396, 4462904; 566596, 4463104; 566596, 4463404; 566796, 4463504; 566896, 4463504; 566996, 4463404; 567196, 4463304; 567296, 4463404; 567696, 4463204; 568396, 4463004; 569896, 4463004; 570696, 4463704; 570896, 4464104; 572096, 4465004; 572096, 4466104; 572196, 4466404; 572896, 4467104; 573596, 4468404; 573496, 4468804; 573196, 4469204; 572996, 4469404; 572696, 4469404; 571896, 4468604; 571496, 4467904; 571096, 4467704; 571096, 4468504; 571296, 4468504; 571196, 4469004; 571296, 4469304; 571296, 4470304; 570596, 4470704; 570556, 4470724; 570556, 4470736; 570562, 4470735; 570557, 4471158; 570882, 4471152; 571325, 4471157; 571331, 4471712; 571332, 4471716; and excluding land bounded by 579424, 4466287; 579440, 4463592; 580153, 4465463; 580228, 4465617; 580280, 4465722; 580409, 4465868; 580935, 4466259; returning to 579424, 4466287.

(38) Subunit 7C; Butte County, Tehama County, California. From USGS 1:24,000 scale quadrangles Acorn Hollow, Campbell Mound, Richardson Springs Northwest, and Vina. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 588835, 4429627; 588996, 4429304; 589596, 4429304; 589596, 4428404; 589596, 4427804; 589896, 4426904; 590596, 4426204; 590596, 4425104; 591296, 4424204; 591596, 4423104; 591658, 4422362; 590621, 4423490; 590082, 4424078; 589912, 4424262; 589224, 4425011; 588550, 4426026; 588521, 4426069; 588374, 4426290; 588309, 4426387; 588309, 4426388; 588308, 4426389; 588263, 4426456; 588110, 4426687; 588008, 4426841; 588096, 4427104; 587996, 4427104; 587898, 4427006; 587852, 4427075; 587233, 4427967; 587203, 4428047; 586868, 4428574; 586847, 4428605; 586996, 4428704; 587396, 4428904; 588396, 4429404; 588596, 4429804; 588796, 4429704; 588829, 4429638; returning to 588835, 4429627.

(39) Subunit 7D; Butte County, California. From USGS 1:24,000 scale quadrangle Richardson Springs. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 593796, 4420704; 593259, 4420620; 592425, 4421527; 592354, 4421604; 593096, 4421604; 593196, 4421304; 593596, 4421204; returning to 593796, 4420704.

(40) Subunit 7E; Butte County, California. From USGS 1:24,000 scale quadrangle Richardson Springs. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 594596, 4420104; 593977, 4419839; 593466, 4420395; 594096, 4420604; 594496, 4420404; returning to 594596, 4420104.

(41) Subunit 7F; Butte County, California. From USGS 1:24,000 scale quadrangle Paradise West, Richardson Springs, Chico. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 597196, 4416204; 597196, 4415404; 597140, 4415330; 596896, 4415004; 597196, 4414804; 597896, 4415304; 598196, 4415004; 597696, 4414404; 597696, 4414204; 597396, 4413604; 597396, 4413104; 598296, 4413704; 598496, 4413704;

598496, 4413404; 597518, 4411742; 597376, 4412187; 597055, 4413207; 596736, 4414221; 596716, 4414286; 596400, 4415288; 596399, 4415293; 596226, 4415844; 596187, 4415965; 596124, 4416162; 596107, 4416216; 596089, 4416270; 596078, 4416304; 596096, 4416304; 596196, 4416204; 596296, 4416304; 596396, 4416404; 596496, 4416504; 596596, 4416504; 596596, 4416604; 596696, 4416604; returning to 597196, 4416204.

(42) Subunit 7G; Butte County, California. From USGS 1:24,000 scale quadrangle Hamlin Canyon, Chico. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 598996, 4411605; 599496, 4411505; 599896, 4411505; 599896, 4410805; 599396, 4410505; 599196, 4410605; 599096, 4410605; 598896, 4410405; 598596, 4410205; 598396, 4409905; 598196, 4409805; 598166, 4409775; 598147, 4409798; 598133, 4409815; 598110, 4409888; 597901, 4410542; 597820, 4410795; 597557, 4411620; 597530, 4411705; 597696, 4411705; 598396, 4412504; 598596, 4413104; 598996, 4413104; returning to 598996, 4411605.

(43) Subunit 7H; Butte County, California. From USGS 1:24,000 scale quadrangle Cherokee, Hamlin Canyon. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 600396, 4405805; 601296, 4405405; 601896, 4405405; 602096, 4405305; 602296, 4405005; 602596, 4405005; 602796, 4404705; 603396, 4404505; 604596, 4404005; 605296, 4404005; 605696, 4403805; 605696, 4403405; 605196, 4403105; 604796, 4403205; 604596, 4403105; 604571, 4402980; 604496, 4402905; 604396, 4402905; 604296, 4402805; 604196, 4402705; 604096, 4402705; 603896, 4402605; 603896, 4402405; 603696, 4402205; 603496, 4402205; 603296, 4402305; 603196, 4402205; 602996, 4402205; 602996, 4401905; 602796, 4401905; 602396, 4402405; 602396, 4402505; 601896, 4403105; 601810, 4403105; 601648, 4403304; 601597, 4403304; 601561, 4403425; 601415, 4403468; 601322, 4403400; 601185, 4403376; 601074, 4403308; 600997, 4403374; 600955, 4403251; 600800, 4403371; 600638, 4403280; 600603, 4403335; 600568, 4403368; 600548, 4403385; 600464, 4403455; 600439, 4403447; 600328, 4403409; 600079, 4403484; 600069, 4403483; 599897, 4403467; 599821, 4403522; 599747, 4403502; 599588, 4403644; 599424, 4403666; 599397, 4403670; 599365, 4403674; 599180, 4403439; 599120, 4403416; 599082, 4404205; 599076, 4404348; 599067, 4404527; 599050, 4405192; 599049, 4405263; 599047, 4405333; 599043, 4405482; 599029, 4405524; 599015, 4405554; 599009, 4405567; 598980, 4405599; 598938, 4405651; 598881, 4405710; 598869, 4405726; 598818, 4405777; 598807, 4405787; 598790, 4405805; 598731, 4405863; 598694, 4405907; 598679, 4405931; 598663, 4405964; 598645, 4406015; 598640, 4406038; 598636, 4406060; 598628, 4406226; 598618, 4406620; 598611, 4406938; 598607, 4407300; 598609, 4407320; 598621, 4407372; 598623, 4407375; 598623, 4407394; 598676, 4407617; 598896, 4407705; 598996, 4407905; 599296, 4408205; 600296, 4408705; 600396, 4408605; 600396, 4408205; 600096, 4407905; 600496, 4407405; 599596, 4406505; 599596, 4406005; returning to 600396, 4405805.

(44) Subunit 7I; Butte County, California. From USGS 1:24,000 scale quadrangle Hamlin Canyon, Shipee. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 607696, 4401105; 607896, 4400905; 607596, 4400605; 606996, 4400605; 605196, 4399605; 605196, 4399405; 606596, 4399305; 606893, 4399135; 606873, 4399104; 606820, 4399056; 606664, 4399070; 606624, 4399076; 606575, 4399084; 606573, 4399084; 606490, 4399069; 606458, 4399042; 606425, 4399015; 606370, 4398974; 606305, 4398940; 606221, 4398927; 606156, 4398927; 606063, 4398936; 605995, 4398939; 605953, 4398938; 605918, 4398935; 605885, 4398921; 605877, 4398942; 605870, 4398953; 605860, 4398957; 605859, 4398956; 605797, 4398947; 605685, 4398921; 605600, 4398911; 605528, 4398915; 605415, 4398869; 605329, 4398849; 605269, 4398839; 605230, 4398828; 605230, 4398828; 605223, 4398828; 605205, 4398828; 605176, 4398829; 605159, 4398830; 605097, 4398855; 605053, 4398874; 605003, 4398897; 604125, 4399313; 603992, 4399240; 603982, 4399239; 603974, 4399241; 603396, 4399327; 603396, 4399405; 602996, 4399405; 603596, 4399605; 604796, 4400005; 604396, 4401105; 604496, 4401205; 604596, 4401105; 604696, 4401105; 604696, 4401205; 604896, 4401205; 604996, 4401205; 604896, 4401405; 605396, 4401705; 605996, 4401805; 606496, 4401605; 607196, 4401205; returning to 607696, 4401105.

(45) Subunit 7J; Butte County, California. From USGS 1:24,000 scale quadrangle Cherokee, Oroville, Shippee. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 610454, 4388429; 610496, 4388305; 609396, 4387905; 609396, 4387705; 608896, 4387605; 608896, 4389105; 607696, 4389105; 607696, 4389305; 607596, 4389405; 607496, 4389405; 607496, 4389705; 607396, 4389805; 607496, 4389805; 607596, 4389905; 607496, 4390105; 607496, 4390305; 607396, 4390405; 607396, 4390605; 607196, 4390805; 605796, 4392105; 605896, 4392105; 606096, 4392305; 606196, 4392505; 605996, 4392705; 605896, 4392705; 605696, 4392605; 606124, 4392947; 606383, 4392656; 606442, 4392590; 606586, 4392442; 606633, 4392398; 607213, 4391850; 607740, 4391343; 607844, 4391243; 607922, 4391168; 608323, 4390783; 608633, 4390441; 608948, 4390093; 609241, 4389770; 609487, 4389499; 609817, 4389134; 609831, 4389118; 609986, 4388947; 610218, 4388694; 610283, 4388624; 610335, 4388559; 610417, 4388468; returning to 610454, 4388429.

(46) Subunit 7K; Butte County, California. From USGS 1:24,000 scale quadrangles Oroville, and Shippee. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 616960, 4387371; 616948, 4387464; 616937, 4387853; 616938, 4387886; 616946, 4388066; 617025, 4388461; 617078, 4388655; 617271, 4389323; 617291, 4389377; 617397, 4389892; 617404, 4389930; 617457, 4390159; 617476, 4390213; 617505, 4390300; 617537, 4390394; 617565, 4390486; 618696, 4390405; 618896, 4390005; 618896, 4389505; 617896, 4388105; 617296, 4387505; returning to 616960, 4387371.

(47) Subunit 7L; Butte County, California. From USGS 1:24,000 scale quadrangle Hamlin Canyon, Shippee. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 612389, 4386215; 612396, 4386105; 612096, 4385905; 611396, 4384305; 611096, 4384305; 611096, 4383405; 610496, 4383405; 610496, 4383005; 610396, 4383005; 610396, 4382905; 610296, 4382805; 610396, 4382805; 610496, 4382705; 610596, 4382705; 610596, 4382605; 610596, 4382505; 610596, 4382405; 610296, 4382105; 610196, 4382205; 610296, 4382305; 610296, 4382405; 610296, 4382505; 610196, 4382405; 609996, 4382205; 609910, 4382119; 608596, 4383105; 608896, 4383605; 609596, 4384005; 609596, 4384305; 609396, 4384805; 609696, 4385105; 609396, 4385605; 609596, 4385805; 609996, 4385905; 610196, 4385905; 610196, 4386205; 610296, 4386305; 610596, 4386505; 611196, 4386905; 611496, 4387205; 611460, 4387320; 611983, 4386741; 612310, 4386376; returning to 612389, 4386215.

(48) Subunit 7M; Butte County, California. From USGS 1:24,000 scale quadrangle Cherokee, Oroville, Shippee.

Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 618688, 4384311; 618688, 4384311; 618656, 4384349; 618608, 4384406; 618473, 4384567; 618453, 4384600; 618382, 4384720; 618321, 4384953; 618303, 4385024; 618281, 4385143; 618113, 4385826; 618093, 4385912; 618046, 4386016; 618026, 4386061; 617997, 4386086; 617935, 4386166; 617827, 4386246; 617781, 4386268; 617763, 4386270; 617760, 4386283; 617521, 4386430; 617796, 4386705; 618096, 4386505; 618296, 4386505; 618796, 4386705; 619096, 4386805; 619296, 4387005; 619396, 4387005; 619596, 4387205; 619596, 4387405; 619796, 4387405; 619896, 4387505; 619996, 4387805; 620296, 4387805; 620696, 4388205; 620796, 4388205; 620796, 4387005; 621396, 4387005; 621696, 4386305; 621496, 4385405; 620996, 4385305; 620696, 4384705; 620496, 4384605; 619696, 4384905; 618696, 4384305; returning to 618688, 4384311.

(49) Subunit 7N; Butte County, California. From USGS 1:24,000 scale quadrangle Oroville, Shippee. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 618596, 4382306; 618596, 4382305; 619396, 4381105; 619596, 4380805; 619596, 4380305; 620896, 4378705; 620996, 4378205; 620396, 4377505; 618896, 4376805; 617896, 4376205; 617196, 4376005; 616996, 4375805; 617596, 4374605; 617596, 4374305; 617396, 4374005; 615511, 4373926; 615500, 4374159; 615415, 4374258; 614979, 4373925; 614761, 4374187; 614666, 4374554; 614396, 4374532; 614396, 4375505; 614696, 4375505; 614696, 4376405; 614896, 4376405; 614996, 4376505; 615196, 4376605; 615196, 4376805; 615996, 4376805; 616396, 4376805; 616396, 4377905; 614996, 4377905; 614996, 4378105; 614796, 4378105; 614796, 4378305; 614596, 4378305; 614596, 4378605; 614696, 4378705; 614696, 4379505; 614296, 4379505; 614296, 4381105; 612696, 4381105; 612696, 4382705; 613596, 4382805; 613796, 4382905; 613896, 4383005; 614096, 4383305; 614296, 4383805; 614296, 4384005; 614896, 4384005; 615169, 4384005; 615902, 4383609; 616800, 4383109; 617362, 4382796; 617423, 4382762; 617659, 4382634; 617685, 4382617; 618083, 4382368; 618443, 4382135; 618464, 4382111; 618541, 4382082; 618540, 4382106; 618553, 4382177; 618559, 4382213; returning to 618596, 4382306.

(50) Subunit 8A; Mendocino County, California. From USGS 1:24,000 scale quadrangle Point Arena. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 441396, 4314002; 441696, 4313502; 441796, 4313302; 442296, 4313202; 442596, 4313102; 442996, 4312602; 443296, 4312102; 443396, 4311802; 443396, 4311602; 442596, 4311602; 442496, 4311802; 442296, 4311802; 441396, 4310802; 441096, 4310702; 440796, 4310702; 440596, 4310902; 440296, 4310902; 440096, 4311102; 439596, 4310802; 438996, 4310802; 438596, 4311202; 438596, 4311602; 438596, 4312302; 438596, 4312502; 438796, 4312802; 439096, 4312902; 439196, 4313302; 439396, 4313702; 439596, 4313802; 439896, 4313702; 440196, 4313802; 441096, 4313802; 441296, 4314002; returning to 441396, 4314002.

(51) Subunit 9A; Lake County, California. From USGS 1:24,000 scale quadrangle Kelseyville, The Geysers. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 520696, 4304503; 520796, 4304203; 521296, 4303703; 521296, 4303303; 520996, 4303203; 520096, 4302703; 519696, 4302703; 519296, 4303003; 518696, 4303403; 518496, 4303803; 517796, 4304303; 517796, 4305303; 518096, 4305603; 518996, 4305603; 519496, 4305403; 519496, 4305003; 520696, 4304503; and excluding land bound by 519229, 4304318; 519282, 4304316; 519286, 4304383; 519355, 4304340; 519671, 4304397; 519803, 4304319; 519978, 4304007; 520024, 4303964; 520021, 4303917; 519881, 4303816; 519825, 4303689; 519774, 4303779; 519731, 4303720; 519735, 4303496; 519936, 4303493; 519942, 4303707; 520021, 4303683; 520033, 4303584; 520071, 4303585; 520076, 4304308; 520048, 4304313; 520040, 4304404; 519226, 4304415; returning to 519229, 4304318.

(52) Subunit 9B; Lake County, California. From USGS 1:24,000 scale quadrangle Middletown. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 538796, 4301004; 539196, 4300404; 540096, 4299804; 540796, 4299504; 541096, 4299104; 541196, 4298504; 540796, 4298104; 540296, 4298204; 539196, 4298904; 538896, 4299004; 538496, 4299004; 538196, 4299304; 538396, 4300004; 537996, 4300504; 537496, 4300404; 536996, 4299704; 536396, 4299504; 536096, 4299504; 535196, 4300204; 535096, 4300604; 535096, 4301004; 535196, 4301604; 535396, 4302004; 535796, 4302204; 536196, 4302204; 536996, 4302104; returning to 538796, 4301004.

(53) Subunit 9C; Napa County, California. From USGS 1:24,000 scale quadrangle Capell Valley, Yountville. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 566896, 4250704; 567396, 4250304; 568196, 4250304; 568396, 4249904; 568196, 4249804; 568496, 4249204; 568596, 4249104; 568396, 4248904; 567896, 4248804; 567596, 4248704; 567496, 4248404; 567396, 4247904; 567296, 4248104; 567096, 4249604; 566796, 4249804; 566496, 4250104; 566196, 4250204; 566096, 4250304; 565596, 4250304; 565196, 4250304; 565196, 4250604; 565496, 4251004; 566096, 4251604; 566696, 4251404; returning to 566896, 4250704.

(54) Subunit 10A; Colusa County, California. From USGS 1:24,000 scale quadrangle Meridian, Colusa. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 587096, 4337905; 587596, 4337405; 587796, 4337605; 588896, 4336505; 588996, 4336505; 589196, 4336305; 589196, 4336705; 589296, 4336705; 589296, 4335705; 587996, 4335705; 587996, 4335805; 587496, 4336405; 587396, 4336605; 586996, 4337605; 586796, 4337605; 586796, 4337505; 586496, 4337505; 586496, 4336605; 586396, 4336405; 586096, 4336405; 585896, 4336705; 585896, 4337005; 585996, 4337005; 585996, 4338005; 586196, 4338005; 586196, 4338205; 586896, 4338705; 587096, 4338305; 587096, 4338205; 586896, 4338005; returning to 587096, 4337905.

(55) Subunit 10B; Yolo County, California. From USGS 1:24,000 scale quadrangles Davis, and Saxon. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 615496, 4262105; 615496, 4260505; 614596, 4260505; 614596, 4261305; 614296, 4261305; 614296, 4261605; 614096, 4261605; 614096, 4262105; returning to 615496, 4262105.

(56) Subunit 10C; Solano County, California. From USGS 1:24,000 scale quadrangle Dozier. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 600496, 4242805; 600496, 4242005; 601396, 4242005; 601396, 4241220; 601098, 4241220; 600974, 4241220; 600543, 4241219; 600117, 4241218; 599096, 4241216; 599096, 4242105; 599696, 4242105; 599696, 4242805; returning to 600496, 4242805.

(57) Subunit 10D; Solano County, California. From USGS 1:24,000 scale quadrangle Elmira. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 593296, 4242004; 593296, 4240404; 593307, 4240404; 593351, 4239612; 592127, 4239598; 592158, 4239931; 592140, 4239942; 592122, 4239975; 592122, 4239986; 592127, 4240065; 592396, 4240604; 592196, 4240604; 591896, 4240804; 591796, 4240904; 591696, 4241004; 591696, 4241104; 591696, 4241504; 591796, 4241504; 591896, 4241404;

591996, 4241404; 592096, 4241304; 592296, 4241104; 592396, 4240704; returning to 593296, 4242004.

(58) Subunit 10E; Solano County, California. From USGS 1:24,000 scale quadrangles Denverton, and Elmira. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 589496, 4233804; 589096, 4234204; 588596, 4234204; 588596, 4236204; 588645, 4236253; 589040, 4236356; 589620, 4236362; 589766, 4236364; 589794, 4236364; 589696, 4234704; 589796, 4234704; 589796, 4234304; 590196, 4234304; 590196, 4233868; 590196, 4233804; returning to 589496, 4233804.

(59) Subunit 10F; Solano County, California. From USGS 1:24,000 scale quadrangles Denverton, Elmira, and Fairfield South. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 589275, 4230706; 589276, 4230706; 589337, 4230698; 589370, 4230694; 589411, 4230699; 589417, 4230713; 589410, 4230984; 589112, 4231020; 589196, 4231104; 589196, 4231504; 588696, 4231404; 588536, 4231484; 588513, 4232204; 588596, 4232204; 588596, 4232304; 588696, 4232304; 588696, 4232604; 588496, 4232804; 588696, 4233104; 588796, 4233304; 590096, 4233304; 590196, 4233304; 590196, 4233104; 590696, 4233104; 591196, 4232604; 591234, 4232629; 591239, 4232624; 591280, 4232660; 591796, 4233004; 592610, 4233095; 592690, 4233095; 592690, 4233104; 592696, 4233104; 592696, 4233604; 592996, 4233504; 592996, 4233555; 592998, 4233555; 592996, 4233558; 592996, 4233604; 593496, 4233904; 594296, 4233904; 594396, 4234704; 594596, 4234704; 594986, 4235200; 595012, 4233903; 595013, 4233118; 595140, 4233114; 595164, 4233100; 595227, 4233071; 595270, 4233031; 595285, 4233015; 595335, 4232955; 595418, 4232782; 595519, 4232583; 595579, 4232471; 595649, 4232328; 595795, 4232048; 596062, 4231522; 595023, 4231515; 594541, 4231511; 594505, 4231477; 594506, 4231420; 594530, 4231344; 594570, 4231298; 594592, 4231261; 594594, 4231219; 594607, 4231174; 594639, 4231161; 594671, 4231147; 594699, 4231145; 594711, 4231142; 594712, 4231130; 594714, 4231115; 594710, 4231094; 594702, 4231089; 594679, 4231079; 594669, 4231072; 594653, 4231049; 594646, 4231013; 594639, 4230983; 594596, 4231004; 593896, 4231004; 593696, 4230304; 593387, 4230319; 593387, 4230319; 593796, 4229704; 594096, 4229504; 593996, 4229404; 593996, 4229304; 594096, 4229204; 593996, 4229104; 593996, 4228904; 594396, 4228804; 594396, 4228304; 593796, 4228204; 593596, 4227904; 592896, 4227904; 592796, 4227804; 592696, 4227804; 592596, 4227704; 592296, 4227604; 592096, 4227304; 591796, 4227204; 591596, 4227004; 591296, 4226904; 590996, 4226804; 590796, 4226904; 590496, 4226904; 589496, 4227204; 589361, 4227204; 589122, 4227268; 588803, 4227384; 588075, 4227674; 588069, 4227676; 587563, 4227840; 587435, 4227881; 587106, 4228001; 587029, 4228138; 586996, 4228204; 586796, 4228304; 586696, 4228804; 586496, 4228904; 586296, 4228904; 586196, 4229104; 585496, 4229704; 585496, 4229904; 585596, 4230004; 585096, 4230104; 585196, 4230204; 585096, 4230304; 585207, 4230371; 585220, 4230354; 585423, 4230389; 585415, 4230433; 585391, 4230453; 585366, 4230466; 585596, 4230604; 585696, 4230904; 585999, 4230904; 586005, 4230876; 586022, 4230869; 586052, 4230862; 586135, 4230865; 586141, 4230878; 586141, 4230892; 586123, 4230901; 586119, 4230904; 586364, 4230904; 586369, 4230888; 586420, 4230842; 586436, 4230799; 587532, 4230821; 587978, 4230857; 588064, 4230915; 588087, 4230928; 588112, 4230930; 588131, 4230927; 588171, 4230904; 588182, 4230901; 588213, 4230899; 588796, 4230704; 588939, 4230704; 589021, 4230702; 589085, 4230703; 589186, 4230717; returning to 589275, 4230706.

(60) Subunit 10G; Solano County, California. From USGS 1:24,000 scale quadrangle Fairfield South. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 583208, 4232797; 583252, 4232811; 583641, 4232942; 583715, 4232965; 583726, 4232969; 583822, 4233000; 583875, 4233018; 583796, 4232704; 583196, 4231704; 582796, 4231604; 582496, 4231304; 582396, 4230504; 582096, 4230504; 581996, 4230204; 581796, 4230204; 581796, 4230904; 581896, 4230904; 581896, 4231404; 581396, 4231404; 581396, 4231804; 581596, 4232004; 581596, 4231704; 581796, 4231704; 581796, 4232704; 581996, 4232704; 582896, 4232804; 583196, 4232804; returning to 583208, 4232797.

(61) Subunit 10H; Solano County, California. From USGS 1:24,000 scale quadrangle Fairfield South. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 577696, 4229504; 577796, 4229404; 578196, 4229604; 578196, 4229504; 577996, 4228904; 577396, 4229204; 577296, 4229604; 577496, 4229804; 577696, 4229604; returning to 577696, 4229504.

(62) Subunit 11A; Yuba County, California. From USGS 1:24,000 scale quadrangles Browns Valley, and Wheatland. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 635096, 4332005; 635096, 4329705; 634696, 4329705; 633896, 4329705; 633696, 4329905; 633596, 4329905; 633396, 4329905; 633396, 4330105; 632796, 4329905; 632496, 4329705; 632496, 4328805; 631396, 4328805; 631396, 4329005; 631696, 4329005; 631696, 4329605; 631996, 4329605; 631996, 4330405; 632896, 4330405; 633096, 4330705; 633096, 4331105; 633196, 4331305; 633596, 4331505; 633896, 4331305; 633896, 4332005; returning to 635096, 4332005.

(63) Subunit 11B; Placer County, California. From USGS 1:24,000 scale quadrangle Lincoln. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 647996, 4313205; 647996, 4312505; 648096, 4312305; 647996, 4311305; 647796, 4311305; 647696, 4311105; 647396, 4311205; 646996, 4311205; 646996, 4311105; 647296, 4311105; 647596, 4311005; 647896, 4311005; 647996, 4310905; 647896, 4310805; 646996, 4310805; 646896, 4310705; 646896, 4310605; 647496, 4310605; 647596, 4310705; 647696, 4310605; 647896, 4310505; 648096, 4310505; 648096, 4309805; 648096, 4309505; 647296, 4309505; 647296, 4309005; 646796, 4308905; 646796, 4308605; 646696, 4308605; 646196, 4308905; 646196, 4308005; 646222, 4307980; 646108, 4308064; 646063, 4308099; 646012, 4308132; 645918, 4308192; 645433, 4308547; 645310, 4308646; 645196, 4308747; 644293, 4309663; 644291, 4309665; 644289, 4309667; 644244, 4309719; 643560, 4310423; 643796, 4310305; 644096, 4310705; 644396, 4310205; 645496, 4310205; 645896, 4310005; 646196, 4310005; 646396, 4309805; 647596, 4309805; 647596, 4310005; 646896, 4310005; 646596, 4310105; 646596, 4310405; 646696, 4310505; 646196, 4310505; 645996, 4310605; 645996, 4311005; 646196, 4310905; 646596, 4310905; 646596, 4311005; 646396, 4311005; 646396, 4311205; 646496, 4311505; 646896, 4311505; 646896, 4311705; 646896, 4311805; 646996, 4311905; 646896, 4312305; 647096, 4312405; 647196, 4312605; 647396, 4312605; 647496, 4312505; 647496, 4312605; 647396, 4312705; 647196, 4312705; 646896, 4312503; 646896, 4312805; 646996, 4313205; 647196, 4313605; 647396, 4314005; 648396, 4314005; 648396, 4313705; returning to 647996, 4313205.

(64) Subunit 11C; Placer County, California. From USGS 1:24,000 scale quadrangle Lincoln. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 644496, 4306482;

644496, 4305705; 644796, 4305705; 644796, 4305205; 644896, 4305205; 644896, 4305005; 645196, 4305005; 645196, 4304905; 645296, 4304805; 645496, 4304905; 645622, 4304905; 645597, 4304892; 645552, 4304878; 645509, 4304874; 645500, 4304876; 645489, 4304870; 645473, 4304845; 645440, 4304828; 645410, 4304815; 645373, 4304793; 645354, 4304775; 645331, 4304746; 645324, 4304743; 645303, 4304721; 645241, 4304661; 645164, 4304612; 645083, 4304568; 645000, 4304539; 644924, 4304536; 644892, 4304538; 644873, 4304543; 644859, 4304549; 644859, 4304548; 644840, 4304549; 644803, 4304531; 644763, 4304503; 644722, 4304474; 644696, 4304454; 644671, 4304439; 644659, 4304439; 644656, 4304441; 644650, 4304444; 644636, 4304458; 644622, 4304469; 644611, 4304461; 644579, 4304457; 644535, 4304451; 644484, 4304448; 644453, 4304448; 644423, 4304445; 644412, 4304440; 644396, 4304436; 644396, 4304705; 644196, 4304705; 644196, 4304805; 644096, 4304805; 644096, 4306474; returning to 644496, 4306482.

(65) Subunit 11D; Sacramento County, California. From USGS 1:24,000 scale quadrangle Folsom. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 655336, 4279155; 655196, 4279155; 655150, 4279167; 655156, 4279185; 655186, 4279195; 655186, 4279365; 655156, 4279385; 655136, 4279395; 655116, 4279415; 655106, 4279445; 655086, 4279455; 655056, 4279525; 655036, 4279575; 655036, 4279605; 655196, 4279605; 655197, 4279611; 655316, 4279615; 655306, 4279955; 655386, 4279955; 655314, 4279951; 655326, 4279736; 655474, 4279733; 655466, 4279725; 655376, 4279725; 655366, 4279665; 655366, 4279635; 655356, 4279605; 655346, 4279555; 655336, 4279505; 655336, 4279445; returning to 655336, 4279155.

(66) Subunit 11E; Sacramento County, California. From USGS 1:24,000 scale quadrangle Carmichael. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 649731, 4266483; 649796, 4266505; 649890, 4266499; 650296, 4266905; 650496, 4266805; 650696, 4266805; 650896, 4267005; 650996, 4267305; 650896, 4267705; 650596, 4267605; 650396, 4267905; 649996, 4268205; 649496, 4267905; 649196, 4267605; 649196, 4267305; 649496, 4267205; 649296, 4266905; 648496, 4266905; 648396, 4267505; 648096, 4267805; 648696, 4268305; 649496, 4268705; 649496, 4269005; 649696, 4269405; 649896, 4269405; 649896, 4268505; 650496, 4268705; 650896, 4268605; 651096, 4268605; 651096, 4269205; 651896, 4269105; 651596, 4268605; 651696, 4267705; 651696, 4266305; 651596, 4266205; 651596, 4266105; 651196, 4266105; 651196, 4265805; 651666, 4265617; 651685, 4264881; 651696, 4264205; 651496, 4264205; 651496, 4264005; 650596, 4264005; 650596, 4264105; 650496, 4264105; 650496, 4264405; 650096, 4264505; 649996, 4264905; 649496, 4264905; 649196, 4264805; 648996, 4264905; 648796, 4264905; 648796, 4265105; 648796, 4265305; 649996, 4265305; 649996, 4265805; 648396, 4265805; 648396, 4266005; 648596, 4266205; 648796, 4266005; 649096, 4266005; 649396, 4266205; 649496, 4266405; returning to 649731, 4266483.

(67) Subunit 11F; Sacramento County, California. From USGS 1:24,000 scale quadrangle Sloughhouse. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 660757, 4256313; 660777, 4255924; 660696, 4256005; 660396, 4255905; 660096, 4256005; 659896, 4256105; 659946, 4256255; 659996, 4256405; 660296, 4256305; 660396, 4256605; 660612, 4256533; 660729, 4256449; 660742, 4256432; returning to 660757, 4256313.

(68) Subunit 11G; Amador County, Sacramento County, California. From USGS 1:24,000 scale quadrangles Carbondale, Clay, Goose Creek, and Sloughhouse. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 654796, 4248555; 654796, 4248605; 654796, 4248805; 655196, 4248805; 655896, 4248805; 656396, 4249505; 656696, 4249305; 657296, 4250005; 656796, 4250905; 657796, 4250905; 657796, 4251305; 656796, 4251205; 656796, 4251905; 656596, 4252105; 656596, 4252405; 657096, 4253505; 657496, 4254405; 657896, 4254105; 657896, 4254005; 658196, 4253805; 658996, 4253305; 659096, 4253305; 659396, 4253105; 660096, 4254305; 660196, 4254605; 660296, 4254705; 660396, 4255005; 660696, 4255105; 660796, 4255205; 660896, 4255805; 660850, 4255851; 660873, 4255851; 661637, 4255865; 661651, 4255601; 661827, 4252068; 661832, 4251947; 662276, 4251977; 662409, 4251980; 662679, 4251997; 663105, 4252023; 663215, 4252003; 663317, 4252039; 663371, 4252095; 663408, 4252146; 663420, 4252196; 663440, 4252251; 663474, 4252316; 663486, 4252396; 663505, 4252516; 663533, 4252575; 663606, 4252695; 663642, 4252719; 663686, 4252727; 663726, 4252712; 663822, 4252705; 663857, 4252706; 663896, 4252721; 663914, 4252764; 663920, 4252796; 663857, 4252880; 663747, 4253004; 663747, 4253037; 663763, 4253091; 663837, 4253213; 663903, 4253293; 663928, 4253295; 664001, 4253291; 664058, 4253303; 664135, 4253365; 664184, 4253407; 664222, 4253422; 664315, 4253500; 664344, 4253504; 664409, 4253477; 664465, 4253411; 664567, 4253418; 664662, 4253481; 664688, 4253505; 664743, 4253559; 664849, 4253655; 664950, 4253758; 664964, 4253805; 664973, 4253929; 664952, 4253998; 664979, 4254043; 665073, 4254139; 665214, 4254225; 665270, 4254273; 665323, 4254297; 665409, 4254269; 665487, 4254229; 665610, 4254195; 665715, 4254243; 665752, 4254299; 665819, 4254352; 665853, 4254363; 665896, 4254358; 665949, 4254318; 665976, 4254298; 666052, 4254239; 666056, 4254207; 666125, 4254170; 666163, 4254172; 666210, 4254184; 666264, 4254197; 666332, 4254245; 666369, 4254253; 666406, 4254245; 666435, 4254240; 666513, 4254210; 666547, 4254168; 666587, 4254124; 666619, 4254114; 666677, 4254117; 666748, 4254111; 666801, 4254066; 666818, 4254035; 666836, 4253969; 666838, 4253889; 666860, 4253792; 666887, 4253752; 666922, 4253724; 666945, 4253718; 667011, 4253723; 667073, 4253756; 667153, 4253781; 667238, 4253802; 667349, 4253785; 667373, 4253769; 667398, 4253773; 667409, 4253786; 667411, 4253813; 667473, 4253839; 667578, 4253845; 667714, 4253831; 667897, 4253780; 668055, 4253686; 668263, 4253626; 668456, 4253639; 668519, 4253655; 668621, 4253643; 668739, 4253609; 668796, 4253548; 668896, 4253471; 668974, 4253415; 669094, 4253336; 669194, 4253292; 669267, 4253288; 669347, 4253276; 669424, 4253270; 669495, 4253201; 669557, 4253129; 669654, 4253082; 669715, 4253062; 669761, 4253063; 669955, 4253052; 670108, 4252985; 670239, 4252978; 670337, 4252993; 670375, 4252990; 670416, 4252964; 670467, 4252910; 670515, 4252879; 670595, 4252812; 670633, 4252797; 670690, 4252732; 670722, 4252678; 670738, 4252653; 670759, 4252648; 670808, 4252657; 670828, 4252680; 670812, 4252712; 670823, 4252726; 670852, 4252739; 670903, 4252728; 670946, 4252729; 670979, 4252701; 671008, 4252634; 671046, 4252594; 671071, 4252579; 671137, 4252568; 671206, 4252564; 671287, 4252468; 671366, 4252374; 671412, 4252343; 671472, 4252324; 671534, 4252310; 671605, 4252270; 671627, 4252253; 671655, 4252255; 671699, 4252295; 671727, 4252314; 671770, 4252320; 671812, 4252316; 671869, 4252308; 671923, 4252302; 671944, 4252281; 672031, 4252224; 672039, 4252232;

672059, 4252259; 672086, 4252263; 672100, 4252240; 672139, 4252205; 672204, 4252111; 672213, 4252089; 672226, 4252061; 672230, 4252049; 672249, 4252035; 672255, 4252005; 672249, 4251995; 672244, 4251985; 672207, 4251970; 672200, 4251954; 672205, 4251906; 672210, 4251885; 672209, 4251860; 672204, 4251786; 672216, 4251713; 672247, 4251698; 672274, 4251711; 672281, 4251706; 672295, 4251670; 672309, 4251635; 672342, 4251607; 672359, 4251589; 672367, 4251580; 672367, 4251592; 672361, 4251922; 672360, 4252004; 672343, 4252721; 672342, 4252746; 672327, 4253475; 672321, 4253759; 672320, 4253811; 672316, 4253962; 672315, 4254034; 672314, 4254092; 672288, 4255416; 672296, 4255405; 672496, 4255405; 672796, 4256205; 673296, 4256205; 672896, 4254905; 672896, 4254605; 673196, 4254705; 673896, 4254705; 674096, 4254405; 674096, 4254205; 674596, 4253805; 674596, 4253505; 674196, 4253305; 674196, 4252705; 674396, 4252105; 674596, 4251705; 674596, 4251405; 673496, 4251305; 673396, 4251205; 673396, 4251005; 673996, 4250805; 674096, 4250305; 674396, 4249805; 674396, 4249605; 674296, 4249505; 673996, 4249505; 673696, 4249705; 672596, 4249705; 672411, 4249798; 671996, 4250005; 671396, 4250005; 671196, 4250305; 671096, 4250305; 671096, 4249605; 670796, 4249605; 670796, 4249305; 670896, 4249105; 670896, 4248805; 670996, 4248705; 670996, 4248305; 670596, 4248105; 670596, 4247930; 670596, 4247905; 670496, 4247905; 670496, 4247805; 670196, 4247805; 670196, 4247605; 670596, 4247305; 671196, 4247305; 671696, 4247505; 671896, 4247405; 671996, 4247105; 671996, 4246905; 671596, 4246605; 671696, 4246405; 671896, 4245805; 671396, 4245205; 671351, 4245169; 670896, 4244805; 670096, 4244005; 670096, 4243905; 670596, 4243605; 670296, 4243205; 670296, 4243105; 670396, 4243005; 670496, 4242905; 670696, 4242405; 671296, 4242705; 671696, 4242805; 671696, 4242505; 670796, 4241905; 669896, 4241905; 669396, 4241705; 668996, 4241705; 668796, 4241605; 668596, 4241405; 668496, 4241405; 668296, 4241505; 668096, 4241805; 667996, 4241805; 667496, 4241405; 667496, 4241605; 666496, 4241505; 665496, 4241505; 665496, 4242505; 665096, 4242505; 665096, 4242105; 664896, 4242105; 664896, 4242005; 664796, 4242005; 664696, 4241905; 664596, 4241905; 664596, 4241105; 664096, 4241105; 664096, 4240805; 663596, 4240805; 663596, 4240705; 663496, 4240605; 663396, 4240605; 663396, 4240405; 663196, 4240405; 663196, 4240705; 662896, 4240705; 662896, 4240305; 662796, 4240205; 662796, 4239805; 662596, 4239805; 662596, 4239405; 662196, 4239405; 662196, 4239205; 662096, 4239105; 661796, 4239105; 661796, 4239005; 661496, 4238805; 661496, 4239705; 661596, 4239705; 661596, 4241405; 661596, 4241705; 661796, 4241805; 662296, 4241805; 662296, 4241405; 662996, 4241405; 662896, 4242105; 662596, 4242105; 662696, 4242805; 662996, 4242905; 663496, 4242905; 663496, 4243605; 663146, 4243605; 663126, 4243646; 663096, 4243649; 663096, 4243705; 662596, 4243705; 662796, 4244505; 662896, 4244605; 662946, 4244605; 663096, 4244705; 663196, 4245105; 663896, 4245105; 663996, 4245305; 664496, 4245405; 664596, 4245005; 664696, 4245005; 664846, 4245043; 664996, 4245080; 664996, 4245105; 665096, 4245105; 664996, 4245505; 664996, 4246305; 664496, 4246305; 663996, 4246505; 662596, 4246105; 662330, 4246105; 662296, 4246105; 662196, 4246205; 661796, 4246205; 661996, 4246805; 662096, 4247105; 661896, 4247305; 660996, 4247305; 660996, 4246945; 660996, 4246905; 660946, 4246905; 659796, 4246905; 659596, 4247105; 659596, 4248105; 660096, 4248105; 659996, 4249405; 660096, 4249705; 659996, 4250005; 659496, 4249505; 659496, 4249305; 659396, 4249005; 659196, 4248805; 659196, 4248705; 659296, 4248605; 659196, 4248505; 658996, 4248505; 658896, 4248405; 658696, 4248405; 658596, 4248605; 658496, 4248705; 658296, 4248805; 658296, 4248705; 658396, 4248505; 658596, 4248305; 658596, 4248205; 658496, 4248105; 658496, 4247705; 658196, 4247705; 658096, 4248305; 656796, 4248305; 656396, 4248705; 655996, 4248005; 656196, 4247905; 656196, 4247805; 656096, 4247605; 655296, 4247605; 655296, 4247005; 654796, 4247005; returning to 654796, 4248555.

(69) Subunit 11H; Sacramento, San Joaquin County, California. From USGS 1:24,000 scale quadrangle Lockeford, Clay. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 654171, 4234569; 654196, 4234605; 655196, 4234605; 655506, 4234373; 655596, 4234305; 655784, 4234399; 655996, 4234505; 656082, 4234505; 656096, 4234505; 656096, 4234305; 656896, 4234305; 656896, 4234505; 657696, 4234505; 657996, 4234805; 658896, 4235005; 658796, 4234905; 658796, 4234405; 659296, 4234405; 659296, 4234505; 659096, 4234705; 660596, 4235105; 661096, 4235105; 661196, 4234905; 660796, 4234505; 660396, 4234205; 660096, 4234105; 659696, 4233205; 656996, 4233205; 654196, 4233005; 654096, 4233005; 654096, 4232505; 653696, 4232505; 653696, 4233905; returning to 654171, 4234569.

(70) Subunit 12A; Napa County, California. From USGS 1:24,000 scale quadrangle Napa, Cuttings Wharf. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 564896, 4233104; 564896, 4232904; 564696, 4233004; 564196, 4232604; 563896, 4232804; 563896, 4233404; 563896, 4234904; 563896, 4235004; 563996, 4235104; 564296, 4235204; 564496, 4235104; 564596, 4234904; 564796, 4234804; 564796, 4234704; 564896, 4234504; 564796, 4234204; 564896, 4234004; 564796, 4233904; 564796, 4233804; 564896, 4233604; returning to 564896, 4233104.

(71) Subunit 12B; Napa County, California. From USGS 1:24,000 scale quadrangle Cuttings Wharf. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 563296, 4230404; 563896, 4229304; 564196, 4229404; 564396, 4229004; 563296, 4228704; 563096, 4228704; 562896, 4228304; 562718, 4228304; 562357, 4228448; 561986, 4228585; 561853, 4228635; 561894, 4228673; 561961, 4228724; 562294, 4228870; 562253, 4229105; 562516, 4229162; 562580, 4229331; 562627, 4229327; 562716, 4229356; 562748, 4229378; 562751, 4229445; 562700, 4229489; 562634, 4229585; 562577, 4229661; 562624, 4230099; 562554, 4230302; 562577, 4230372; 562573, 4230413; 562573, 4230496; 562561, 4230550; 562572, 4230604; 562596, 4230604; 563296, 4230704; returning to 563296, 4230404.

(72) Subunit 12C; Contra Costa County, California. From USGS 1:24,000 scale quadrangle Benicia, Mare Island. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 566896, 4208304; 566896, 4207804; 566996, 4207804; 566996, 4207704; 566996, 4207604; 567196, 4207604; 567196, 4207704; 567096, 4207704; 567096, 4207804; 567196, 4207904; 567296, 4208004; 567596, 4207604; 567996, 4207204; 568296, 4207004; 568596, 4206904; 568496, 4206904; 568396, 4206804; 568296, 4206804; 568296, 4206904; 568196, 4206904; 568196, 4206804; 567996, 4206904; 567796, 4207004; 567696, 4207004; 567696, 4206904; 567596, 4206904; 567296, 4206904; 566696, 4207504; 566496, 4207304; 565996, 4207204; 565796, 4207504; 566507, 4208304; returning to 566896, 4208304.

(73) Subunit 13A; Contra Costa County, California. From USGS 1:24,000 scale quadrangle Antioch South, Brentwood. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 612596, 4195704; 611796, 4194304; 611796, 4194104; 611496, 4193204; 610996, 4193304; 610296, 4193504; 609996, 4193704; 609796, 4193804; 609196, 4193804; 608196, 4194104; 608596, 4194704; 608496, 4194904; 608696, 4195104; 608696, 4195704; 609696, 4195704; 609596, 4195404; 609296, 4194904; 609296, 4194804; 609396, 4194704; 609996, 4194604; 610296, 4194604; 610596, 4194904; 611296, 4195704; 612196, 4196104; returning to 612596, 4195704.

(74) Subunit 13B; Contra Costa County, California. From USGS 1:24,000 scale quadrangle Byron Hot Springs, Clifton Court Forebay. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 617896, 4187704; 618296, 4187904; 618596, 4188104; 618496, 4188404; 617796, 4188604; 617896, 4188704; 617715, 4188659; 617496, 4188804; 617496, 4189004; 618296, 4189304; 618196, 4189604; 618296, 4189904; 618796, 4190104; 618796, 4190504; 619096, 4190804; 619396, 4190904; 619696, 4190904; 619896, 4190504; 619996, 4190504; 620196, 4190704; 620496, 4190704; 620596, 4191004; 621896, 4191004; 622296, 4190504; 622396, 4190204; 622371, 4190204; 622496, 4189704; 623096, 4189104; 622996, 4188504; 622296, 4188504; 622196, 4188604; 621996, 4188804; 621796, 4189104; 621496, 4189504; 621296, 4189804; 621296, 4190204; 621196, 4190204; 621196, 4188504; 620996, 4188504; 620696, 4188204; 620496, 4188404; 620496, 4187904; 620596, 4187704; 620696, 4187604; 620796, 4187504; 620996, 4187504; 621196, 4187304; 620596, 4186904; 620596, 4186704; 621396, 4187104; 621417, 4187094; 621434, 4187085; 621696, 4187204; 622096, 4186804; 622496, 4186204; 622696, 4185904; 622596, 4185804; 622596, 4185604; 622096, 4185104; 621296, 4185104; 621096, 4185304; 620896, 4185304; 620596, 4185004; 620296, 4185104; 619996, 4185404; 619696, 4185304; 619496, 4185504; 618296, 4186404; 618196, 4186904; 617796, 4187204; returning to 617896, 4187704.

(75) Subunit 13C; Contra Costa County, California. From USGS 1:24,000 scale quadrangle Byron Hot Springs. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 614896, 4185204; 615196, 4185004; 615196, 4185304; 615396, 4185304; 615496, 4185004; 615696, 4184704; 615896, 4184704; 616096, 4184604; 616096, 4184504; 615896, 4184304; 615796, 4184304; 615596, 4184004; 615196, 4184004; 614896, 4184004; 614796, 4183804; 614696, 4183804; 614696, 4184304; 614996, 4184804; 614696, 4185104; 614696, 4185704; 614796, 4185704; returning to 614896, 4185204.

(76) Subunit 13D; Alameda County, California. From USGS 1:24,000 scale quadrangle Byron Hot Springs. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 615596, 4181004; 615596, 4180904; 615696, 4180904; 615796, 4181104; 615896, 4181004; 616096, 4180404; 616096, 4180304; 616296, 4180004; 616296, 4179704; 615996, 4179704; 615996, 4179504; 616296, 4179304; 616296, 4178804; 616196, 4178804; 615996, 4179004; 615996, 4179204; 615796, 4179404; 615596, 4179904; 615196, 4180304; 614896, 4180604; 614496, 4180704; 614196, 4180904; 614696, 4181304; 614796, 4181304; 614796, 4181504; 614996, 4181504; 615296, 4181204; 615496, 4181104; returning to 615596, 4181004.

(77) Subunit 13E; Alameda County, California. From USGS 1:24,000 scale quadrangle Altamont, Livermore. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 612496, 4175704; 612496, 4176104; 612196, 4176104; 612196, 4176204; 612096, 4176304; 611896, 4176304; 611696, 4176304; 611696, 4175104; 611496, 4175104; 611296, 4175204; 610996, 4175204; 610896, 4175704; 610496, 4175704; 610396, 4175004; 610296, 4174904; 610096, 4174804; 610096, 4174604; 609196, 4175204; 608696, 4175404; 608496, 4175704; 610096, 4175704; 610096, 4176304; 610496, 4176304; 610496, 4178304; 610896, 4178104; 610896, 4177304; 610896, 4177004; 611296, 4177004; 611996, 4176504; 612396, 4176504; 612496, 4176504; 612496, 4177004; 613396, 4177004; 613496, 4176804; 613396, 4176704; 613396, 4176604; 613396, 4176504; 613296, 4176504; 613296, 4176104; 613496, 4176104; 613496, 4176004; 613596, 4176004; 613596, 4176104; 613696, 4176204; 613796, 4176204; 613796, 4176404; 614496, 4175304; 614396, 4175204; 614296, 4175204; 614196, 4175104; 614096, 4175104; 613996, 4175004; 613896, 4174904; 613796, 4174904; 613796, 4175004; 613696, 4175004; 613696, 4175904; 613396, 4175904; 613296, 4175704; 613196, 4175704; 612896, 4175904; 612796, 4175904; 612596, 4175704; returning to 612496, 4175704.

(78) Subunit 14A; Stanislaus County, California. From USGS 1:24,000 scale quadrangle Ripon. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 662496, 4168105; 661696, 4167805; 661696, 4168105; 660396, 4167605; 660696, 4167305; 660896, 4167005; 660096, 4167005; 659596, 4168605; 661696, 4168605; 661696, 4169205; 662496, 4169205; returning to 662496, 4168105.

(79) Subunit 14B; Merced County, California. From USGS 1:24,000 scale quadrangles Gustine, San Luis Ranch, and Stevinson. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 688396, 4128805; 688696, 4128605; 689196, 4128705; 689296, 4128605; 689496, 4128405; 689896, 4128305; 689996, 4128105; 690296, 4128105; 690496, 4128005; 690596, 4127805; 690696, 4125305; 692796, 4125305; 693296, 4124805; 693196, 4124605; 693196, 4124205; 693396, 4123505; 693696, 4123205; 693896, 4122805; 694096, 4122705; 694175, 4122626; 694131, 4122595; 692549, 4121476; 692396, 4121705; 692296, 4121805; 692296, 4122305; 692196, 4122505; 691896, 4122605; 691496, 4122605; 691357, 4122884; 691358, 4122902; 691359, 4122918; 691363, 4122960; 691369, 4123003; 691363, 4123043; 691344, 4123077; 691313, 4123096; 691296, 4123099; 691296, 4123305; 691207, 4123484; 691223, 4123482; 691245, 4123487; 691252, 4123499; 691262, 4123523; 691273, 4123544; 691287, 4123575; 691290, 4123598; 691296, 4123605; 691291, 4123615; 691297, 4123654; 691311, 4123697; 691316, 4123747; 691310, 4123785; 691288, 4123825; 691268, 4123854; 691247, 4123877; 691223, 4123893; 691195, 4123900; 691167, 4123900; 691151, 4123895; 690996, 4124205; 690655, 4124205; 690655, 4124207; 690665, 4124222; 690678, 4124232; 690679, 4124252; 690673, 4124271; 690660, 4124287; 690642, 4124298; 690622, 4124307; 690619, 4124307; 690619, 4124324; 690596, 4124329; 690571, 4124335; 690565, 4124343; 690541, 4124375; 690484, 4124395; 690449, 4124397; 690276, 4124454; 690223, 4124494; 690179, 4124500; 690121, 4124588; 690116, 4124659; 690092, 4124705; 690085, 4124810; 690048, 4124861; 690008, 4124900; 689952, 4124924; 689915, 4124989; 689884, 4125015; 689844, 4125034; 689796, 4125105; 689754, 4125400; 689761, 4125400; 689768, 4125408; 689742, 4125562; 689726, 4125598; 689696, 4125805; 689796, 4126005; 689696, 4126405; 689496, 4126405; 689372, 4126343; 689335, 4126386; 689285, 4126469; 689231, 4126483; 689217, 4126487; 689165, 4126532; 689164, 4126657; 689116, 4126766; 689086, 4126798;

689007, 4126783; 688999, 4126800; 689009, 4126811; 689196, 4126905; 689120, 4127000; 689121, 4127012; 689045, 4127097; 689027, 4127129; 689019, 4127127; 688951, 4127212; 688919, 4127259; 688876, 4127308; 688831, 4127386; 688819, 4127426; 688792, 4127455; 688780, 4128049; 688289, 4128040; 688196, 4128505; returning to 688396, 4128805.

(80) Subunit 14C; Merced County, California. From USGS 1:24,000 scale quadrangles San Luis Ranch, and Stevinson. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 693218, 4125475; 693196, 4125505; 693242, 4125551; 693296, 4125605; 693796, 4125705; 693796, 4127105; 693896, 4127105; 693996, 4126805; 694296, 4126705; 694696, 4126205; 694696, 4126005; 694796, 4125805; 695275, 4125531; 695496, 4125405; 695596, 4121805; 694996, 4122205; 694796, 4122505; 694596, 4122705; 694596, 4122905; 694196, 4123205; 693896, 4123305; 693896, 4123605; 693596, 4123705; 693596, 4124305; 693796, 4124505; 693896, 4124805; 693696, 4125005; 693496, 4125105; returning to 693218, 4125475.

(81) Subunit 14D; Merced County, California. From USGS 1:24,000 scale quadrangles Arena, San Luis Ranch, Stevinson, and Turner Ranch. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 702966, 4121510; 703296, 4120905; 703996, 4120305; 704696, 4119605; 704696, 4119605; 704796, 4119505; 698996, 4119405; 698896, 4119505; 698639, 4119762; 698655, 4119775; 698597, 4119816; 698600, 4119874; 698722, 4120002; 698758, 4119882; 698790, 4119918; 698764, 4120921; 698760, 4121315; 698690, 4121313; 698696, 4121405; 699996, 4121405; 700096, 4120205; 700296, 4120205; 700296, 4122505; 697096, 4122405; 696996, 4124905; 697796, 4124905; 697796, 4125105; 697696, 4125205; 697796, 4125405; 698096, 4125505; 698296, 4125605; 698396, 4125905; 698796, 4126305; 699596, 4126305; 699696, 4126105; 699396, 4126105; 699396, 4125205; 700196, 4125205; 700296, 4125805; 700696, 4125505; 701196, 4125105; 701196, 4124105; 700396, 4124105; 700396, 4123605; 700596, 4123605; 700696, 4123305; 701196, 4123205; 701296, 4123005; 701496, 4122905; 701696, 4122505; 701996, 4122305; 702696, 4122005; returning to 702966, 4121510.

(82) Subunit 14E; Merced County, California. From USGS 1:24,000 scale quadrangles Arena, and Turner Ranch. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 706796, 4121905; 706896, 4120705; 706796, 4120305; 706796, 4119505; 708196, 4119505; 708196, 4119405; 708096, 4119305; 707996, 4119005; 707996, 4118805; 708096, 4118705; 708396, 4118705; 708396, 4117905; 707996, 4117905; 707596, 4118305; 706596, 4118305; 706096, 4118705; 705696, 4119105; 705296, 4119505; 704896, 4119805; 704796, 4119905; 704796, 4120205; 705196, 4120205; 705196, 4120405; 704996, 4120505; 704996, 4120605; 705196, 4120605; 704996, 4120805; 705096, 4120905; 705196, 4121505; 705296, 4121505; 705396, 4121805; 705796, 4121905; 705796, 4122005; 705496, 4122105; 705396, 4122205; 705596, 4122405; 705496, 4122405; 705396, 4122305; 705296, 4122305; 705196, 4122305; 704996, 4122305; 704996, 4122505; 704896, 4122605; 704596, 4122605; 704396, 4122705; 704096, 4122605; 703996, 4122705; 703496, 4124205; 703396, 4124405; 701396, 4126305; 700196, 4127405; 700563, 4128872; 700596, 4129005; 700596, 4130405; 701096, 4130405; 701096, 4129905; 701196, 4129605; 701296, 4129605; 701196, 4129905; 701196, 4130405; 701796, 4130405; 701796, 4129005; 701896, 4129005; 702896, 4129005; 703096, 4128605; 703396, 4128605; 703996, 4128605; 703996, 4128805; 704296, 4128805; 704296, 4128305; 703396, 4128205; 703496, 4128105; 703496, 4127705; 703596, 4127605; 703896, 4127305; 703796, 4127105; 703596, 4127105; 703496, 4126905; 703496, 4125905; 703596, 4125905; 704496, 4125905; 704396, 4125805; 704496, 4125705; 704596, 4125105; 704596, 4124605; 705096, 4124605; 705096, 4125105; 705796, 4125105; 705796, 4124705; 706696, 4124805; 706796, 4123505; returning to 706796, 4121905.

(83) Subunit 14F; Merced County, California. From USGS 1:24,000 scale quadrangles Sandy Mush, and Turner Ranch. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 706796, 4121905; 711596, 4122005; 711596, 4121505; 711596, 4121005; 709996, 4121105; 709996, 4121705; 709896, 4121705; 709896, 4121605; 709796, 4121305; 709596, 4121305; 709396, 4121405; 708896, 4121205; 708796, 4121105; 706896, 4121105; returning to 706796, 4121905.

(84) Subunit 14G; Merced County, California. From USGS 1:24,000 scale quadrangles Sandy Mush and Turner Ranch. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 711296, 4120305; 711496, 4120205; 711596, 4120305; 711696, 4119405; 711996, 4119405; 711996, 4119205; 712196, 4119105; 712396, 4119105; 712396, 4119005; 712696, 4119005; 712896, 4118605; 711696, 4118505; 711696, 4118305; 711496, 4118305; 711396, 4118205; 711196, 4117905; 709996, 4117905; 709996, 4118605; 709996, 4118805; 709796, 4118805; 709796, 4119405; 710396, 4119405; 710396, 4119705; 710796, 4119705; 710796, 4119805; 710696, 4119805; 710696, 4119905; 710796, 4120005; 710696, 4120105; 710796, 4120205; 710796, 4120305; 710996, 4120205; 711196, 4120205; returning to 711296, 4120305.

(85) Subunit 14H; Merced County, California. From USGS 1:24,000 scale quadrangle Sandy Mush. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 714696, 4114805; 713396, 4114805; 713196, 4115105; 713396, 4115105; 713896, 4115205; 713896, 4116405; 715496, 4116405; 715596, 4116305; 715596, 4115623; 714696, 4115605; returning to 714696, 4114805.

(86) Subunit 14I; Merced County, California. From USGS 1:24,000 scale quadrangles El Nido, and Sandy Mush. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 718196, 4119755; 718196, 4119805; 718596, 4119805; 718596, 4120705; 718996, 4120705; 718996, 4119805; 719396, 4119805; 719496, 4120005; 719696, 4119905; 720296, 4119905; 720396, 4120005; 720796, 4120005; 720996, 4119805; 721596, 4119805; 721696, 4119905; 722096, 4119905; 722196, 4119805; 722296, 4120005; 722296, 4120105; 722996, 4120105; 722996, 4119405; 722196, 4119305; 722296, 4118205; 725496, 4118305; 725496, 4118383; 725496, 4118387; 726196, 4118405; 726196, 4119905; 728696, 4119905; 728696, 4119005; 727896, 4119005; 727796, 4118405; 727696, 4118305; 727596, 4118305; 727596, 4118205; 727596, 4116705; 726896, 4116705; 726796, 4116705; 726896, 4115105; 725996, 4115105; 725996, 4116705; 724396, 4116705; 724396, 4117405; 722790, 4117311; 722696, 4117405; 721896, 4117405; 721896, 4118205; 720296, 4118205; 720296, 4117405; 719496, 4117405; 719496, 4116505; 718696, 4116505; 718696, 4116905; 718296, 4116905; 718296, 4117005; 718396, 4117105; 718496, 4117205; 718696, 4117205; 718696, 4117305; 718696, 4118096; 718996, 4118105; 718996, 4118705; 718896, 4118805; 718796, 4118805; 718696, 4118905; 717796, 4118905; 717796, 4119705; 718196, 4119705; returning to 718196, 4119755.

(87) Subunit 14J; Merced County, California. From USGS 1:24,000 scale quadrangle Sandy Mush. Land bounded by the following UTM Zone 10, NAD27

coordinates (E,N): 721396, 4120605; 720596, 4120605; 720596, 4121405; 721396, 4121405; 721396, 4121005; returning to 721396, 4120605.

(88) Subunit 14K; Merced County, California. From USGS 1:24,000 scale quadrangle El Nido. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 722996, 4121605; 721896, 4121605; 722296, 4122305; 722996, 4122305; returning to 722996, 4121605.

(90) Subunit 14L; Merced County, California. From USGS 1:24,000 scale quadrangles El Nido, and Plainsburg. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 731796, 4116805; 730496, 4116805; 730496, 4118405; 730296, 4118405; 730196, 4119105; 730096, 4119505; 730096, 4119705; 730196, 4120005; 730996, 4120005; 730996, 4121205; 731396, 4121305; 731896, 4121205; 732796, 4121105; 734096, 4121005; 734296, 4120905; 734296, 4120105; 733496, 4120105; 733496, 4118505; 731796, 4118505; returning to 731796, 4116805.

(91) Subunit 14M; Kings County and Tulare County, California. From USGS 1:24,000 scale quadrangles Burris Park, Monson, Remnoy, and Traver. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 276838, 4031116; 276881, 4031202; 277581, 4031302; 278281, 4031702; 279581, 4031602; 279081, 4032702; 280581, 4032702; 281481, 4033102; 281881, 4033002; 283081, 4034102; 283881, 4034202; 284780, 4035002; 286880, 4034902; 287080, 4034902; 288580, 4034902; 288580, 4035402; 287780, 4035502; 287780, 4036502; 289380, 4036502; 289480, 4037202; 291180, 4037202; 291180, 4037002; 291880, 4037002; 291980, 4036602; 291980, 4035402; 292733, 4035590; 292727, 4035432; 292680, 4035202; 291980, 4035202; 291780, 4035202; 291780, 4035402; 290580, 4035502; 290580, 4035902; 289880, 4035902; 289880, 4035502; 289480, 4035502; 289480, 4034302; 288580, 4034302; 288580, 4034002; 287780, 4034002; 287780, 4034302; 287080, 4034402; 287080, 4034102; 285080, 4034202; 285080, 4033602; 283181, 4033602; 283181, 4032902; 282681, 4032902; 282681, 4032402; 282281, 4032402; 282181, 4031602; 282181, 4030902; 280181, 4030902; 280181, 4030602; 279081, 4030402; 278781, 4030302; 278581, 4029902; 278181, 4029802; 278088, 4029807; 276481, 4029902; 275781, 4029402; 275581, 4029002; 275381, 4028402; 275081, 4028102; 274781, 4027902; 274781, 4029602; 275681, 4029602; 276181, 4030202; 276481, 4030402; returning to 276838, 4031116.

(92) Subunit 14N; Tulare County, California. From USGS 1:24,000 scale quadrangles Alpaugh, Cocoran, and Taylor Weir. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 276581, 3997103; 276781, 3997003; 278181, 3997002; 278181, 3995402; 279681, 3995403; 279681, 3993803; 278081, 3993803; 278081, 3992203; 278881, 3992203; 278881, 3991403; 279681, 3991403; 279681, 3990603; 279681, 3989803; 279681, 3989003; 278781, 3989003; 278781, 3987403; 279281, 3987403; 279281, 3986303; 278981, 3986303; 278981, 3986503; 278681, 3987003; 278581, 3987203; 278381, 3987303; 277181, 3987403; 276981, 3988303; 276981, 3988803; 276581, 3988803; 276081, 3989703; 275981, 3990603; 276181, 3990803; 276181, 3991303; 276481, 3991303; 276481, 3992103; 276481, 3992303; 274481, 3992303; 274481, 3993903; 274881, 3993903; 274881, 3994503; 274981, 3994703; 275781, 3994703; 273781, 3997102; returning to 276581, 3997103.

(93) Subunit 14O; Tulare County, California. From USGS 1:24,000 scale quadrangles Alpaugh, and Pixley. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 288081, 3974303; 288081, 3974703; 288481, 3974703; 288481, 3975003; 288881, 3975003; 288881, 3975903; 285481, 3975903; 285181, 3976103; 285081, 3976603; 284981, 3977103; 284681, 3977303; 284681, 3977503; 283281, 3977503; 282981, 3977203; 284081, 3976203; 284081, 3976003; 283981, 3976003; 282081, 3976003; 281081, 3977703; 282281, 3977703; 282681, 3977403; 282881, 3977503; 282881, 3977703; 283181, 3977903; 283181, 3978003; 283281, 3978003; 283281, 3979203; 286581, 3979203; 286581, 3980003; 287381, 3980003; 287381, 3979103; 287781, 3979103; 287781, 3977603; 287781, 3977603; 289081, 3977603; 288981, 3976003; 290581, 3975903; 290481, 3975803; 290481, 3975003; 291481, 3975003; 291481, 3975103; 291581, 3975103; 291481, 3974203; 291381, 3974203; 291282, 3973411; 290484, 3973428; 290481, 3974303; 288481, 3974303; returning to 288081, 3974303.

(94) Subunit 14P; Tulare County, California. From USGS 1:24,000 scale quadrangles Alpaugh, and Pixley. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 288081, 3974303; 288081, 3973503; 287281, 3973503; 287281, 3973403; 287281, 3973403; 287281, 3972803; 285881, 3972803; 285881, 3973403; 285581, 3973403; 285581, 3973503; 285081, 3973503; 285081, 3972603; 283981, 3972603; 283081, 3974303; returning to 288081, 3974303.

(95) Subunit 14Q; Tulare County, California. From USGS 1:24,000 scale quadrangle Delano West. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 290033, 3972047; 290022, 3971848; 290454, 3971840; 290438, 3971046; 289595, 3971055; 289581, 3971055; 289581, 3972303; 290467, 3972303; 290460, 3972041; returning to 290033, 3972047.

(96) Subunit 15A; San Joaquin County, California. From USGS 1:24,000 scale quadrangle Peters, Farmington, Linden, Valley Springs SW. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 676096, 4212205; 676696, 4211005; 676396, 4211005; 676496, 4210805; 676397, 4210405; 676297, 4210305; 676197, 4210305; 675897, 4210105; 675697, 4210005; 675797, 4209805; 675997, 4209505; 675997, 4209405; 676597, 4209405; 676797, 4209905; 676796, 4210605; 676896, 4210705; 677296, 4211105; 678796, 4211105; 678896, 4210305; 680296, 4210205; 680296, 4209505; 681196, 4209505; 681896, 4210105; 682099, 4210068; 682109, 4209560; 682119, 4209092; 681596, 4208905; 681396, 4208305; 680896, 4208205; 680896, 4205905; 680596, 4205505; 680496, 4204905; 679796, 4204405; 679796, 4203105; 679296, 4203105; 679296, 4203205; 679096, 4203205; 679096, 4203105; 678597, 4203105; 678497, 4202905; 678397, 4202905; 678397, 4202805; 678497, 4202705; 678497, 4202505; 677797, 4202005; 677697, 4201505; 677597, 4201505; 677522, 4201430; 677463, 4201405; 675897, 4201405; 675797, 4202805; 675997, 4202805; 675997, 4203005; 675797, 4203005; 675797, 4204605; 672597, 4204505; 672597, 4205405; 672897, 4205605; 672897, 4206105; 672197, 4206105; 672197, 4206305; 671897, 4206305; 671697, 4206505; 671697, 4206905; 673297, 4206905; 673297, 4207205; 674097, 4207205; 674097, 4207505; 674797, 4207305; 674797, 4207005; 675197, 4207005; 675697, 4207205; 675697, 4207905; 675397, 4207905; 675397, 4207805; 674597, 4207805; 674497, 4207905; 674297, 4208005; 674027, 4208185; 674004, 4208506; 674897, 4208605; 674797, 4209105; 674697, 4209105; 674697, 4209405; 673997, 4209405; 673997, 4209605; 673597, 4209505; 673297, 4209405; 673297, 4209305; 673197, 4209305; 673196, 4211705; 673596, 4211605; 673996, 4211505; 673997, 4211205; 674197, 4211205; 674197, 4211305; 674397, 4211305; 674396, 4211405; 674997, 4211205; 675296, 4211305; 675296, 4211505; 675396, 4211605; 675396,

4211671; 675446, 4211705; 675596, 4211705; 675596, 4211805; 675596, 4212205; returning to 676096, 4212205.

(97) Subunit 15B; Tuolumne and Stanislaus County, California. From USGS 1:24,000 scale quadrangle Keystone, Knights Ferry. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 706708, 4189617; 706796, 4189905; 707396, 4190505; 707896, 4190505; 708496, 4189805; 708796, 4189805; 709296, 4189105; 709296, 4188405; 710196, 4188005; 710015, 4186646; 710009, 4186600; 709573, 4186981; 709372, 4187156; 708531, 4187889; 708447, 4187963; 708360, 4188038; 708228, 4188154; 708095, 4188270; 707735, 4188584; 707703, 4188612; 707661, 4188649; 706981, 4189243; 706692, 4189494; 706674, 4189509; returning to 706708, 4189617.

(98) Subunit 15C; Stanislaus County, California. From USGS 1:24,000 scale quadrangles Paulsell, and Waterford. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 699396, 4176489; 700596, 4176531; 701301, 4176555; 701378, 4176635; 701442, 4176570; 701852, 4176583; 701696, 4176505; 701696, 4176305; 701696, 4176005; 701796, 4175705; 701896, 4175605; 702096, 4175605; 702096, 4174905; 701696, 4174905; 701696, 4174005; 701996, 4173505; 701896, 4173405; 701796, 4173305; 701796, 4173105; 701796, 4173005; 701696, 4173005; 701596, 4172905; 701596, 4172805; 701696, 4172805; 701696, 4172605; 701596, 4172405; 701396, 4172305; 701196, 4172405; 700796, 4172405; 700696, 4172405; 700596, 4172505; 700596, 4172705; 700496, 4172705; 700496, 4172605; 700196, 4172505; 699696, 4172505; 699596, 4172605; 699396, 4172605; 699196, 4172305; 698896, 4172305; 698796, 4172405; 698496, 4172205; 698196, 4172605; 698296, 4172805; 697496, 4174105; 697396, 4174105; 697396, 4174305; 697896, 4174305; 697896, 4176105; 697796, 4176105; 697796, 4176242; 698187, 4176203; 698182, 4176418; 698181, 4176447; returning to 699396, 4176489.

(99) Subunit 15D; Stanislaus County, California. From USGS 1:24,000 scale quadrangle Paulsell. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 703196, 4177305; 703096, 4177105; 703008, 4177164; 703002, 4177308; 703196, 4177313; returning to 703196, 4177305.

(100) Subunit 15E; Stanislaus County, Tuolumne County, California. From USGS 1:24,000 scale quadrangles Cooperstown, Keystone, La Grange, and Paulsell. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 705196, 4174505; 705496, 4175205; 705096, 4175705; 705396, 4176105; 705796, 4176505; 705796, 4176805; 705796, 4177305; 705196, 4177305; 705096, 4177105; 704896, 4177105; 704896, 4176905; 704696, 4176905; 704596, 4177005; 704596, 4177205; 704396, 4177305; 704296, 4177105; 704096, 4177105; 703896, 4176905; 703596, 4177105; 703596, 4177455; 703757, 4177460; 703741, 4177798; 703896, 4178005; 704096, 4178005; 704196, 4177905; 704296, 4177905; 704296, 4178205; 703996, 4178205; 703996, 4178605; 703896, 4178705; 703996, 4178905; 703996, 4179005; 703685, 4179005; 703683, 4179046; 704531, 4178989; 705326, 4179286; 706238, 4179131; 708158, 4179213; 708755, 4178373; 709373, 4178848; 709975, 4179310; 710001, 4179330; 711355, 4179383; 711346, 4179738; 711724, 4179792; 711695, 4180558; 711674, 4180690; 713135, 4181130; 713537, 4181279; 714099, 4181546; 714637, 4181825; 714723, 4181878; 714730, 4181882; 715078, 4182097; 715141, 4182136; 715046, 4182231; 714819, 4182405; 715196, 4182405; 715596, 4183205; 715896, 4183205; 716096, 4182505; 716996, 4182505; 717196, 4182305; 717196, 4181805; 716996, 4181105; 717296, 4180705; 717296, 4180405; 717203, 4180188; 716996, 4179705; 717579, 4179851; 717796, 4179905; 718596, 4179805; 718796, 4179005; 719396, 4178505; 719551, 4178078; 719796, 4177405; 720222, 4177476; 720396, 4177505; 720796, 4177505; 720841, 4176920; 720896, 4176205; 721496, 4175705; 722296, 4175105; 722796, 4175005; 722896, 4173405; 723096, 4173305; 723296, 4173405; 723796, 4173405; 724096, 4173105; 724196, 4172105; 722896, 4172005; 721796, 4171005; 721668, 4170448; 721596, 4170305; 721496, 4170205; 721296, 4170105; 721096, 4169905; 721096, 4169405; 720996, 4169405; 720096, 4168305; 718996, 4167805; 718796, 4167905; 718196, 4168305; 718096, 4168305; 717996, 4168405; 716296, 4168405; 715996, 4168305; 715696, 4168105; 715596, 4168005; 715496, 4168105; 715496, 4169205; 714996, 4169705; 714996, 4169805; 715196, 4169805; 715296, 4170005; 715396, 4170005; 715396, 4170205; 715396, 4170212; 715396, 4171005; 715296, 4171005; 715296, 4170805; 715196, 4170805; 715196, 4170505; 714996, 4170505; 714996, 4170105; 713996, 4169605; 713896, 4169705; 713096, 4169305; 712596, 4169205; 712296, 4169205; 712096, 4169405; 711596, 4169705; 711396, 4169705; 710596, 4168905; 709396, 4168905; 709196, 4169305; 709196, 4169505; 708996, 4169505; 708896, 4169705; 708796, 4169705; 708696, 4169605; 708596, 4169705; 708496, 4169805; 708796, 4170005; 708896, 4170105; 708996, 4170205; 709196, 4170305; 709296, 4170405; 709496, 4170405; 709496, 4170605; 709396, 4170605; 709296, 4170705; 709196, 4170605; 708896, 4170505; 708896, 4170405; 708596, 4170305; 708496, 4170105; 708196, 4170005; 707996, 4170005; 707996, 4170105; 708196, 4170305; 708296, 4170305; 708296, 4170405; 708096, 4170405; 708296, 4170605; 708296, 4170705; 708196, 4170705; 707996, 4170505; 707796, 4170505; 707796, 4170605; 707696, 4170705; 707496, 4170705; 707196, 4170905; 707196, 4171005; 707296, 4171105; 707396, 4171005; 707596, 4171105; 707896, 4171405; 707996, 4171405; 708196, 4171405; 708296, 4171505; 708196, 4171605; 708196, 4171705; 708396, 4171705; 708396, 4171905; 708496, 4171905; 708596, 4172005; 708596, 4172105; 708796, 4172205; 708896, 4172305; 708896, 4172405; 708796, 4172505; 708596, 4172505; 708496, 4172605; 708396, 4172505; 708296, 4172505; 708196, 4172405; 708096, 4172305; 707996, 4172305; 707896, 4172505; 707696, 4172405; 707496, 4172305; 707496, 4172405; 707296, 4172505; 707196, 4172105; 707096, 4172005; 706796, 4172005; 706796, 4172105; 706596, 4172105; 706496, 4172105; 706496, 4172205; 706296, 4172405; 706396, 4172505; 706496, 4172605; 706396, 4172605; 706296, 4172605; 706196, 4172705; 705996, 4172905; 705896, 4173105; 705896, 4173305; 706096, 4173605; 705996, 4173705; 705896, 4173905; 705796, 4174005; 705596, 4174005; 705496, 4173905; 705496, 4173505; 705296, 4173005; 705196, 4173005; 705196, 4172405; 704996, 4172205; 704896, 4171905; 704696, 4171905; 704596, 4171705; 704496, 4171605; 704696, 4171205; 704796, 4171305; 704996, 4171005; 704796, 4170905; 704996, 4170805; 704896, 4170705; 704696, 4170705; 704696, 4170505; 704896, 4170005; 705196, 4170005; 705096, 4169905; 705096, 4169305; 704896, 4169105; 704196, 4169105; 703596, 4169305; 703496, 4169405; 703496, 4169905; 703696, 4170005; 703696, 4170105; 703596, 4170105; 703596, 4170605; 703496, 4170705; 703496, 4171105; 703296, 4171305; 703496, 4171305; 703496, 4171605; 703696, 4171605; 703696, 4173805; 704396, 4173805; 704396, 4173505; 705263, 4173505; returning to 705196, 4174505.

(101) Subunit 15F; Stanislaus County, California. From USGS 1:24,000 scale

quadrangle Paulsell. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 700596, 4170338; 700596, 4170705; 700396, 4170705; 700396, 4170905; 700396, 4171605; 701296, 4171605; 702096, 4171605; 702096, 4169605; 702296, 4169605; 702296, 4169505; 702296, 4169463; 702296, 4169005; 701796, 4168805; 701396, 4168605; 701296, 4168405; 701096, 4168405; 701096, 4169417; 701096, 4169505; 700796, 4169505; 700796, 4170205; 700796, 4170305; 700646, 4170305; 700596, 4170305; returning to 700596, 4170338.

(102) Subunit 15G; Stanislaus County, California. From USGS 1:24,000 scale quadrangles Montpelier, and Paulsell. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 704896, 4167305; 705096, 4167205; 705396, 4167205; 705396, 4166205; 705096, 4166105; 704496, 4166105; 704296, 4166005; 704096, 4166005; 703896, 4166205; 703496, 4166405; 703496, 4166605; 703596, 4166605; 703696, 4166705; 703796, 4166805; 703796, 4167005; 704696, 4167405; 704796, 4167405; returning to 704896, 4167305.

(103) Subunit 15H; Merced County, Stanislaus County, California. From USGS 1:24,000 scale quadrangles Cooperstown, La Grange, Merced Falls, Montpelier, Paulsell, and Turlock Lake. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 712996, 4163605; 712996, 4163505; 713196, 4163605; 713596, 4163805; 713696, 4163805; 713696, 4163905; 713796, 4164105; 714296, 4164105; 714496, 4164305; 714596, 4164605; 714696, 4164605; 714896, 4164505; 714896, 4164005; 714496, 4163805; 714496, 4163405; 714596, 4163305; 715296, 4163805; 715396, 4164005; 715496, 4164005; 715396, 4163705; 715196, 4163505; 715096, 4163305; 714896, 4163105; 714996, 4163005; 715096, 4163005; 715796, 4163005; 715996, 4162905; 716096, 4162705; 716196, 4162605; 716296, 4162605; 716396, 4162705; 716496, 4162805; 716596, 4162905; 716696, 4163005; 716696, 4163305; 716596, 4163405; 716596, 4163605; 716696, 4163905; 716896, 4164305; 716796, 4164705; 716896, 4165105; 717296, 4165605; 717296, 4165905; 717096, 4166205; 716696, 4166205; 716496, 4166105; 716496, 4166705; 716696, 4166705; 716896, 4166905; 716896, 4167105; 717096, 4167205; 717596, 4167205; 718196, 4167105; 718596, 4166905; 718696, 4166405; 718796, 4166205; 719196, 4166505; 719396, 4166605; 719596, 4166605; 719596, 4166305; 719696, 4166205; 719696, 4165905; 719896, 4165905; 719996, 4166105; 719996, 4166005; 720796, 4166005; 720796, 4163505; 721629, 4163505; 721796, 4163505; 722496, 4163905; 722496, 4163961; 722496, 4165105; 722296, 4165105; 722296, 4165205; 721596, 4165205; 721596, 4165905; 721096, 4166105; 720796, 4166305; 720996, 4166405; 721096, 4166505; 721196, 4166705; 721096, 4166805; 720396, 4166805; 720196, 4166705; 720296, 4166505; 720296, 4166405; 720196, 4166305; 720096, 4166305; 719896, 4166605; 719596, 4167205; 719596, 4167405; 719796, 4167605; 720596, 4167605; 720796, 4167505; 720996, 4167305; 721196, 4167205; 721396, 4167505; 721796, 4167505; 722096, 4167405; 722596, 4167405; 722996, 4167305; 723396, 4167205; 723096, 4168205; 723096, 4169005; 723396, 4169505; 723896, 4169605; 724196, 4169605; 724696, 4169005; 724796, 4168105; 725196, 4167705; 725396, 4167005; 726296, 4166905; 726596, 4166605; 726596, 4166405; 726824, 4166235; 727396, 4165805; 727796, 4165605; 729096, 4165605; 730196, 4165205; 730496, 4164905; 730596, 4164705; 730796, 4163905; 731396, 4163905; 731796, 4163605; 731896, 4163205; 732296, 4162605; 732296, 4162305; 732796, 4162505; 733096, 4162405; 733696, 4161905; 733796, 4161305; 733696, 4160805; 734696, 4160205; 734823, 4160078; 734896, 4160005; 734896, 4159940; 734896, 4159305; 734496, 4158505; 734396, 4157905; 734596, 4157705; 734796, 4157805; 734996, 4158105; 735096, 4158605; 735596, 4158605; 735601, 4158601; 735601, 4158601; 735796, 4158405; 735771, 4158278; 735696, 4157905; 736267, 4157334; 736296, 4157305; 736896, 4157105; 736996, 4156905; 736996, 4156305; 736808, 4156305; 736396, 4156305; 736096, 4156105; 735596, 4156105; 734196, 4156705; 733496, 4156905; 731796, 4156705; 730996, 4156305; 728996, 4156405; 728796, 4156505; 728796, 4156605; 728696, 4156705; 728396, 4156705; 728196, 4156605; 727996, 4156605; 727196, 4156605; 726996, 4156405; 726796, 4156305; 726396, 4156305; 726196, 4156405; 725896, 4156305; 725696, 4156205; 725596, 4156105; 725496, 4156005; 725196, 4155905; 725096, 4155805; 724996, 4155805; 724896, 4155905; 724396, 4155905; 724396, 4155505; 723896, 4155505; 723996, 4155105; 723396, 4155205; 722796, 4154905; 722796, 4155205; 722396, 4155205; 722396, 4156605; 722996, 4156605; 722996, 4157205; 723596, 4157205; 723596, 4156805; 723796, 4156705; 724396, 4156705; 724396, 4157205; 724296, 4157205; 724196, 4158005; 723896, 4158005; 723796, 4158805; 722596, 4158805; 722596, 4159005; 722496, 4159005; 722396, 4159105; 722296, 4159105; 721696, 4159105; 721696, 4159305; 721596, 4159405; 721596, 4159605; 721696, 4159605; 721696, 4159705; 721796, 4159705; 721796, 4160305; 721196, 4160305; 721196, 4159905; 720896, 4159905; 720896, 4160305; 719596, 4160305; 719596, 4160105; 720096, 4159405; 719696, 4159405; 719696, 4159305; 719596, 4159305; 719496, 4159305; 719396, 4159205; 719196, 4159205; 719096, 4159205; 718996, 4159105; 718796, 4158905; 718696, 4158805; 718696, 4158705; 718496, 4158705; 718296, 4158605; 718296, 4158505; 718396, 4158405; 718496, 4158305; 718596, 4158305; 718696, 4158205; 718796, 4158205; 718996, 4158105; 719096, 4157905; 719096, 4157705; 718796, 4157405; 718096, 4157505; 717896, 4157205; 717996, 4157005; 718096, 4156805; 718496, 4157105; 718796, 4156505; 718796, 4156105; 717596, 4156105; 717596, 4156505; 717196, 4156505; 717196, 4156105; 716696, 4156105; 716696, 4155605; 716396, 4155505; 716296, 4154805; 715996, 4154705; 715996, 4154905; 715896, 4155005; 715896, 4155105; 715796, 4155205; 715696, 4155505; 715596, 4155605; 715496, 4155605; 715396, 4156405; 715496, 4156405; 715496, 4157005; 715496, 4157205; 715596, 4157205; 715596, 4157405; 717696, 4157405; 717696, 4159505; 718196, 4160005; 718296, 4160305; 718496, 4160605; 718796, 4160905; 716896, 4160905; 716896, 4160205; 715349, 4160205; 714996, 4160205; 714996, 4160705; 715096, 4160705; 715096, 4160805; 715296, 4160805; 715296, 4160905; 714496, 4160905; 714496, 4161005; 713796, 4161005; 713796, 4160905; 713396, 4160905; 713296, 4161005; 713196, 4160905; 713196, 4160805; 713496, 4160505; 713496, 4160405; 713696, 4160305; 713896, 4160605; 713996, 4160605; 714096, 4160505; 714096, 4160205; 711230, 4160106; 711196, 4161705; 709596, 4161705; 709596, 4163305; 707996, 4163305; 707996, 4162905; 707096, 4162905; 707096, 4165405; 707496, 4165405; 707496, 4165605; 706796, 4165905; 706596, 4165605; 706296, 4165805; 706396, 4166105; 706296, 4166205; 706296, 4166305; 706396, 4166305; 706396, 4166505; 706296, 4166505; 706296, 4166905; 706596, 4166905; 706796, 4166505; 706896, 4166505; 706896, 4166105; 707096, 4166105; 707096, 4165905; 707296, 4165905; 707296, 4166505; 707496, 4166505; 707896, 4165805;

707896, 4165405; 708096, 4165605; 708296, 4165605; 708496, 4165505; 708496, 4165305; 708296, 4165205; 708296, 4165105; 708396, 4165005; 708496, 4165005; 708596, 4165105; 708696, 4165205; 708896, 4165205; 709196, 4164905; 710296, 4164905; 710296, 4166205; 710196, 4166205; 710196, 4166305; 710096, 4166305; 709996, 4166305; 709996, 4166505; 709896, 4166505; 709896, 4166905; 710296, 4166605; 711096, 4167405; 711696, 4167605; 712496, 4167605; 712496, 4167105; 712996, 4167105; 712996, 4167005; 712696, 4166705; 711896, 4166805; 711696, 4166605; 711696, 4166405; 711896, 4166305; 711896, 4166405; 711996, 4166405; 712096, 4166105; 712196, 4166305; 712296, 4166305; 712396, 4166205; 712596, 4166205; 712596, 4166005; 712796, 4166005; 712796, 4166105; 712896, 4166105; 713096, 4165905; 713019, 4165867; 712896, 4165805; 712796, 4165605; 712596, 4165605; 712596, 4165405; 712796, 4165405; 712696, 4165205; 712496, 4165305; 712396, 4165205; 712596, 4165105; 712596, 4165005; 712496, 4164905; 712696, 4164905; 712696, 4164805; 712696, 4164705; 712796, 4164605; 712696, 4164505; 712596, 4164605; 712496, 4164605; 712496, 4164105; 712896, 4164305; 713196, 4164105; 713296, 4163905; returning to 712996, 4163605.

(104) Subunit 15I; Merced County, California. From USGS 1:24,000 scale quadrangle Turlock Lake. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 713896, 4155205; 712696, 4155005; 712696, 4156605; 712996, 4156605; 712996, 4156905; 714896, 4157005; 714896, 4156605; 714396, 4156105; 714296, 4156005; 714096, 4155305; 714096, 4155205; returning to 713896, 4155205.

(105) Subunit 15J; Madera County, Mariposa County, Merced County, California. From USGS 1:24,000 scale quadrangles Haystack Mountain, Illinois Hill, Indian Gulch, Le Grand, Merced, Merced Falls, Owens Reservoir, Plainsburg, Planada, Raynor Creek, Snelling, Winton, and Yosemite Lake. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 736505, 4134005; 733996, 4134005; 733996, 4134605; 733896, 4134705; 733896, 4134805; 733096, 4134805; 733096, 4135605; 732596, 4135605; 730396, 4135505; 730296, 4135405; 730196, 4135405; 729996, 4135505; 729996, 4136305; 729996, 4136505; 730096, 4136505; 730196, 4136405; 730296, 4136405; 730396, 4136405; 730496, 4136505; 730596, 4136605; 730696, 4136705; 730696, 4136805; 730696, 4137005; 730696, 4137105; 730596, 4137205; 730496, 4137305; 730396, 4137305; 729996, 4137505; 729896, 4137505; 729796, 4137405; 729496, 4137405; 729396, 4137605; 729396, 4138205; 729296, 4138305; 729096, 4138205; 728896, 4138505; 728496, 4138605; 728296, 4138605; 727996, 4138405; 727796, 4138305; 727696, 4138205; 727496, 4138105; 727496, 4137605; 727396, 4137605; 727396, 4137405; 727496, 4137405; 727496, 4137305; 727396, 4137305; 727396, 4137205; 727496, 4137205; 727496, 4137005; 726596, 4137005; 726596, 4136305; 726496, 4136205; 725896, 4136205; 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(106) Subunit 15K; Madera County, California. From USGS 1:24,000 scale quadrangle Kismet. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 764595, 4105205; 761810, 4105205; 761795, 4105705; 762195, 4105705; 762995, 4106105; 763395, 4106005; 764195, 4106505; 764195, 4106005; 764595, 4106005; 764595, 4106205; 764895, 4106105; 765295, 4106205; 765795, 4106305; 765995, 4106505; 766195, 4106505; 766195, 4106305; 766395, 4106205; 766695, 4106105; 766695, 4104905; 764595, 4104805; returning to 764595, 4105205. Subunit 16A; Alameda County, California. From USGS 1:24,000 scale quadrangle Milpitas. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 590197, 4150203; 590578, 4150013; 590549, 4149963; 590480, 4150004; 590417, 4150034; 590409, 4150019; 590406, 4150019; 590403, 4150019; 590400, 4150018; 590397, 4150017; 590394, 4150017; 590391, 4150016; 590388, 4150015; 590299, 4150066; 590297, 4150067; 590296, 4150068; 590294, 4150069; 590292, 4150069; 590290, 4150070; 590288, 4150071; 590286, 4150071; 590284, 4150072; 590281, 4150072; 590279, 4150073; 590277, 4150073; 590275, 4150073; 590273, 4150074; 590271, 4150074; 590269, 4150074; 590267, 4150074; 590265, 4150073; 590262, 4150073; 590260, 4150073; 590258, 4150073; 590256, 4150072; 590254, 4150072; 590252, 4150071; 590250, 4150071; 590248, 4150070; 590246, 4150069; 590244, 4150068; 590242, 4150067; 590240, 4150066; 590238, 4150065; 590237, 4150064; 590235, 4150063; 590233, 4150062; 590231, 4150061; 590230, 4150059; 590027, 4149887; 590023, 4149883; 590018, 4149880; 590013, 4149876; 590008, 4149873; 590003, 4149870; 589998, 4149867; 589993, 4149864; 589988, 4149862; 589982, 4149860; 589977, 4149857; 589971, 4149856; 589966, 4149854; 589960, 4149852; 589954, 4149851; 589949, 4149850; 589943, 4149849; 589937, 4149848; 589931, 4149847; 589925, 4149847; 589920, 4149847; 589914, 4149847; 589908, 4149847; 589902, 4149848; 589896, 4149848; 589890, 4149849; 589885, 4149850; 589879, 4149852; 589873, 4149853; 589868, 4149855; 589862, 4149857; 589857, 4149859; 589851, 4149861; 589846, 4149863; 589841, 4149866; 589836, 4149869; 589831, 4149872; 589826, 4149875; 589821, 4149878; 589816,

4149882; 589812, 4149886; 589807, 4149889; 589803, 4149893; 589799, 4149897; 589795, 4149902; 589791, 4149906; 589738, 4149968; 589997, 4149903; returning to 590197, 4150203.

(107) Subunit 15L; Fresno County, and Madera County, California. From USGS 1:24,000 scale quadrangles Daulton, Friant, Gregg, Lanes Bridge, Little Table Mountain, and Millerton Lake West. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 233282, 4106500; 233311, 4106904; 233377, 4107821; 233380, 4107865; 233491, 4107900; 233596, 4107902; 233644, 4107900; 233680, 4107899; 233697, 4107898; 233759, 4107917; 233786, 4107935; 233808, 4107948; 233855, 4107979; 233917, 4108019; 234009, 4108041; 234065, 4108039; 234115, 4108015; 234132, 4107992; 234164, 4107785; 234176, 4107596; 234202, 4107547; 234340, 4107386; 234351, 4107345; 234350, 4107272; 234350, 4107220; 234366, 4107153; 234379, 4107097; 234738, 4106944; 235151, 4106911; 235179, 4106923; 235232, 4106995; 235284, 4107100; 235307, 4107122; 235346, 4107136; 235464, 4107102; 235607, 4107034; 235721, 4106941; 235896, 4106926; 235929, 4106912; 235981, 4106872; 235996, 4106864; 236033, 4106845; 236109, 4106843; 236426, 4106897; 236896, 4106742; 237015, 4106706; 237841, 4106782; 237878, 4106776; 237918, 4106750; 237936, 4106738; 237948, 4106725; 238168, 4106555; 238180, 4106552; 238462, 4106471; 238828, 4106150; 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258283, 4097527; 258184, 4097642; 258181, 4097636; 258181, 4097700; 258081, 4097800; 256781, 4098100; 256281, 4098100; 256281, 4096500; 255082, 4096600; 254981, 4094900; 256162, 4094900; 256123, 4094849; 256058, 4094384; 256055, 4094364; 256046, 4094295; 256037, 4094227; 255930, 4093459; 255877, 4093070; 255875, 4093057; 255891, 4093056; 255865, 4092898; 255775, 4092898; 255737, 4091904; 255827, 4091855; 255896, 4091964; 255981, 4091993; 255981, 4091984; 255981, 4091882; 255749, 4091668; 255725, 4091647; 255481, 4091500; 255256, 4091246; 255189, 4091172; 255172, 4091162; 255110, 4091082; 254948, 4090900; 254886, 4090900; 253782, 4090900; 253744, 4090862; 253681, 4090800; 253606, 4090800; 253582, 4090800; 253482, 4090800; 253481, 4090400; 253506, 4090400; 253840, 4090400; 253882, 4090400; 253881, 4090300; 254082, 4090300; 253881, 4090200; 253782, 4090200; 253681, 4090100; 253581, 4089900; 253482, 4089900; 253381, 4089800; 253282, 4089700; 253182, 4089500; 253082, 4089300; 252782, 4089100; 252482, 4088800; 251582, 4088800; 251582, 4088300; 252582, 4088300; 252509, 4087866; 252483, 4087712; 252482, 4087700; 252471, 4087700; 252382, 4087700; 252280, 4087650; 252182, 4087600; 251982, 4087400; 251882, 4087300; 251782, 4087300; 251682, 4087200; 251582, 4087100; 251482, 4087000; 251482, 4086900; 251282, 4086900; 251182, 4089100; 251282, 4089800; 251582, 4089800; 251582, 4089900; 251982, 4089900; 251982, 4090200; 252482, 4090200; 252482, 4091000; 251282, 4091000; 251282, 4091400; 251682, 4091400; 251682, 4091800; 251282, 4091800; 251282, 4092000; 251082, 4092000; 250682, 4092000; 250482, 4092000; 250482, 4092600; 250482, 4092600; 250482, 4092700; 246382, 4092800; 245582, 4092800; 242382, 4092900; 242382, 4094800; 242582, 4094900; 244082, 4094800; 244082, 4096500; 244882, 4096400; 244982, 4098000; 245782, 4098000; 245782, 4099600; 242582, 4099800; 242482, 4095000; 242382, 4095000; 239582, 4095000; 237682, 4095000; 237682, 4096000; 237782, 4098300; 239682, 4098200; 239782, 4099800; 236182, 4099900; 236182, 4100200; 237582, 4101700; 238482, 4102500; 238882, 4103100; 239382, 4103900; 238982, 4104100; 238882, 4104200; 238857, 4104194; 238482, 4104100; 238296, 4103914; 238282, 4103900; 238282, 4103400; 238082, 4103200; 237982, 4103100; 237882, 4103100; 237882, 4103946; 237882, 4104000; 237882, 4104100; 238182, 4104100; 237182, 4104100; 237182, 4105500; 235582, 4105600; 235582, 4106400; 233317, 4106498; 233317, 4106498; 233312, 4106499; 233312, 4106499; returning to 233282, 4106500 excluding land bounded by 250582, 4094600; 250557, 4094200; 250519, 4093451; 250497, 4093000; 250497, 4093000; 250882, 4093000; 250922, 4093000; 251282, 4093300; 251374, 4094600; 250582, 4094600; returning to 250582, 4094600.

(108) Subunit 15M; Madera County, California. From USGS 1:24,000 scale quadrangles Millerton Lake East, and North Fork. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 270881, 4108600; 271381, 4108200; 271581, 4107600; 271681, 4107100; 271281, 4106600; 270281, 4106600; 269981, 4106800; 269981, 4107400; 270181, 4108400; 269381, 4108100; 269081, 4108500; 268581, 4108500; 268381, 4109800; 268881, 4110200; 268981, 4110800; 268381, 4111100; 268581, 4111300; 268681, 4112100; 268881, 4112200; 270681, 4112200; 270881, 4111900; 270781, 4111100; 269681, 4110600; 269781, 4110300; 270081, 4110000; 270681, 4109500; returning to 270881, 4108600.

(109) Subunit 15N; Fresno County, California. From USGS 1:24,000 scale quadrangles Academy, and Millerton Lake East. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 266981, 4097100; 267081, 4097400; 267881, 4098100; 268181, 4098500; 268181, 4098700; 268081, 4098900; 267481, 4099600; 267481, 4100100; 267781, 4100600; 268181, 4101200; 268681, 4101200; 269181, 4100900; 269681, 4100900; 269881, 4101100; 269981, 4101300; 269681, 4102000; 269281, 4102200; 268681, 4102600; 268781, 4103600; 269181, 4103600; 269681, 4102900; 270281, 4103300; 270381, 4103300; 270781, 4102300; 270581, 4102200; 270381, 4102000; 270381, 4101700; 270581, 4101300; 270681, 4100900; 270581, 4100800; 270281, 4100500; 269481, 4100300; 268381, 4100300; 268181, 4100100; 268181, 4099900; 268481, 4099600; 268681, 4099300; 268781, 4099000; 268781, 4098700; 268681, 4098100; 268581, 4097900; 268481, 4097600; 268181, 4097400; 267881, 4097200; 267381, 4097100; returning to 266981, 4097100.

(110) Subunit 15O; Fresno County, California. From USGS 1:24,000 scale quadrangles Academy, Friant, and Round Mountain. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 259348, 4097383; 259581, 4097500; 259681, 4097500; 259881, 4097400; 259881, 4097200; 260081, 4097000; 260281, 4097000; 260381, 4096800; 260681, 4096600; 260881, 4096400; 261581, 4096400; 261881, 4096300; 262281, 4096400; 262481, 4096800; 263181, 4097000; 263381, 4097000; 263681, 4097000; 264981, 4096300; 264781, 4096100; 264281, 4096100; 263881, 4096300; 263881, 4095800; 263681, 4095700; 263581, 4095600; 263581, 4095500; 263581, 4095400; 263981, 4095400; 263981, 4095100; 263681, 4095100; 263681, 4094900; 263881, 4094900; 263881, 4094800; 263381, 4094500; 262381, 4094000; 261881, 4093400; 260781, 4093200; 259981, 4092100; 259981, 4091900; 260281, 4091900; 261281, 4092200; 262281, 4091300; 262981, 4091600; 263481, 4091100; 263481, 4089700; 263281, 4089600; 263181, 4089200; 264781, 4088500; 265081, 4087700; 265381, 4087400; 265981, 4087400; 265981, 4086600; 267081, 4086600; 267681, 4086800; 267881, 4086300; 267281, 4085300; 267481, 4084900; 268181, 4085100; 268381, 4085600; 269181, 4085600; 269881, 4085200; 270381, 4084700; 271181, 4084601; 271981, 4084900; 272281, 4085401; 272881, 4086000; 273081, 4087100; 273381, 4087500; 273281, 4088300; 273281, 4089400; 274781, 4089400; 275481, 4089800; 275681, 4090300; 275981, 4090600; 276581, 4090700; 277181, 4090700; 277181, 4090000; 276181, 4088700; 276181, 4087700; 276081, 4087300; 275481, 4087000; 275181, 4086400; 274981, 4085800; 274481, 4085301; 274081, 4084700; 273481, 4084200; 273481, 4083601; 273681, 4083200; 273681, 4082801; 272981, 4082700; 272881, 4082000; 272881, 4081201; 273081, 4080600; 273281, 4080300; 273581, 4079900; 273781, 4079501; 273881, 4078901; 274281, 4078401; 274381, 4077901; 273381, 4077900; 273381, 4076901; 273081, 4076401; 271381, 4076501; 271481, 4076701; 271781, 4076901; 271881, 4077101; 271881, 4077301; 271581, 4077501; 271181, 4077501; 271181, 4078001; 271381, 4078200; 271681, 4078701; 271881, 4078901; 272181, 4078901; 272181, 4079701; 271181, 4079700; 268081, 4079801; 268081, 4080400; 268381, 4080401; 268381, 4080600; 268081, 4080600; 268081, 4081100; 267581, 4081100; 267581, 4080701; 266581, 4080700; 266581, 4080900; 266381, 4080900; 266381, 4081101; 266681, 4081100; 266681, 4081501; 267081, 4082101; 267081, 4082200; 268381, 4082201; 268381, 4081500; 268481, 4081401; 268481, 4081000; 268881, 4081001; 268881, 4082600; 269681, 4082600; 269681, 4083000;

270081, 4083000; 270181, 4083600; 268881, 4083300; 268881, 4083170; 268783, 4083242; 268754, 4083261; 268740, 4083277; 268724, 4083296; 268717, 4083328; 268704, 4083389; 268602, 4083754; 268597, 4083780; 268598, 4083808; 268608, 4083832; 268618, 4083854; 268634, 4083876; 268675, 4083938; 268694, 4083971; 268705, 4084033; 268716, 4084073; 268717, 4084108; 268717, 4084130; 268712, 4084156; 268709, 4084176; 268695, 4084200; 268682, 4084220; 268652, 4084236; 268397, 4084375; 268369, 4084390; 268339, 4084395; 268320, 4084391; 268301, 4084381; 268276, 4084377; 268246, 4084363; 268226, 4084354; 268197, 4084355; 268163, 4084356; 268134, 4084371; 268120, 4084387; 268105, 4084400; 268087, 4084426; 268025, 4084514; 268007, 4084539; 267994, 4084559; 267974, 4084575; 267954, 4084585; 267929, 4084591; 267916, 4084597; 267891, 4084592; 267861, 4084587; 267798, 4084565; 267769, 4084556; 267739, 4084552; 267710, 4084548; 267686, 4084548; 267656, 4084554; 267636, 4084569; 267619, 4084585; 267603, 4084605; 267590, 4084621; 267529, 4084743; 267501, 4084802; 267488, 4084826; 267474, 4084848; 267455, 4084863; 267431, 4084877; 267373, 4084903; 267310, 4084930; 267291, 4084945; 267277, 4084964; 267144, 4085292; 267141, 4085317; 267136, 4085337; 267142, 4085360; 267148, 4085380; 267162, 4085393; 267196, 4085414; 267346, 4085522; 267376, 4085567; 267396, 4085585; 267407, 4085600; 267411, 4085614; 267412, 4085638; 267420, 4085736; 267421, 4085780; 267417, 4085803; 267408, 4085819; 267389, 4085849; 267366, 4085881; 267332, 4085885; 267308, 4085914; 267271, 4085944; 267238, 4085981; 267227, 4085999; 267209, 4086020; 267122, 4086227; 267104, 4086256; 267084, 4086269; 267056, 4086283; 266906, 4086331; 266891, 4086342; 266882, 4086352; 266867, 4086372; 266849, 4086402; 266825, 4086426; 266801, 4086437; 266771, 4086445; 266747, 4086438; 266722, 4086426; 266687, 4086406; 266594, 4086390; 266560, 4086382; 266526, 4086381; 266501, 4086377; 266477, 4086377; 266376, 4086400; 266351, 4086401; 266327, 4086402; 266297, 4086403; 266247, 4086390; 266213, 4086381; 266184, 4086375; 266164, 4086377; 266140, 4086383; 266106, 4086398; 265972, 4086470; 265938, 4086490; 265928, 4086507; 265910, 4086537; 265892, 4086570; 265868, 4086595; 265829, 4086610; 265804, 4086620; 265785, 4086618; 265770, 4086609; 265755, 4086589; 265744, 4086563; 265738, 4086531; 265743, 4086505; 265733, 4086482; 265717, 4086458; 265692, 4086440; 265652, 4086425; 265604, 4086407; 265574, 4086399; 265549, 4086385; 265534, 4086369; 265519, 4086344; 265507, 4086302; 265493, 4086278; 265468, 4086253; 265433, 4086239; 265300, 4086200; 265255, 4086191; 265217, 4086197; 265173, 4086214; 265130, 4086230; 265096, 4086250; 265030, 4086310; 264977, 4086370; 264864, 4086462; 264686, 4086500; 264646, 4086646; 264145, 4086593; 263385, 4087492; 263250, 4087462; 262733, 4087787; 262377, 4088430; 262168, 4088625; 261938, 4088667; 261884, 4088677; 261847, 4088935; 261881, 4088900; 261845, 4088949; 261712, 4089859; 261816, 4090114; 261861, 4090181; 261946, 4090230; 262019, 4090628; 261877, 4091074; 261790, 4091345; 261561, 4091701; 261492, 4091853; 261478, 4091881; 261382, 4092067; 261066, 4092009; 260594, 4091923; 260082, 4091835; 259931, 4091809; 259927, 4091872; 259919, 4092031; 259969, 4092207; 260060, 4092294; 260115, 4092347; 260281, 4092532; 260323, 4092741; 260563, 4093046; 260514, 4093202; 260706, 4093697; 260542, 4093983; 260409, 4094216; 260399, 4094501; 260394, 4094638; 259681, 4095909; 259681, 4096500; 259568, 4096500; 259490, 4096685; 259560, 4096972; 259429, 4097248; 259437, 4097286; 259377, 4097317; returning to 259348, 4097383.

(111) Subunit 15P; Fresno County, California. From USGS 1:24,000 scale quadrangle Clovis. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 247982, 4091500; 247982, 4090700; 246682, 4090700; 246682, 4090300; 246482, 4090300; 246482, 4089900; 247082, 4089900; 247082, 4089200; 245882, 4089200; 245882, 4089600; 245482, 4089600; 245582, 4091600; 246182, 4091600; 246182, 4091000; 246582, 4091100; 246882, 4091200; 247282, 4091300; 247582, 4091400; 247882, 4091500; returning to 247982, 4091500.

(112) Subunit 15Q; Fresno County, California. From USGS 1:24,000 scale quadrangle Clovis. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 265581, 4081601; 264281, 4081601; 265554, 4082449; 265656, 4082509; 265781, 4082592; 265781, 4082301; 265681, 4082300; 265681, 4081700; 265581, 4081700; returning to 265581, 4081601.

(113) Subunit 15R; Tulare County, California. From USGS 1:24,000 scale quadrangles Ivanhoe, and Stokes Mountain. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 300980, 4041602; 300280, 4041602; 299980, 4041702; 299680, 4041902; 299280, 4042502; 298980, 4042802; 298980, 4043102; 299280, 4043302; 299780, 4043302; 299780, 4044502; 300180, 4045102; 300780, 4045202; 301280, 4044702; 301480, 4044702; 301480, 4045002; 301380, 4045002; 301380, 4045602; 302280, 4045602; 302280, 4045402; 302580, 4045402; 303080, 4045702; 303180, 4045702; 303380, 4045502; 303680, 4045502; 303880, 4045902; 304380, 4045902; 304580, 4046102; 304780, 4046102; 304980, 4046602; 304780, 4047502; 304880, 4047702; 304780, 4048102; 304880, 4048302; 305480, 4048302; 305880, 4047802; 306080, 4047702; 306380, 4047702; 306580, 4047402; 306580, 4046802; 306380, 4046702; 306180, 4045702; 305980, 4045102; 305680, 4044902; 305480, 4044102; 305480, 4043902; 305980, 4043702; 305780, 4043202; 305780, 4042202; 305080, 4042202; 304980, 4041802; 304280, 4041802; 304180, 4041402; 301480, 4041502; 300980, 4041302; returning to 300980, 4041602 excluding land bounded by 299280, 4039193; 298499, 4039227; 298480, 4039302; 298580, 4039602; 298980, 4039702; 298980, 4040802; 299780, 4040802; 299380, 4041302; 300980, 4041302; 300980, 4041202; 300480, 4041202; 300480, 4039902; 300380, 4039902; 300380, 4039202; 300380, 4039102; 300080, 4039102; 300080, 4038402; 299280, 4038402; 299280, 4038639; 299293, 4039193; 299694, 4039182; 299695, 4039202; 299731, 4039993; 300093, 4039986; 300104, 4040440; 299864, 4040716; 299157, 4040740; 299141, 4040404; 299317, 4040392; 299299, 4040017; 299320, 4040016; 299294, 4039202; 299293, 4039193; returning to 299280, 4039193.

(114) Subunit 15S; Tulare County, California. From USGS 1:24,000 scale quadrangles Auckland, Ivanhoe, Stokes Mountain, and Woodlake. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 309080, 4043702; 309680, 4043202; 311780, 4043202; 312180, 4042802; 312780, 4042802; 313080, 4042502; 313080, 4042102; 312580, 4041802; 311080, 4040802; 311080, 4040202; 310680, 4040002; 310680, 4039702; 310480, 4039702; 310480, 4039602; 310080, 4039602; 310080, 4039302; 309980, 4039202; 309980, 4039002; 309780, 4039002; 309380, 4039002; 309380, 4038602; 308980, 4038602; 308980, 4038202; 308180, 4038202; 308080, 4038002; 307980, 4038002; 307980, 4037402; 308180, 4037402; 308180, 4037202; 308380, 4037202; 308380,

4037802; 308780, 4037802; 308780, 4037702; 308880, 4037602; 308780, 4037402; 308980, 4037402; 308980, 4037202; 308780, 4037202; 308780, 4037002; 309180, 4037002; 309180, 4036602; 308780, 4036602; 308780, 4036802; 308180, 4036802; 308180, 4036702; 308280, 4036702; 308280, 4036602; 308180, 4036602; 308180, 4036402; 308380, 4036402; 308380, 4036302; 308558, 4036302; 308480, 4035602; 308380, 4035602; 308380, 4035202; 308980, 4034802; 309080, 4034602; 308780, 4034602; 308780, 4033902; 308680, 4033902; 308680, 4033802; 308780, 4033702; 308580, 4033502; 308280, 4033602; 308080, 4033702; 308180, 4034102; 308080, 4034302; 308080, 4034702; 307780, 4034902; 307580, 4035202; 307480, 4035402; 307480, 4035602; 307280, 4036102; 306980, 4036702; 307180, 4037102; 306780, 4038102; 306780, 4038202; 306880, 4038302; 307080, 4038302; 307280, 4038402; 307180, 4038502; 307180, 4039702; 308180, 4040002; 308580, 4040502; 308280, 4041302; 307680, 4041302; 307180, 4041802; 307180, 4042402; 307780, 4043502; 307880, 4044302; 308280, 4044502; returning to 309080, 4043702.

(115) Subunit 15T; Tulare County, California. From USGS 1:24,000 scale quadrangle Woodlake. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 312780, 4039402; 312780, 4039202; 313380, 4039202; 313580, 4038802; 313180, 4038402; 313780, 4038402; 313980, 4038302; 314180, 4037802; 314680, 4037802; 314880, 4037302; 314880, 4037002; 314080, 4036402; 314180, 4036202; 314980, 4036202; 315180, 4036402; 315580, 4036402; 316180, 4036202; 316480, 4035202; 316480, 4035002; 315980, 4034302; 314180, 4034402; 313480, 4034702; 312880, 4034802; 312880, 4034902; 313080, 4034902; 313080, 4035702; 312580, 4035702; 312580, 4035502; 312380, 4035502; 312180, 4035302; 312080, 4035302; 312080, 4034902; 311380, 4034902; 311380, 4035102; 311580, 4035102; 311580, 4035302; 311180, 4035402; 311180, 4035102; 311080, 4035002; 311080, 4034902; 310580, 4034902; 310480, 4034802; 310380, 4034902; 310380, 4035702; 310680, 4035702; 310680, 4036502; 310880, 4036502; 310880, 4036802; 310580, 4036802; 310580, 4036902; 310680, 4037202; 310480, 4037402; 309880, 4037402; 309980, 4038202; 310180, 4038202; 310180, 4038002; 310580, 4038002; 310580, 4037702; 310880, 4037702; 310880, 4038102; 311280, 4038102; 311280, 4038502; 311580, 4038502; 311580, 4038602; 311680, 4038602; 311680, 4038802; 311780, 4038902; 312080, 4038902; 312080, 4039302; 311880, 4039302; 311680, 4039402; 311780, 4039802; 311780, 4039802; 312180, 4040502; 312780, 4040802; 313080, 4040802; 313680, 4040302; 313780, 4040102; 313180, 4039402; returning to 312780, 4039402.

(116) Subunit 15U; Tulare County, California. From USGS 1:24,000 scale quadrangle Monson. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 292780, 4036223; 292756, 4036224; 292733, 4035590; 291980, 4035402; 291980, 4036602; 292780, 4036602; 292780, 4037402; 291980, 4037502; 292080, 4039302; 292380, 4039002; 292880, 4039002; 292880, 4038302; 293280, 4038302; 293280, 4038202; 294477, 4038202; 294430, 4036802; 294380, 4035402; 294313, 4035402; 294270, 4035469; 294036, 4035567; 294043, 4035741; 294329, 4035733; 294329, 4035783; 293527, 4035814; 293548, 4036184; returning to 292780, 4036223.

(117) Subunit 15V; Tulare County, California. From USGS 1:24,000 scale quadrangle Monson. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 297580, 4036102; 297580, 4035302; 297580, 4035002; 296880, 4035102; 296280, 4035102; 296780, 4036602; 297580, 4036502; returning to 297580, 4036102.

(118) Subunit 15W; Tulare County, California. From USGS 1:24,000 scale quadrangle Monson. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 293431, 4033802; 292680, 4033802; 292680, 4033808; 292683, 4033807; 292686, 4034084; 293057, 4034063; 293438, 4034046; returning to 293431, 4033802.

(119) Subunit 16B; Alameda County, California. From USGS 1:24,000 scale quadrangle Niles, Milpitas. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 592097, 4150703; 592397, 4150403; 592397, 4150385; 592371, 4150407; 592373, 4150418; 592310, 4150478; 592292, 4150493; 592178, 4150572; 592123, 4150572; 592053, 4150638; 591927, 4150506; 591921, 4150499; 591701, 4150252; 591698, 4150252; 591695, 4150252; 591692, 4150252; 591689, 4150252; 591686, 4150252; 591683, 4150252; 591680, 4150251; 591677, 4150250; 591675, 4150250; 591672, 4150249; 591669, 4150248; 591666, 4150247; 591664, 4150246; 591661, 4150245; 591658, 4150244; 591656, 4150242; 591653, 4150241; 591651, 4150239; 591648, 4150238; 591646, 4150236; 591644, 4150234; 591641, 4150232; 591639, 4150230; 591637, 4150228; 591635, 4150226; 591633, 4150224; 591631, 4150222; 591629, 4150220; 591628, 4150217; 591626, 4150215; 591624, 4150213; 591623, 4150210; 591622, 4150208; 591620, 4150205; 591619, 4150202; 591618, 4150200; 591617, 4150197; 591616, 4150194; 591615, 4150191; 591614, 4150189; 591614, 4150186; 591613, 4150183; 591613, 4150180; 591613, 4150177; 591612, 4150174; 591612, 4150171; 591612, 4150168; 591612, 4150165; 591612, 4150163; 591613, 4150160; 591613, 4150157; 591539, 4150076; 591493, 4150122; 591340, 4149959; 591352, 4149949; 591366, 4149936; 591397, 4149907; 591428, 4149878; 591570, 4149746; 591647, 4149676; 591686, 4149643; 591717, 4149620; 591762, 4149591; 591785, 4149578; 591817, 4149565; 591874, 4149541; 591922, 4149523; 591968, 4149511; 592009, 4149501; 592054, 4149494; 592098, 4149489; 592161, 4149487; 592216, 4149493; 592333, 4150186; 592342, 4150188; 592341, 4150191; 592348, 4150192; 592349, 4150189; 592395, 4150195; 592297, 4149803; 592197, 4149403; 592097, 4149303; 592081, 4149303; 592200, 4149453; 592185, 4149451; 592155, 4149449; 592127, 4149450; 592091, 4149453; 592050, 4149459; 591983, 4149469; 591941, 4149480; 591880, 4149500; 591814, 4149526; 591748, 4149561; 591691, 4149598; 591654, 4149627; 591627, 4149653; 591550, 4149723; 591407, 4149856; 591376, 4149885; 591345, 4149914; 591332, 4149926; 591319, 4149937; 591317, 4149934; 591142, 4149751; 591013, 4149825; 591597, 4150603; 591697, 4150503; 591897, 4150503; returning to 592097, 4150703.

(120) Subunit 17A; San Benito, Monterey Counties, California. From USGS 1:24,000 scale quadrangle Llanada, San Benito, Hernandez Reservoir, Rock Springs Peak, Topo Valley, Hepsedam Peak, Lonoak, Pinalito Canyon, Monarch Peak, Nattrass Valley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 673301, 4024031; 673596, 4024104; 674896, 4026004; 674596, 4026304; 674696, 4026804; 674196, 4027104; 673096, 4026604; 672496, 4026804; 671696, 4028504; 670796, 4028504; 669796, 4028704; 669796, 4029904; 669896, 4030504; 670396, 4031904; 670796, 4034904; 671396, 4036904; 669196, 4037504; 669296, 4038404; 668796, 4040104; 669896, 4042504; 671996, 4043104; 674196, 4043304; 676096, 4045404; 677396, 4046504; 683096, 4043104; 683896, 4042004; 683796, 4040404; 682396, 4039504; 681396, 4038404; 681696, 4036804; 681796, 4035604; 680896, 4034304; 678896, 4035004;

678096, 4035804; 677696, 4036904; 677296, 4037604; 676896, 4037704; 676196, 4038304; 675896, 4038804; 675096, 4038304; 675196, 4037804; 674796, 4037404; 673196, 4036804; 673896, 4036304; 674096, 4035304; 674796, 4034804; 675596, 4034504; 676096, 4033404; 676896, 4033104; 677696, 4032504; 678196, 4031904; 679096, 4031204; 679696, 4031004; 679996, 4031504; 679996, 4032504; 680596, 4032804; 681096, 4032304; 681596, 4031304; 682696, 4031004; 684496, 4028505; 685296, 4028505; 685596, 4028005; 687496, 4029305; 688096, 4030505; 688896, 4030905; 689796, 4031005; 691295, 4032405; 692095, 4032105; 692595, 4031405; 693295, 4031105; 693795, 4031105; 694395, 4030705; 693895, 4029305; 692695, 4028305; 693595, 4028305; 694395, 4027605; 694395, 4027005; 695195, 4025905; 696695, 4024705; 696695, 4023505; 697295, 4022405; 697995, 4022405; 698395, 4021305; 699295, 4020305; 699195, 4019205; 698595, 4019105; 698095, 4018505; 697195, 4018605; 695796, 4017705; 695496, 4016705; 695196, 4016305; 694996, 4015705; 694996, 4014805; 694952, 4014692; 694496, 4013505; 693896, 4012905; 693696, 4011905; 692496, 4010705; 692096, 4008905; 691696, 4008405; 690896, 4008405; 689596, 4009205; 689096, 4009905; 688996, 4010505; 687896, 4010805; 687196, 4010805; 685496, 4011905; 684996, 4013105; 683696, 4013905; 683496, 4014705; 682796, 4015005; 682596, 4016005; 683196, 4016405; 683196, 4016849; 683196, 4017505; 684296, 4019305; 684296, 4020305; 683496, 4022005; 681796, 4023305; 681196, 4023405; 680796, 4024205; 680696, 4025305; 679896, 4025504; 679396, 4026704; 678796, 4027104; 678196, 4026404; 677496, 4026204; 676096, 4025404; 676096, 4024804; 676696, 4024304; 676896, 4023504; 675896, 4022304; 675798, 4021666; 675696, 4021004; 675096, 4020004; 674296, 4019704; 672296, 4016504; 670896, 4015504; 670096, 4015504; 669596, 4015804; 669196, 4016504; 669696, 4017204; 669596, 4018404; 670196, 4019104; 670396, 4022004; 671096, 4022804; 672796, 4023904; returning to 673301, 4024031.

(121) Subunit 18A; Monterey County, California. From USGS 1:24,000 scale quadrangle Williams Hill, Jolon, Valleton, Bradley, San Miguel, Wunpost. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 668597, 3981705; 668797, 3981405; 668597, 3980905; 668797, 3980405; 669497, 3979905; 669897, 3980305; 670697, 3980505; 671497, 3980405; 671497, 3979305; 671997, 3979305; 672797, 3978405; 674797, 3978405; 675497, 3978005; 674697, 3976705; 674897, 3975505; 674997, 3975372; 674997, 3975305; 674797, 3975305; 674737, 3975786; 674736, 3976029; 674706, 3976031; 674697, 3976105; 673540, 3976105; 673514, 3976459; 673497, 3976459; 673497, 3976505; 673129, 3976505; 673126, 3976836; 673926, 3976848; 673934, 3977666; 673097, 3977663; 673097, 3977705; 672358, 3977674; 672298, 3978463; 670682, 3978454; 670706, 3977606; 670697, 3977605; 670697, 3977433; 670307, 3977714; 669890, 3978014; 669500, 3978298; 669301, 3978444; 669106, 3978599; 668788, 3978852; 668773, 3978864; 668728, 3978899; 668672, 3978944; 668639, 3978959; 668524, 3979010; 668452, 3979050; 668397, 3979105; 667234, 3979977; 668252, 3979993; 668234, 3980797; 667835, 3980800; 667819, 3981613; 667417, 3981606; 667411, 3981905; 668097, 3981905; returning to 668597, 3981705.

(122) Subunit 19A; Monterey County, California. From USGS 1:24,000 scale quadrangle Bradley, San Miguel, Wunpost, Valleton. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 706395, 3974906; 706595, 3974206; 706496, 3971706; 706696, 3970606; 707096, 3969906; 707096, 3969206; 706896, 3969006; 706896, 3968006; 706696, 3967305; 705596, 3965306; 705496, 3965306; 705385, 3970275; 706163, 3970285; 706139, 3972736; 705331, 3972723; 705296, 3974306; 705250, 3974306; 705250, 3974310; 705026, 3974306; 704096, 3974306; 703796, 3973606; 703796, 3973206; 703325, 3972358; 703266, 3972286; 702996, 3972106; 702696, 3971806; 702596, 3971706; 702027, 3971042; 702019, 3971042; 701981, 3971006; 701696, 3971006; 701396, 3970806; 700896, 3970806; 700096, 3970806; 700096, 3970206; 699096, 3970216; 699096, 3970306; 699296, 3970506; 699896, 3972006; 700296, 3972606; 700496, 3973406; 700896, 3974106; 701396, 3974506; 701796, 3975306; 702996, 3976106; 703296, 3976706; 704295, 3977606; 704895, 3977706; 705495, 3977706; 706195, 3978106; 706795, 3978506; 706795, 3978106; 706295, 3976506; 706195, 3975306; returning to 706395, 3974906.

(123) Subunit 19B; Monterey, San Luis Obispo Counties, California. From USGS 1:24,000 scale quadrangle Bradley. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 694826, 3962816; 694896, 3963306; 695496, 3963306; 695796, 3963206; 695851, 3963206; 695857, 3962893; 695688, 3962837; 695596, 3962806; 695596, 3962772; 695566, 3962771; 695596, 3961437; 695596, 3961206; 694396, 3961206; 694396, 3961006; 694296, 3961206; 694896, 3961606; 694996, 3962206; 694796, 3962606; returning to 694826, 3962816.

(124) Subunit 19C; Monterey, San Luis Obispo Counties, California. From USGS 1:24,000 scale quadrangle San Miguel. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 706573, 3963024; 706896, 3963306; 707696, 3963306; 707659, 3963047; 707596, 3962606; 707996, 3962306; 708196, 3961806; 707596, 3961106; 706996, 3961106; 706996, 3961206; 706889, 3961286; 706888, 3961340; 706905, 3962663; 706746, 3962700; 706639, 3962753; 706585, 3962809; 706506, 3962813; 706384, 3962858; returning to 706573, 3963024.

(125) Subunit 19D; San Luis Obispo County, California. From USGS 1:24,000 scale quadrangle San Miguel. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 705696, 3959606; 705996, 3959206; 706045, 3958909; 705731, 3958904; 705722, 3959308; 705396, 3959304; 705396, 3960906; 705559, 3960924; 706296, 3960931; 706296, 3960906; 706096, 3960806; returning to 705696, 3959606.

(126) Subunit 19E; San Luis Obispo County, California. From USGS 1:24,000 scale quadrangle Paso Robles, and San Miguel. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 705796, 3956906; 705407, 3956906; 705396, 3957463; 705396, 3958495; 706383, 3958510; 706696, 3958406; 706996, 3957806; 706996, 3957406; 706496, 3957006; returning to 705796, 3956906.

(127) Subunit 19F; San Luis Obispo County, California. From USGS 1:24,000 scale quadrangle Paso Robles, Adelaida. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 705896, 3956306; 706396, 3955806; 707996, 3955906; 707996, 3955206; 708196, 3954906; 707696, 3953806; 707396, 3953406; 705796, 3952406; 705096, 3952606; 703296, 3952006; 703096, 3952006; 703096, 3953306; 702296, 3953306; 702209, 3954002; 703137, 3954834; 705448, 3954885; 705447, 3954906; 705496, 3954906; 705424, 3956054; 705415, 3956506; 705496, 3956506; returning to 705896, 3956306.

(128) Subunit 19G; Monterey and San Luis Obispo Counties, California. From USGS 1:24,000 scale quadrangle Creston, Paso Robles, Estrella, Ranchito Canyon, Cholame Hills. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 724752, 3963363; 725195, 3963806; 725195, 3963369;

725195, 3963106; 725095, 3961906; 725695, 3961506; 726195, 3961506; 726195, 3961106; 725295, 3960206; 725195, 3959006; 724795, 3958106; 724395, 3956506; 724795, 3956306; 725295, 3954806; 724195, 3953406; 723895, 3952506; 723495, 3951806; 723195, 3950406; 723595, 3949506; 723595, 3948806; 724195, 3948306; 723595, 3948206; 722395, 3948706; 719295, 3948706; 719295, 3949506; 718395, 3949506; 718396, 3948706; 718995, 3948706; 719095, 3948506; 719295, 3948506; 719295, 3947906; 720095, 3947906; 720095, 3946306; 720295, 3946206; 720895, 3945506; 721095, 3945006; 721195, 3944706; 721196, 3943206; 720196, 3943206; 718796, 3942006; 717796, 3941506; 717496, 3941506; 717096, 3941706; 717296, 3942306; 715196, 3944706; 715396, 3945006; 714596, 3945706; 714896, 3946006; 714696, 3946206; 714096, 3946206; 713296, 3946806; 713296, 3947006; 713696, 3947606; 713596, 3948206; 713296, 3948506; 712896, 3947706; 712696, 3947706; 712596, 3947806; 712596, 3948606; 711696, 3948906; 711396, 3949106; 711296, 3949606; 710696, 3949706; 710596, 3949806; 710596, 3950006; 710996, 3950206; 710996, 3950406; 710696, 3950506; 709496, 3950306; 709396, 3951906; 709896, 3952606; 709896, 3954606; 709596, 3955006; 709596, 3955406; 710296, 3955406; 710496, 3955306; 711096, 3955106; 711596, 3954406; 711696, 3953406; 713996, 3953406; 714296, 3953806; 714596, 3953606; 715096, 3953506; 715396, 3953306; 715596, 3953206; 715796, 3953206; 716096, 3953506; 716595, 3953506; 716895, 3953406; 717695, 3953506; 717995, 3954006; 718595, 3954406; 718995, 3954606; 719395, 3954706; 720495, 3955406; 721495, 3956506; 722295, 3958206; 722595, 3960206; 723395, 3961906; 724295, 3962306; 724495, 3963106; returning to 724752, 3963363.

(129) Subunit 20A; San Luis Obispo, California. From USGS 1:24,000 scale quadrangle Simmler. Land bounded by the following UTM Zone 11, NAD 27 coordinates (E,N): 229082, 3913702; 231982, 3913003; 233382, 3913003; 234382, 3912703; 235182, 3911903; 235382, 3911003; 233982, 3909903; 233782, 3909503; 235382, 3908803; 235782, 3908303; 237282, 3907303; 237782, 3906103; 238014, 3905871; 238008, 3905871; 237194, 3905886; 237184, 3905886; 236403, 3905898; 236380, 3905898; 236429, 3907546; 235115, 3907587; 234832, 3907596; 234824, 3907373; 234770, 3905961; 233642, 3906004; 231878, 3906076; 231889, 3906496; 231732, 3906501; 231682, 3906803; 231982, 3908603; 231882, 3909202; 229482, 3910003; 227282, 3911002; 227382, 3913202; 228182, 3913602; returning to 229082, 3913702.

(130) Subunit 21A; Santa Barbara County, California. From USGS 1:24,000 scale quadrangle Santa Ynez, Lake Cachuma, Los Olivos, Figueroa Mtn. Land bounded by the following UTM Zone 10, NAD27 coordinates (E,N): 775096, 3831708; 774296, 3831608; 773696, 3831708; 772596, 3831608; 772196, 3831208; 771496, 3831308; 770496, 3830808; 769896, 3830708; 769396, 3830908; 769196, 3831108; 768596, 3832408; 768596, 3833108; 768796, 3833508; 769996, 3834508; 770296, 3834508; 771996, 3835008; 772396, 3835108; 772896, 3834808; 773196, 3834808; 773196, 3835108; 773796, 3835108; 773796, 3835508; 773696, 3835908; 773296, 3836708; 773896, 3836908; 774396, 3836308; 774996, 3836108; thence east to UTM zone 11, land bounded by the following UTM 11 NAD 83 coordinates (E, N): 225183, 3836002; 225383, 3836203; 225683, 3836802; 226683, 3838302; 228283, 3839102; 229883, 3838802; 232283, 3840302; 232483, 3841502; 232383, 3842502; 231683, 3842902; 230383, 3844702; 230083, 3846003; 230883, 3846202; 231283, 3846002; 231783, 3846002; 232083, 3846302; 232883, 3846802; 233883, 3846802; 234583, 3846202; 234783, 3845402; 235283, 3845402; 235983, 3844303; 236483, 3844002; 236483, 3843602; 235983, 3843402; 235783, 3843102; 235583, 3842802; 235283, 3842702; 235183, 3842602; 235183, 3841802; 235383, 3841102; 235283, 3840503; 234783, 3839802; 234983, 3839502; 234683, 3839302; 234683, 3839102; 234383, 3839102; 233883, 3839102; 233183, 3838002; 232983, 3837802; 232383, 3837702; 232183, 3838002; 231883, 3838202; 231483, 3838302; 230783, 3837502; 230883, 3837002; 230383, 3836402; 230183, 3835902; 230083, 3835502; 229183, 3835102; 228983, 3834702; 228883, 3833602; 228083, 3833102; 227483, 3833002; 227083, 3832602; 226783, 3832202; 226183, 3832202; 225883, 3832302; 225283, 3831802; 225083, 3831702; 224883, 3831702; thence west to UTM zone 10 to the point of beginning at UTM 10 NAD 27 coordinates 775096, 3831708.

(131) Subunit 22A; Ventura County, California. From USGS 1:24,000 scale quadrangles Alamo Mountain, Lion Canyon, Lockwood Valley, San Guillermo, and Topatopa Mountains. Land bounded by the following UTM Zone 11, NAD27 coordinates (E,N): 315281, 3843603; 315781, 3842204; 316581, 3840904; 317282, 3837903; 317281, 3836804; 317205, 3836464; 316582, 3833703; 315782, 3833103; 315282, 3833903; 314082, 3833903; 313182, 3832003; 311582, 3830603; 310182, 3830303; 309482, 3830803; 308482, 3830703; 307282, 3830403; 306082, 3831003; 304782, 3831103; 303482, 3831903; 302182, 3832403; 301682, 3833403; 300482, 3833403; 299282, 3833803; 298282, 3834203; 297782, 3835103; 297982, 3837103; 299582, 3837303; 301282, 3838203; 301582, 3839103; 303482, 3840803; 303882, 3842503; 304982, 3843403; 305882, 3843403; 307782, 3843204; 309582, 3843204; 310582, 3844003; 311982, 3844404; 313481, 3845203; 314581, 3843903; returning to 315281, 384360.

Dated: August 1, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–15569 Filed 8–10–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
August 11, 2005

Part III

Department of Commerce

Economic Development Administration

13 CFR Chapter III

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision; Final Rules

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 050729210–5210–01]

RIN 0610–AA63

Economic Development Administration Reauthorization Act of 2004 Implementation; Regulatory Revision

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Interim final rule.

SUMMARY: On October 27, 2004, President Bush signed the Economic Development Administration Reauthorization Act of 2004 (the ''*2004 Act*'') into law. The Economic Development Administration (''*EDA*'') publishes this interim final rule to reflect the amendments made to EDA's authorizing statute, the Public Works and Economic Development Act of 1965 (''*PWEDA*''), by the 2004 Act. In addition to tracking the statutory amendments to PWEDA, the interim final rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's regulations. The interim final rule also reorders and re-titles certain parts of the existing regulations in a more logical sequence, expands the construction and use of defined terms, and presents information to the reader in a more concise and overall user-friendly format.

DATES: This interim final rule is effective October 1, 2005. Comments on this interim final rule must be received by EDA's Office of Chief Counsel no later than 5 p.m. e.s.t. on October 11, 2005.

ADDRESSES: Comments on the interim final rule may be submitted through any of the following:

- Mail: Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.
- Facsimile: (202) 482–5671, Attention: Office of Chief Counsel. Please indicate ''Comments on the Interim Final Rule'' on the cover page.
- E-mail: *edaregs@eda.doc.gov.* Please state ''Comments on the Interim Final Rule'' in the subject line.
- Federal e-Rulemaking portal *http://www.regulations.gov.*

Comments on the collections of information should be submitted to both EDA and the Office of Management and Budget (''*OMB*'') by mail, facsimile or e-mail submissions:

- EDA: Office of Chief Counsel, Room 7005, Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230; facsimile: (202) 482–5671; e-mail at *edaregs@eda.doc.gov,* Attention: Office of Chief Counsel. Please indicate ''Comments on Collections of Information in EDA's Interim Final Rule'' on each submission.
- OMB: Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: EDA Desk Officer, 725 17th Street, NW., Washington, DC 20503; facsimile: (202) 395–7285; e-mail at *David_Rostker@omb.eop.gov,* Attention: EDA Desk Officer. Please indicate ''Comments on Collections of Information in EDA's Interim Final Rule'' on each submission.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–4687.

SUPPLEMENTARY INFORMATION:

Discussion of the Interim Final Rule

EDA is publishing this interim final rule (the ''*Interim Final Rule*'') to reflect the amendments made to EDA's authorizing statute, PWEDA, by the 2004 Act (Pub. L. 108–373). In addition to tracking the statutory amendments to PWEDA, the Interim Final Rule reflects EDA's current practices and policies in administering its economic development programs that have evolved since the promulgation of EDA's regulations (the ''*Former Regulations*''), codified at 13 CFR Chapter III. The Interim Final Rule also (i) reorders and re-titles certain parts of the Former Regulations in a more logical sequence, (ii) expands the construction and use of defined terms, and (iii) presents information to the reader in a more concise and overall user-friendly format. All capitalized terms not otherwise defined in this discussion have the meanings ascribed to them in the Interim Final Rule.

On February 3, 2005, the President announced the Strengthening America's Communities initiative, which consists of the intended consolidation and transfer of eighteen (18) federal economic and community development programs to and within the Department of Commerce (''*DOC*''). In addition, the President's Fiscal Year 2006 budget anticipates the initiative by proposing $27 million of administrative funding for EDA while eliminating all program funding. Despite the proposed elimination of program funding, EDA is promulgating the Interim Final Rule because (i) It is necessary to reflect and implement the amendments to PWEDA in the 2004 Act, (ii) it is necessary for the implementation and monitoring of existing EDA Investments, (iii) it is necessary for new Investments pursuant to appropriations for Fiscal Year 2005, (iv) it would be necessary for new Investments pursuant to appropriations for Fiscal Year 2006 that Congress may enact, and (v) it conforms certain areas of EDA policy and practice to current DOC policy and practice and existing case law.

Part 300—General Information

Part 300 (titled *General Information*) of the Interim Final Rule is EDA's introduction to the reader and establishes the foundation for the entire chapter. This foundation begins with presenting EDA's mission in § 300.1, which is ''to lead the federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy.'' Section 300.1 has been revised to specifically state EDA's mission, as well as to highlight the policies and practices that EDA employs in order to attract private capital investments and higher-skill, higher-wage jobs to those Regions experiencing substantial and persistent economic distress.

Section 300.2 is similar in scope to § 300.4 of the Former Regulations and provides the contact information for the EDA Headquarters office located in Washington, DC. This section also invites interested parties to visit EDA's Internet Web site at *www.eda.gov* for detailed contact information with respect to EDA's regional offices located throughout the United States. This information is also published by EDA in an annual notice of Federal Funding Opportunity (''*FFO*'').

The main focus of revising part 300 occurred in § 300.3, which introduces several new defined terms, as well as revised former defined terms, that are referenced throughout the chapter. EDA increased the use of defined terms to ensure clarity, consistency and technical precision, and encourages users of the Interim Final Rule to review the definitions in § 300.3. For example, the added defined terms ''*Region*'' or ''*Regional*'' reflect EDA's view that true economic development is measured by economic units of human, natural, technological, capital or other resources, defined geographically, and not necessarily by contiguous geographical areas or geographical areas defined by

political boundaries. The use of the terms ''Region'' or ''Regional'' intends to expand the narrowly-tailored ''area'' concept contained in the Former Regulations. EDA believes this change in scope is necessary in order for EDA's programs to foster meaningful and self-sustaining economic development through the United States.

The new defined terms ''*Investment*'' or ''*Investment Assistance*'' generally replace the use of the defined term ''*grant*'' in the Former Regulations. These defined terms reflect EDA's policy priority that EDA Investments (through the legal mechanism of a Grant or Cooperative Agreement) must generate a ''return.'' In this regard, EDA functions similar to a venture capital organization, although EDA typically measures any return on its Investments in the form of job creation and the generation of private capital investments, rather than a cash return or other more traditional financial measurements.

To create consistency in the Interim Final Rule, the new defined term ''*Special Need*'' generally tracks the criteria set forth in § 301.2(b)(3) of the Former Regulations, although EDA may enumerate additional circumstances constituting a Special Need in an FFO. Additionally, consistent with the amendment made to Section 3(4) of PWEDA by the 2004 Act, the definition of ''*Eligible Recipient*'' has been amended to remove an ''area'' as an qualified Eligible Recipient. The concepts of ''cash or in-kind contributions'' are referenced in § 301.4(a) of the Former Regulations; however, there are no meanings ascribed to such terms. Accordingly, the Interim Final Rule, in § 300.3, introduces the new defined terms ''*In-Kind Contribution,*'' ''*Local Share*'' and ''*Matching Share.*''

Part 301—Eligibility, Investment Rate and Proposal and Application Requirements

Part 301 of the Interim Final Rule is an amalgamation of parts 301 and 304 of the Former Regulations, and sets forth (i) general applicant and Project eligibility, (ii) Investment Rate, (iii) proposal and application requirements, and (iv) proposal evaluation criteria common to all PWEDA-enumerated programs (excluding Trade Adjustment Assistance for Firms at part 315). Part 301 presents these general requirements in a more logical sequence than the Former Regulations and provides the user with a helpful roadmap to navigate through these threshold issues.

Part 301 is organized into five (5) subparts. Subpart A presents an overview of eligibility requirements, subpart B addresses applicant eligibility, subpart C addresses Regional economic distress level requirements, subpart D sets forth the maximum Investment Rates and corresponding Matching Share requirements for various Projects, and subpart E addresses the proposal and application requirements, as well as the evaluation criteria used by EDA in selecting Projects. Part 301 should be read in conjunction with (i) part 302 (titled *General Terms and Conditions for Investment Assistance*), (ii) the specific part governing the EDA program under which a proponent proposes a Project, and (iii) the applicable FFO. For example, a proponent proposing a Public Works Project should consult subparts A, B, C and E of part 301 to determine its eligibility, the Project's eligibility, and the general proposal and application requirements. The proponent should also read subpart D of part 301 to determine the maximum Investment Rate (and corresponding Matching Share requirement) for the Project, although the Investment Rate for the Project is ultimately determined by EDA. In addition to reviewing part 301, the proponent should consult parts 302 and 305, in order to ascertain general terms and conditions for EDA Investment Assistance and specific Public Works Investment requirements. Finally, the proponent should consult the applicable FFO to determine any additional proposal and application requirements, evaluation criteria and EDA funding priorities, as well as any other information or requirements unique to EDA's competitive solicitation for a particular EDA program.

Subsections 301.1(a)–(d) provide the user with a roadmap (including references to applicable subparts of part 301) to determine (i) who is eligible to apply for Investment Assistance (*i.e.*, whether the applicant is an Eligible Applicant), (ii) whether the Project contemplated by the applicant is located in a Region subject to threshold economic distress levels, (iii) whether the sources of funding fulfill the Investment Rate and Matching Share requirements, and (iv) the proposal evaluation criteria used by EDA to select a Project for potential funding, as well as the formal application requirements that an Eligible Applicant must satisfy once its Project is invited for application by EDA. Subsection 301.1(e) indicates that a Project must also meet the general requirements set forth in part 302 and the specific program requirements (as applicable) set forth in part 303 (*Planning Investments and Comprehensive Economic Development Strategies*), part 304 (*Economic Development Districts*), part 305 (*Public Works and Economic Development Investments*), part 306 (*Training, Research and Technical Assistance Investments*), or part 307 (*Economic Adjustment Assistance Investments*). Subsection 301.2(a) is substantively the same as § 301.1(a) in the Former Regulations. This section states who is eligible to apply for EDA Investment Assistance by providing a cross-reference to the definition of Eligible Applicant in § 300.3.

Section 301.2(b) requires a non-profit organization to submit documentation verifying that it is working in cooperation with officials of a political subdivision of a State in order to establish its eligibility for Investment Assistance. *See* Section 3(4)(A)(vi) of PWEDA. This stipulation is different from the provision in § 301.1(b) of the Former Regulations, which allows a non-profit organization to work in cooperation with a political subdivision of a State or an Indian Tribe. EDA removed the reference to an Indian Tribe in order to track the amendment to Section 207(a)(3) of PWEDA. Section 301.2(b) of the Interim Final Rule also provides that EDA may ''waive'' this cooperation requirement for certain Projects under parts 306 and 307 of a ''significant'' Regional or national scope (*see also* §§ 306.3(b), 306.6(b) and 307.5(b)) and in this respect, the Interim Final Rule differs from § 301.1(b) of the Former Regulations. Specifically, § 301.2(b) provides that EDA may ''waive'' the cooperation requirement, whereas § 301.1(b) of the Former Regulations provides that EDA may determine that the cooperation requirement is ''satisfied'' by certain Projects of a regional or national scope under parts 306 and 307. The waiver provision in § 301.2(b) is necessary to track the language of Section 207(a)(3) of PWEDA, which specifically contemplates a waiver (and not a deemed satisfaction) of the cooperation requirement. Additionally, § 301.2(b) applies to Projects of a ''significant'' Regional scope, whereas § 301.1(b) of the Former Regulations (*see* §§ 307.3(b), 307.7(b) and 308.5(a) of the Former Regulations) does not require that Regional Projects be of a significant scope. EDA believes that only those Regional Projects of a significant scope should be excluded from the general requirement that non-profit organizations work in cooperation with representatives of political subdivisions. EDA determines whether a Project is of a ''significant'' Regional scope on a case-

by-case basis, based on the facts and circumstances surrounding a Project.

Section 301.3 sets forth the economic distress criteria that the Region in which a Project will be located (*e.g.*, a Public Works Investment under part 305 or an Economic Adjustment Assistance Investment under part 307) or the Region comprising an Economic Development District (under part 304) must meet in order for a Project to qualify for Investment Assistance. PWEDA, and accordingly, the Interim Final Rule, sets forth no economic distress criteria for Planning Investments (part 303) and Training, Research and Technical Assistance Investments (part 306).

In general, the economic distress levels referenced in § 301.3(a) of the Interim Final Rule (for Projects under parts 305 and 307) are similar to the ''area eligibility'' criteria provided in § 301.2(a)–(e) of the Former Regulations. These economic distress criteria track Sections 301 and 405 of PWEDA. The only substantive change in § 301.3(a) is that EDA will determine economic distress levels according to unemployment rates or per capita income levels, based upon the most recent American Community Survey (''ACS'') published by the U.S. Census Bureau for (i) the applicable Region where the Project will be located (for Projects seeking to qualify under § 301.3(a)(1)), (ii) the geographical area where substantial direct Project benefits will occur (for Projects seeking to qualify under § 301.3(a)(2)), or (iii) the geographical area of poverty or unemployment (for Projects seeking to qualify under § 301.3(a)(3)). EDA believes that the ACS is the most accurate and reliable metric currently available to measure the economic distress of a Region (or other geographical area). Where a recent ACS is not available, EDA will base its decision upon the most recent federal data from other sources, including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or any other federal source determined by EDA to be appropriate. For economic distress based upon a Special Need, EDA will conduct an independent analysis of the facts and circumstances in a given case. *See* § 301.3(a)(4)(ii) of the Interim Final Rule.

Certain provisions in § 301.3(a) are reworded and/or reordered for clarity. For example, § 301.3(a)(1)(iii) references a Special Need (now defined in § 300.3), whereas § 301.2(b)(3) of the Former Regulations actually enumerates the special need criteria. Section 301.3(c) sets forth the economic distress level for a Region to be designated as an Economic Development District. In particular, § 301.3(c)(1) requires that a Region contain at least one (1) geographical area that fulfills the economic distress criteria set forth in § 301.3(a)(1) (consistent with § 302.1(a) of the Former Regulations). Section 301.3(c) contains a cross-reference to § 304.1 for a listing of the remaining eligibility requirements for Economic Development Districts.

Pursuant to § 301.3(d), EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable. This requirement is consistent with § 301.2(f) of the Former Regulations.

Section 301.4 of the Interim Final Rule has undergone substantial revision in order to reflect the new Investment Rate determination regime in Section 204 of PWEDA (*see also* Sections 205 and 206 of PWEDA). Generally, as stated in Section 204(a) of PWEDA and in § 301.4(b)(1), the maximum Investment Rate for a Project must not exceed the sum of fifty (50) percent, plus an additional thirty (30) percent, based on the ''relative needs'' of the Region where the Project is located. This is a significant change from the Investment Rate (referred to as ''grant rates'') regime in § 301.4 of the Former Regulations. The Former Regulations provide that EDA may increase the Investment Rate above fifty (50) percent, based on the applicant's demonstration that the non-federal share that would otherwise be required cannot be provided because of the applicant's overall economic situation. The shift in focus from the applicant's overall economic situation to the relative needs of the Region where the Project is located ensures that allocations of EDA Investment Assistance are provided to the most economically distressed Regions. *See* Section 206(2) of PWEDA. Additionally, pursuant to the deletion of former Section 403 of PWEDA by the 2004 Act, the ten (10) percent EDA ''bonus'' funding for certain Projects located in Economic Development Districts has been removed.

There are certain statutory exceptions that allow for maximum Investment Rates in excess of eighty (80) percent. These exceptions are set forth in § 301.4(b)(3)–(4) and are discussed below. As provided in § 301.4(a), there is no minimum Investment Rate for a Project.

Section 301.4(b)(1)(i) establishes the criteria that EDA uses to determine the relative needs of the Region in which a Project is located. *See* Section 204(a)(2)(B) of PWEDA, which requires EDA to promulgate regulations establishing relative needs criteria. The burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located. In making a relative needs determination, EDA will focus on the economic distress level of a Region (rather than on specific geographical areas or types of economic distress), and will evaluate the relative needs of a Region based on the specific facts and circumstances and the criteria in § 301.4(b)(1)(i)(A)(1)–(4). *See* Section 206(2) of PWEDA. A Project is eligible for the maximum allowable Investment Rate, as determined by EDA, between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project.

Table 1 in § 301.4(b)(1)(ii) provides the maximum allowable Investment Rates for Projects, in accordance with certain levels of economic distress in relevant Regions. In cases where Table 1 produces divergent results (*i.e.*, where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 will be the maximum allowable Investment Rate for the Project.

Table 1 provides (i) new maximum Investment Rate categories of 30 and 40 percent for those Regions eligible for Investment Assistance under PWEDA, but which are experiencing lower levels of economic distress, and (ii) higher threshold levels of economic distress for the 50, 60 and 70 percent maximum allowable Investment Rate categories (the economic distress levels for the 80 percent maximum allowable Investment Rate category are the same as in the Former Regulations). These changes are necessary in order to ensure that allocations of Investment Assistance are provided to the most economically distressed Regions. EDA may provide additional Investment Rate criteria and standards in an FFO to ensure that the level of economic distress in a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in making Investments. *See* § 301.4(c).

Subsection 301.4(b)(2) provides that EDA will determine the maximum allowable Investment Rate for a Project subject to a Special Need based on the actual or threatened overall economic situation of the Region in which the Project is located. Due to the nature and circumstances that may give rise to a Region possibly having a Special Need, EDA has the flexibility to determine the maximum Investment Rate for such a Project on a case-specific basis and,

therefore, may take into account both the actual and threatened economic situation of the effected Region. For example, in the case of a Special Need based on severe damage caused by a natural disaster, EDA may determine the Project's Investment Rate based on an assessment of the threatened economic situation of the Region resulting from the natural disaster. However, unless the Project is eligible for a higher Investment Rate pursuant to § 301.4(b)(3) or (4), the maximum Investment Rate for any Project subject to a Special Need will be eighty (80) percent.

Section 301.4(b)(3) provides that the maximum allowable Investment Rate for a Training, Research and Technical Assistance Project under part 306 is based on the relative needs (as determined by § 301.4(b)(1)) of the Region which the Project will serve. However, § 301.4(b)(3) also provides that for (i) Projects of a national scope under part 306 (*i.e.*, where the relative needs of a particular Region cannot be evaluated due to the national scope of the Project) and (ii) for all other Projects under part 306 (after the application of § 301.4(b)(1)), the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project (i) merits and is not otherwise feasible without an increase in the Investment Rate, or (ii) will be of no or only incidental benefit to the Eligible Recipient. Section 301.4(b)(3) replaces the Investment Rate determinations for Training, Research and Technical Assistance Investments under §§ 307.3(c), 307.7(c) and 307.11(c) of the Former Regulations and tracks Section 204(c)(3) of PWEDA.

Table 2 in § 301.4(b)(4) reflects the statutory authority of PWEDA, which provides that certain projects are eligible for a maximum Investment Rate of one hundred (100) percent. This table provides that the following Projects are eligible for a maximum Investment Rate of one hundred (100) percent:

(i) Projects of Indian Tribes (Section 204(c)(1) of PWEDA);

(ii) Economic Adjustment Assistance Investments (under part 307) awarded in Presidentially-Declared Disaster areas where EDA received an application for assistance in post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration (Section 703 of PWEDA);

(iii) Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity, or Projects of non-profit organizations that the Assistant Secretary determines have exhausted their effective borrowing capacity (Section 204(c)(2) of PWEDA);

(iv) Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 (Section 215(e) of PWEDA); and

(v) Projects located in an Economic Development District that receive planning performance awards pursuant to § 308.3 (Section 216(e) of PWEDA).

With respect to item (ii) above (certain Economic Adjustment Assistance Projects in Presidentially-Declared Disaster areas), EDA has removed the requirement contained in § 301.4(b) of the Former Regulations that the Federal Emergency Management Agency (''FEMA'') grant rate for the Region must be greater than eighty (80) percent in order for the Project to be eligible for a one hundred (100) percent Investment Rate. The FEMA rate is not required by Section 703 of PWEDA and EDA believes that the association unnecessarily creates an artificial threshold, since the FEMA rate is often based on criteria different from that used to set the EDA Investment Rate.

Section 301.5 provides that the required Matching Share of any Project's eligible costs may consist of cash or In-Kind Contributions. This is consistent with Section 204(b) of PWEDA and § 301.4(a) of the Former Regulations. Section 301.5 requires the Eligible Applicant to show that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with Investment Assistance requirements. This latter requirement is stated in various places throughout the Former Regulations (*see* §§ 305.3(c), 308.5(c) and 316.17 of the Former Regulations) and has been moved to § 301.5, since it applies to all EDA Investments.

Section 301.6 follows Section 205 of PWEDA. It provides that, pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement a grant awarded by another ''designated federal grant program,'' provided the Eligible Applicant qualifies for financial assistance under such program but is unable to supply the required Matching Share because of its economic situation.

Sections 301.7 through 301.10 stipulate proposal and application requirements, as well as proposal evaluation criteria that EDA uses to select Projects for possible Investment awards. These sections have been moved from part 304 of the Former Regulations and redrafted to reflect more accurately the proposal and application process and the evaluation criteria that EDA uses in Project selection. The Investment Assistance process begins with the submission of an Investment Assistance proposal by an Eligible Applicant on a Form ED–900P. EDA will review completed proposal materials for compliance with the requirements set forth in PWEDA, the Interim Final Rule, the applicable FFO and other applicable federal statutes and regulations. From those proposals that meet EDA's technical and legal requirements, EDA will invite certain applicants to apply formally for further consideration.

EDA evaluates the competitiveness of varying proposals based on strategic areas of interest and priority considerations identified in the applicable FFO and the degree to which an Investment in the proposed Project will satisfy one (1) or more of the criteria set forth in § 301.8(a)–(f). These criteria have been added to the Interim Final Rule to draw attention to the overarching principles that EDA uses to evaluate the competitiveness of a Project. Proponents should use these criteria as a roadmap for Project development and proposal submission. The applicable regional office will provide application materials and guidance to applicants who are invited to complete formal Investment Assistance applications. Each formal application must include the items set forth in § 301.10(b).

Part 302—General Terms and Conditions for Investment Assistance

Part 316 of the Former Regulations (titled *General Requirements for Financial Assistance*) has been moved to part 302 and re-titled *General Terms and Conditions for Investment Assistance.* Part 302 applies to all Investments under PWEDA and certain provisions, such as § 302.5, apply to Adjustment Assistance under the Trade Act (*see* part 315).

Section 302.1 addresses the environmental reviews that EDA undertakes of Projects, in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190; 42 U.S.C. 4321 *et seq.*), and all applicable federal environmental statutes, regulations and Executive Orders. This section is substantively the same as § 316.1 of the Former Regulations, although the specific references to the various environmental authorities in § 316.1(b) of the Former Regulations have been removed. These authorities continue to apply to Projects under PWEDA, as applicable.

Section 316.2 of the Former Regulations requires an ''excess capacity study'' in connection with certain EDA Investments. This reference has been removed to track the deletion of Section 208 of PWEDA by the 2004 Act. Similarly, § 316.3 of the Former Regulations also has been removed because the 2004 Act deleted the Congressional finding underlying this section (formerly, Section 2(a)(8) of PWEDA).

The next two sections, 302.2 and 302.3, are substantively the same as their counterparts in the Former Regulations (§§ 316.4 and 316.5). Section 302.2 allows EDA to waive non-statutory administrative or procedural conditions for Investment Assistance when such requirements cannot be met by an Eligible Applicant as the result of a disaster. Section 302.3 is consistent with the powers granted to the Assistant Secretary under Section 601 of PWEDA to take necessary actions to protect or further EDA's interest in connection with loans, loan guaranties and Investment Assistance under PWEDA.

With respect to Recipients, §§ 302.4, 302.5 and 302.6 address access to EDA records, relocation assistance and land acquisition requirements, and the general applicability of federal laws and DOC regulations, policies and procedures with respect to federal financial assistance. These sections are substantively the same as §§ 316.6, 316.7 and 316.8 of the Former Regulations. Similarly, § 302.7 is substantively the same as § 316.9 of the Former Regulations, except that EDA has added the non-payment of costs (or other applicable procedure) to the list of actions that EDA may take when a Recipient makes any change to a Project without obtaining prior EDA approval. The non-payment of costs is consistent with current EDA practices and Recipients should be aware that EDA may take this course of action as appropriate. Section 302.8 addresses pre-approval Investment Assistance costs and is substantively the same as § 316.10 of the Former Regulations.

Section 302.9 is substantively the same as § 316.11 of the Former Regulations, except that the Interim Final Rule clarifies that inter-governmental reviews of Economic Adjustment Assistance Projects under part 307 apply to construction Projects or RLF Grants only, rather than to *all* Economic Adjustment Assistance Projects under part 307.

Subsection 302.10(a) is substantively the same as § 302.12 of the Former Regulations. Subsection 302.10(b) follows Section 606 of PWEDA. Specifically, § 302.10(b)(1) sets forth the requirement that an Eligible Applicant must certify to EDA the names of any attorneys, agents and other persons engaged by it or on its behalf for the purpose of expediting an application for Investment Assistance and the fees paid or to be paid to the person for expediting the application. Subsection 302.10(b)(2) allows EDA to request the Eligible Applicant to execute an agreement that binds the Eligible Applicant (for the two-year (2) period beginning on the date on which the Investment Assistance is awarded) to refrain from employing, offering any office or employment to or retaining for professional services certain persons associated with EDA or DOC.

Section 302.11 references the economic development information clearinghouse maintained by EDA on its Internet Web site (*www.eda.gov*) pursuant to Section 502 of PWEDA. Section 302.11 amends § 316.13 of the Former Regulations by removing specific references to the various information maintained by EDA and inviting interested parties to visit EDA's Internet Web site.

Sections 302.12 and 302.13 of the Interim Final Rule, addressing project administration, operation and maintenance of standards, are substantively similar to §§ 316.14 and 316.15 in the Former Regulations. EDA has included the statutory language of Section 602 of PWEDA in § 302.13, rather than a reference to Section 602 of PWEDA as in the Former Regulations.

Section 302.14 is substantively similar to § 316.16 of the Former Regulations and establishes the Recipient's recordkeeping requirements and the right of EDA, the DOC's Office of Inspector General and the Comptroller General of the United States (and any of their respective agents or representatives) to examine such records to verify the Recipient's compliance with Investment Assistance requirements (generally in the context of an audit). *See also* Section 608 of PWEDA. In describing the records to which these parties have access, § 302.14(b) includes a specific reference to computer programs and data processing software. EDA believes these materials (in addition to hardcopy records) are inherently part of the Eligible Recipient's records and, therefore, access to these materials is essential in order to perform a thorough and effective audit or examination.

Section 302.15 (consistent with Section 610 of PWEDA) provides that EDA will accept a certification from an Eligible Applicant, when such certification is accompanied by evidence satisfactory to EDA, that the Eligible Applicant meets the requirements for receiving Investment Assistance. Section 302.15 is substantively the same as § 316.17 in the Former Regulations (the reference to the availability of the Matching Share in § 316.17 of the Former Regulations is now contained in § 301.5 of the Interim Final Rule).

Section 302.16 (consistent with Section 212 of PWEDA) addresses Recipients' reporting requirements. This section generally follows § 316.18 of the Former Regulations; however, § 302.16(b) contains an explanatory sentence informing Recipients that EDA will use the reported data to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard. Subsection 302.16(b) also provides that data used by Recipients in preparing reports must be accurate and verifiable, as determined by EDA, and must come from independent sources (whenever possible). Additionally, to enable EDA to determine the economic development effect of Projects that provide service benefits, § 302.16(c) allows EDA to require that Recipients submit a Project service map and information from which EDA may determine whether services are provided to all segments of the assisted Region.

Section 302.17 states EDA's conflicts of interest policy. Users should also review the DOC regulations at 15 CFR 14.42 and 24.36(b)(3) for additional rules and requirements. Section 302.17 provides that an Interested Party shall not receive, directly or indirectly, any financial or personal benefits in connection with an Investment Assistance award. An Interested Party also shall not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or any other benefit having a monetary value for himself or herself or for another person or entity, from any person or organization that has obtained or seeks EDA Investment Assistance. These policies are consistent with internal EDA conflicts of interest rules and EDA believes that it is important to promulgate these provisions in the Interim Final Rule to ensure express public knowledge.

Section 302.18 sets forth a Recipient's post-approval requirements. Such requirements are generally applicable to all Projects assisted under PWEDA. These requirements are contained in various parts of the Former Regulations (*e.g.*, § 306.4) and have been moved to § 302.18 of the Interim Final Rule

because of their applicability to all EDA Investments. For Economic Adjustment Assistance Investments, Recipients must comply with the post-approval requirements set forth in § 307.6.

Section 316.19 of the Former Regulations is moved to § 305.5 for clarity and organization. In the event that an Economic Development District is not the Recipient of an Investment award involving construction, § 305.5 allows a District Organization to administer the Project for the Recipient upon the fulfillment of certain requirements. Section 305.5 is substantively the same as § 316.19 in the Former Regulations. Section 302.19 of the Interim Final Rule requires that a Recipient must, to the maximum extent permitted by law, indemnify and hold EDA harmless from any liability that EDA may incur due to the actions or omissions of the Recipient. This provision generally applies to all EDA Investments and is intended to insulate EDA where it is subject to a liability vis-à-vis any Recipient's actions or omissions.

Section 302.20 replaces part 317 (titled *Civil Rights*) in the Former Regulations and conforms EDA's civil rights policy and practice to existing DOC policy and practice (specifically, DOC's effectuation of Title VI of the Civil Rights Act of 1964, as amended (''*Title VI*'')) and existing case law. The introduction in § 317.1(a) in the Former Regulations has been rewritten to make clear that discrimination is prohibited with respect to Investment Assistance under PWEDA and Adjustment Assistance under the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*) (the ''*Trade Act*''). The statutes under § 317.1(a)(1)–(5) have been revised to increase clarity and utility.

The express anti-retaliatory provision in § 317.1(b) of the Former Regulations was not included in subsection 302.20(a)(1) of the Interim Final Rule because Section 601 of Title VI is covered by DOC's implementing regulations at 15 CFR part 8, specifically, the anti-retaliatory provision in 15 CFR 8.9. Similarly, subsections 302.20(a)(3) and (4) refer to DOC's implementing regulations at 15 CFR parts 8b and 20, respectively, because (i) 15 CFR 8b.26 makes Title VI enforcement provisions applicable to Section 504 of the Rehabilitation Act of 1973, as amended, and (ii) 15 CFR 20.14 contains a non-retaliatory provision in connection with the Age Discrimination Act of 1975, as amended. For the stand-alone gender discrimination provisions at 42 U.S.C. 3123 and 42 U.S.C. 6709, covered in subsection 302.20(a)(2), we have (i) placed a specific anti-retaliatory provision in § 302.20(c) and (ii) provided a cross-reference to the procedures set forth in 15 CFR 8.7 through 8.15.

Subsections 317.1(d)(2)–(5) were not included in the Interim Final Rule because 15 CFR 8.7 covers the compliance report and review requirements of all Recipients and Other Parties subject to 15 CFR part 8. This elimination was also based on the rationale that Recipients and Other Parties should not be subject to more rigorous reporting requirements than Recipients or beneficiaries of funding from other DOC bureaus also subject to 15 CFR part 8 (*see* Appendix A to 15 CFR part 8 for a full list of DOC bureaus). Specifically, 15 CFR 8.7(b) provides that ''[e]ach recipient and other party subject to this part shall keep such [racial and ethnic data] records and submit * * * timely, complete and accurate compliance reports at such times and * * * containing such information as the responsible Department official may determine to be necessary to enable him to ascertain whether the recipient or such other party subject to this part has complied with this part.''

Subsections 317.1(f) and (g) were not included in part because EDA no longer maintains an Office of Civil Rights, the result of an agency-wide reorganization that took effect in January 2004. For the same reason, EDA will no longer use its Civil Rights Guidelines (referenced in part 317 of the Former Regulations) in pre-approval or post-approval operations of EDA Investments. However, to measure the economic development impact of EDA's programs across a broad population, the Interim Final Rule makes clear that EDA will evaluate Planning Investment applications based on the ''extent of broad-based representation and involvement of the Region's civic, business, labor, minority and other interests in the Eligible Applicant's economic development activities'' (§ 303.3(a)(4)) and that Planning Organizations should ensure that their Strategy Committees include representatives of minority and labor groups (§ 303.6(a)). Additionally, subsections 317.1(f) and (g) were not included in the Interim Final Rule in an effort to bring EDA's program requirements and policies in line with other DOC bureaus.

The reporting requirement found at § 317.1(e) has been eliminated and redrafted at § 302.16(c) to emphasize EDA's goal to assess the economic development impact of its programs. Finally, § 302.20(d) effects the essential reporting requirement that Eligible Applicants provide assurances that they will comply with applicable laws, EDA and DOC regulations, and other applicable requirements prohibiting discrimination.

Part 303—Planning Investments and Comprehensive Economic Development Strategies

Part 303 combines the content of part 303 (*Planning Process and Strategies for District and other Planning Organizations supported by EDA*) and part 306 (*Planning Assistance*) in the Former Regulations. The major revision focus emphasizes that results-driven implementation, not just the writing of a ''*Comprehensive Economic Development Strategy*'' (or ''*CEDS*''), is vital to successful performance under this program. The CEDS is also a crucial part of EDA's program portfolio, as part of an application for Investment Assistance under parts 305 (*Public Works and Economic Development Investments*) and 307 (*Economic Adjustment Assistance Investments*).

In § 303.1, ''planning assistance'' is revised to refer to ''*Planning Investments*'' as a defined term, referring to an Investment awarded under Section 203 of PWEDA. The first sentence of § 303.1 informs the reader that Planning Investments provide support to Planning Organizations for the development, implementation, revision or replacement of a CEDS. This language requires EDA to issue reimbursements to a Planning Organization solely on the basis of its preparation and delivery of an executed CEDS. The former definition of ''*Planning Organization*'' was simplified for clarity and a CEDS is referred to as such or as a Comprehensive Economic Development Strategy only. The alternate definition of ''*Strategy*'' in reference to a CEDS was removed from the chapter altogether, to avoid any possible confusion with the defined term ''*Strategy Grant*'' in part 307.

In § 303.3, the application evaluation criteria used for awarding Planning Investments to Planning Organizations is revised to correlate directly with the quality of work accomplished to develop a CEDS, the qualifications of an Eligible Applicant to implement the goals and objectives of a CEDS, and the involvement of the Region's business leadership in the preparation of a CEDS. Consistent with the focus on a well-prepared and demonstrable CEDS, a new section has been introduced, § 303.5, which states that Planning Investments may be used to pay only direct and indirect costs (administrative or otherwise) attributable to the

development and implementation of a CEDS.

The requirements for an EDA-funded CEDS process, set forth in § 303.6, are revised to increase clarity and to introduce new provisions. One of the most important changes made is that a Strategy Committee (appointed for a Planning Organization) must represent the main economic interests of the relevant Region by including a majority of its representatives from businesses within the Region. This section also requires a Planning Organization to submit an initial CEDS that contains an analysis of the (a) opportunities for economic development and (b) problems contributing to economic distress in the relevant Region, rather than conduct an initial study on such issues. This obligation is revised primarily to make clear to Planning Organizations that a CEDS is required to be delivered to EDA prior to any implementation action.

Section 303.7 is organized with sub-headings to direct the reader's attention to specific technical requirements related to the preparation of a CEDS. Certain technical requirements have been enhanced; for example, the CEDS must include (a) a discussion of private sector participation in the CEDS work, rather than community participation, (b) a specific plan of action with certain criteria for gauging the implementation of the goals and objectives of the CEDS, and (c) specific performance measures for appraising the Planning Organization's development and execution of the CEDS. Additional technical requirements are new, including a required section in the CEDS that lists all suggested Projects for the applicable Region and a separate section involving a prioritization process for ranking Projects, programs and activities as they best address the Region's greatest needs.

EDA Planning Investments provide support in two (2) additional, specialized areas: Short-term Planning Investments and State plans. However, former part 306 has no individual sections addressing the requirements for Investment Assistance in these areas. In the Interim Final Rule, we have added specific sections, §§ 303.8 and 303.9, that distinguish the requirements for short-term Planning Investments and State plans. Unlike the Former Regulations, the assistance given to support short-term planning activities is laid out in detail. An applicant for short-term Planning Investments must provide performance measures similar to the ones required to be included in a CEDS and program reports during the term of the Planning Investment.

Part 304—Economic Development Districts

The part on Economic Development Districts (also referred to as a ''*District*'' or an ''*EDD*'' in § 300.3) has been revised for clarity and completeness, particularly by amending section titles and placing sub-headings within sections.

Section 304.1 sets forth the Regional eligibility requirements that must be satisfied in order for EDA to consider a District Organizations's request to designate a Region as an EDD, including submission of an EDA-approved CEDS. This section cross-references § 301.3(a)(1) to relate the economic distress criteria that at least one (1) geographic area in the Region must meet in order to be considered for a District designation. All provisions with respect to formation, organization and operation of a ''*District Organization*'' are contained in § 304.2. One major achievement of § 304.2 is that a District Organization's governing body's reporting requirements now conform to current legislative and DOC requirements. Two (2) new actions are required of a governing body: the District Organization and its board of directors must (a) make available to the public any audited statements, annual budgets and minutes of public meetings that are reasonably requested and (b) comply with all federal and State financial assistance reporting requirements and the conflicts of interest provisions set forth in § 302.17 of the chapter. Another new requirement (to the extent not in violation of State or local law) is a majority of ''*Private Sector Representatives*'' on the board of directors of a District Organization, which is defined in § 300.3 as any senior management official or executive holding a key decision-making position in any for-profit enterprise. Similarly, the governing body must include private sector delegates of workforce development boards, institutions of higher education, minority groups and labor groups.

The sections on District modification and District termination (§§ 302.4 and 302.6 in the Former Regulations) are combined into one new section, § 304.3. In addition to EDA's ability to terminate a Region's designation if the District no longer maintains the requirements for such designation (*i.e.*, regional eligibility and formation or organization requirements) or if the District requests termination, EDA may now terminate a Region's District designation based on performance. In this regard, poor performance with respect to the execution of its CEDS may be grounds for termination.

Information with respect to the performance evaluations of Economic Development Districts are incorporated into § 304.4 from another part of the Former Regulations (part 318). Pursuant to PWEDA, EDA will evaluate each District within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District continues to receive Investment Assistance. Unlike the information formerly provided in § 318.2, the performance evaluation provisions of § 304.4 in the Interim Final Rule contain detailed standards by which an EDD will be evaluated, namely, the continuing Regional eligibility of the District, the management of the District Organization, and the implementation of its CEDS, including its contribution towards the retention and creation of employment.

Part 305—Public Works and Economic Development Investments

Part 305 is revised from current part 305 (*Grants for Public Works and Development Facilities*). This part was streamlined and organized in substance, in order to clarify only those obligations assumed by EDA or an Eligible Recipient, as the case may be. Public Works Investments comprise EDA's largest Investment program. Subpart A lays out general information regarding this program's scope and award and application requirements. The first section, § 305.1, is reworded to provide specific information on the purpose and scope of Public Works and Economic Development Investments. The criteria section (§ 305.2) remains unchanged and continues to specify the scope of activities eligible for consideration of a Public Works Investment in subsection (a), and sets forth a list of determinations in subsection (b) that EDA must reach in order for a Public Works Investment to be made. In § 305.2(c), in line with Section 201 of PWEDA, the Interim Final Rule clearly indicates that not more than fifteen (15) percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one (1) State.

The application requirements for Public Works Investments are set forth in § 305.3. This section is present in the Former Regulations; however, the reference to a mandatory identification of ''other funds, both eligible federal and non-federal, that will make up the balance of the proposed project's financing, including any private sources of financing,'' is removed. Rather,

§ 305.3(a)(4) instructs that any application for Public Works Investment Assistance must demonstrate how the proposed Project meets the proposal evaluation criteria set forth in § 301.8 of the chapter (*e.g.*, how the Investment exhibits a high level of local government or non-profit Matching Share). The purpose of this cross-reference to § 301.8 is to improve the readability and usefulness of the Interim Final Rule, and also to highlight the importance that EDA places on proposal and application requirements set forth in subpart E of part 301.

The section on Public Works Projects for design and engineering work was moved from subpart B and placed as § 305.4 under subpart A. This section was largely rewritten and reorganized for clarity, and now includes a provision to ensure awareness that EDA's funding of a Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

The programmatic emphasis on revising subpart B was to eliminate unnecessary provisions and establish clear guidance for EDA's and Recipients' duties. The following section titles and related text in the Former Regulations were removed in their entirety: (a) *Pilot program;* (b) *Project management conference;* (c) *Selection of the architect/engineer;* (d) *Advertising for bids;* (e) *Bid overrun;* (f) *Construction progress schedule;* (g) *Project development time schedule;* (h) *Controlling budget;* (i) *Disbursement of funds for grants;* (j) *Final inspection;* and (k) *Reports*.

Pilot program (§ 305.5 in the Former Regulations) was initially created to allow EDA's Chicago regional office to develop a pilot program to waive certain EDA post-approval requirements. This provision is no longer necessary under PWEDA; therefore, it was eliminated. The section titled *Project management conference* (§ 305.6 in the Former Regulations) was eliminated because it addresses an administrative matter with respect to an accepted Investment award. The section titled *Selection of the architect/engineer* (§ 305.7 in the Former Regulations) was also eliminated, as requirements for the procurement of architect/engineer services and construction services are provided in 15 CFR parts 14 and 24, by which EDA is bound. Title 15 CFR part 14 establishes the uniform requirements for DOC grants awarded to institutions of higher education, hospitals, other non-profits and commercial organizations. Title 15 CFR part 24 establishes administrative rules for grants to State, local and Indian tribal governments. Therefore, EDA determined that there is no need to provide identical guidance in the Interim Final Rule and decided that the content of former §§ 305.6 and 305.7 be placed in a revised EDA guidance publication titled *Guidance for Approved Construction Projects*.

The section titles (a) *Advertising for bids*, (b) *Bid overrun*, (c) *Construction progress schedule*, (d) *Project development time schedule*, (e) *Controlling budget*, (f) *Disbursement of funds for grants*, (g) *Final inspection*, and (h) *Reports* (§§ 305.12, 305.13, 305.16, 305.20, 305.21, 305.24, 305.25 and 305.26 in the Former Regulations) and related text were all removed as administrative processes that are more suitable for the *Guidance for Approved Construction Projects*.

The first section under subpart B is § 305.5 titled *Project administration by District Organization*. This section was moved from former § 316.19 to part 305 because the provisions are applicable to construction projects only. The content of § 316.19 was reorganized and rewritten in line with applicable defined terms in § 300.3.

The sections *Construction Management services* and *Design/Build method of construction* (§§ 305.10 and 305.11 in the Former Regulations) are combined into one new section, § 305.6, and redrafted to address and account for the majority of EDA Public Works Investments that lend themselves to the traditional design/build method of construction. However, Recipients may employ other construction methods, too. If any method other than the design/build method is used, the Recipient is required to submit to EDA for approval a construction management services procurement plan and hire a third party design professional to oversee the construction services. The new section also includes specific procurement elements that the Recipient must address in its submitted plan, including the justification for the proposed method for procurement of construction management services and the scope of work with cost estimates and schedules. Additionally, a cross-reference to 15 CFR parts 14 and 24 informs the reader that any DOC requirements therein must be followed with respect to any selected procurement method.

Similar to the provisions placed in § 305.6 to inform the Recipient of necessary items that must be addressed in any construction management services procurement plan submitted to EDA, § 305.7 (*Services performed by the Recipient's own forces*) is revised to include information that the Recipient must submit to EDA to justify the use of ''in-house forces.'' One new specification is evidence that the in-house services requiring approval are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal). Further, § 305.8, *Recipient-furnished equipment and materials*, is revised to remove subsection (a) of § 305.9 in the Former Regulations as unnecessary text, largely because a Recipient should inherently select equipment and/or materials suitable for a desired use. The requirement that a Recipient submit with a ''request for EDA approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials,'' is also removed because this competitive procurement concern is covered by applicable provisions of 15 CFR parts 14 and 24.

The section titled *Project phasing* (§ 305.8 in the Former Regulations) was entirely redrafted to increase clarity and utility. The section title is renamed *Project phasing and Investment disbursement* (§ 305.9 in the Interim Final Rule) to closely associate the concept of Project phasing with EDA funds disbursement. Unlike § 305.8 in the Former Regulations, this revised section contains specific information that the Recipient must provide to EDA for approval of any Project that necessitates phasing, including a description of elements to be completed in each phase and detailed construction cost estimates for each phase.

The last five (5) sections in subpart B, §§ 305.10 (*Bid underrun*), 305.11 (*Contract awards; early construction start*), 305.12 (*Project sign*), 305.13 (*Contract change orders*) and 305.14 (Occupancy prior to completion), contain the same substance as found in the Former Regulations. However, all of these sections have been rewritten to eliminate any ambiguity or extraneous provisions. For example, the section on Contract change orders removes subsections (c) and (d) of § 305.19 in the Former Regulations, which provide that ''EDA will not approve financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun'' and, with respect to a change order for a Project funded with one-year funds, EDA approval of the change order must be based on a determination that the required work is necessary and within the Project scope.

Part 306—Training, Research and Technical Assistance Investments

The content of part 306 with respect to Local and National Technical

Assistance Investments and University Center Projects was primarily reorganized, shortened and rewritten for increased understanding and inclusiveness of all pertinent information. Subpart A (*Local Technical Assistance*) is combined with the substance of subpart C (*National Technical Assistance, Training, Research, and Evaluation*) and re-titled *Local and National Technical Assistance*. Specifically, § 306.1(a), dealing with the scope of Local and National Technical Assistance Investments, captures all possible purposes for such Investments, including those laid out in Section 207 of PWEDA. Two new purposes, as provided in PWEDA, include (a) studies that evaluate the effectiveness of EDA Investments coordinated with projects funded under other federal statutes and agencies and (b) the assessment, marketing and establishment of business clusters and associations. Section 306.1(d) tracks the language in Section 207(b) of PWEDA, which states that EDA may provide Local and National Technical Assistance (i) through officers or employees of DOC, (ii) pay funds made available to carry out subpart A to Federal Agencies, and (iii) employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for Local and National Technical Assistance Investments.

Sections 307.2 and 307.10 in the Former Regulations are combined into one new section and re-titled *Award requirements* (§ 306.2 in the Interim Final Rule). In addition to the evaluation criteria listed under both of these sections, EDA will also evaluate the extent to which the proposed Project meets the criteria outlined in the applicable FFO. Similarly, the content of §§ 307.3 and 307.11 in the Former Regulations is merged into § 306.3 and re-titled *Application requirements* (in the Former Regulations, each section is called *Award and grant rate requirements*). With regard to the Investment Rate for Local and National Technical Assistance Investments, the detailed information provided in subsection (c) of each section is removed and replaced with a cross-reference to § 301.4(b)(3), which tables the relevant Investment Rates for all EDA Investments. The cross-reference to § 301.4(b)(3) is made in applicable sections of all parts relating to specific EDA programs (*i.e.*, parts 303–307) to draw attention to the new organization of the Interim Final Rule.

The title of Subpart B is changed from *University Center Program to University Center Economic Development Program*. The second sentence under § 307.5 (*Purpose and scope*) in the Former Regulations was replaced with two sentences that communicate: ''institutions of higher education have many assets* * *that can address local economic problems'' and with EDA Investment Assistance, such institutions establish research centers (''*University Centers*'') that provide technical assistance to public and private sector organizations.

To mirror the organization and sequence of §§ 306.2 and 306.3 in subpart A, §§ 306.5 and 306.6 are named *Award requirements* and *Application requirements*, respectively. In § 306.5, in addition to the general evaluation and selection criteria set forth in part 301, the first sentence provides that EDA will evaluate a proposed Project subject to the competitive selection process outlined in the applicable FFO. Further, the following criteria provision replaces subsection (e) in § 307.6 in the Former Regulations: ''Addresses the economic development needs, issues and opportunities of the Region and will benefit distressed areas in the Region.'' In § 306.6, instead of stipulating a timeframe ''generally not to exceed twelve months,'' the revised section states that EDA will provide Investment Assistance under subpart B for the period of time required to complete the Project's scope of work, as outlined in the applicable FFO. A cross-reference to § 301.4(b)(3) is given for information regarding the applicable Investment Rate for University Center Projects.

The University Center Economic Development Program establishes a three-year competitive cycle in which performance evaluations occurring within three (3) years after the initial Investment award will determine if a University Center may qualify to compete again for Investment Assistance. Section 306.7 incorporates information regarding the performance evaluations of University Centers from another part of the Former Regulations (part 318). Consistent with Section 506(d)(2) of PWEDA, § 306.7 contains an additional performance evaluation standard by which University Centers will be evaluated. At a minimum, University Centers will be evaluated specifically with regard to their contributions to providing technical assistance, conducting applied research, meeting program performance objectives and disseminating Project results in accordance with the scope of work funded during the evaluation period.

Part 307—Economic Adjustment Assistance Investments

EDA has extensively considered, examined and revised part 308 in the Former Regulations, resulting in a set of provisions in part 307 of the Interim Final Rule that improves the understanding of some rather complex provisions. The reading of this part has been greatly improved by making effective use of defined terms in subparts A and B.

Subpart A, covering Economic Adjustment Assistance Investments, is revised to follow PWEDA and read more concisely. In § 307.1(a), the list of causes of adverse economic changes was condensed by creating a definition of ''*Federally-Declared Disaster*'' that includes fishery failures and fishery resource disasters pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16. U.S.C. 1861a(a)). This list now also includes ''loss of manufacturing jobs.'' Similarly, because the term ''Special Need'' is defined in § 300.3 of the chapter, § 307.2 has been shortened.

Section 308.3 in the Former Regulations, titled *Use of Economic Adjustment grants*, is renamed *Use of Economic Adjustment Assistance Investments* in § 307.3 of the Interim Final Rule. Substantively, this section contains the same content as in the Former Regulations. However, ''Strategy Grant'' is a new defined term specific to subpart A, referring to Economic Adjustment Assistance Investments that help develop CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation. Likewise, an ''*Implementation Grant*'' is defined as an Economic Adjustment Assistance Investment used to fund a Project implementing a CEDS. Any use of the word ''strategy'' outside of the defined term ''Strategy Grant'' is replaced with the defined term ''CEDS'' to help distinguish and enhance understanding of both terms. The content of § 308.3(b) has been moved to a new part of the Interim Final Rule, part 309 (titled *Redistributions of Investment Assistance*), in line with Section 217 of PWEDA, and restated for accuracy.

Section 308.4 in the Former Regulations, titled *Selection and evaluation factors*, is renamed *Award requirements* in § 307.4 of the Interim Final Rule, parallel with similar provisions in other program parts. This section has been reorganized and sub-titled for clarity and substantively contains information identical to that in the Former Regulations. Section

308.3(c)(2)(iv), regarding the use of In-Kind Contributions, has been moved to a more suitable subsection in § 307.18(d) of the Interim Final Rule, as this provision is applicable to revolving loan fund (''*RLF*'') Grants only.

Section 307.5 on application requirements significantly condenses § 308.5 in the Former Regulations for clarity and improved comprehension. For example, subsection (c) was removed in its entirety, as non-EDA funds and In-Kind Contributions may comprise the Matching Share of *any* Project's eligible costs, so long as the applicant can show that the Matching Share is committed to the Project, will be available as needed, and is not encumbered in any way that conflicts with the requirements of EDA Investment Assistance. Matching Share sources are part of the general eligibility criteria applicable to all EDA programs. Therefore, this provision has been placed in a new section of part 301 called *Matching Share requirements* (§ 301.5).

The last section in subpart A, § 308.6 in the Former Regulations, has been redrafted at § 307.6 in the Interim Final Rule (titled *Economic Adjustment Assistance post-approval requirements*) to emphasize and cross-reference relevant parts or subparts in the chapter with respect to Strategy Grants and Implementation Grants. For instance, Implementation Grants involving construction must meet the requirements for Public Works Investments, whereas Implementation Grants not involving construction must follow the requirements for Local and National Technical Assistance Investments. Accordingly, § 307.6 now references parts 305 and 306 for additional requirements that Implementation Grants must fulfill (in addition to the post-approval stipulations set forth in § 302.18), and part 303 for additional requirements that Strategy Grants must achieve.

The defined terms in § 308.8 in the Former Regulations have been extensively rewritten for accuracy and completeness, and some defined terms have been removed because of infrequent use in subpart B (*see* § 307.8 in the Interim Final Rule). For instance, ''*Program income*'' and ''*Secondary market*'' are deleted because these terms are not referenced anywhere in the subpart in the Former Regulations. The defined terms ''*Exempt Security,*'' ''*Sale,*'' ''*SEC,*'' ''*Security*'' and ''*RLF Third Party*'' are new to § 307.8, and have been introduced in large part to interpret the provisions of Section 209(d)(2) and (4) of PWEDA. The definition for ''*Securitization*'' has been revised to make clear that ''techniques such as the sale of loans,'' as placed in the current definition of the word, are not Securitization transactions. The new defined term ''*Sale*'' explains that after an RLF Recipient sells its RLF portfolio (or a portion thereof) to a third party, the third party may participate in a subsequent Securitization offered in a secondary market transaction.

With respect to RLF Plans, § 308.9 in the Former Regulations is reorganized and rewritten at § 307.9 in the Interim Final Rule. Subsections 308.9(b)(3) and (4) in the Former Regulations concerning the requirement that ''strategic objectives'' and ''administrative procedures'' be shown in the RLF Plan have been replaced with the following language to stress the importance on specific components by which EDA will evaluate an RLF Plan:

> ''The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It shall also provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with federal and local laws.''

This section also includes a new subsection (c) that indicates that an RLF Recipient must request and obtain EDA approval prior to any modification of an RLF Plan. Similar to § 307.9, § 308.10 (*Pre-loan requirements*) in the Former Regulations is condensed and reorganized in § 307.10 of the Interim Final Rule by placing the substance of subsection (b) into a third subsection.

The major emphasis on rewriting § 307.11, which discusses the addition of lending areas and the merger of RLFs, was to (a) correlate the substance of the section to applicable provisions in Section 209 of PWEDA, (b) eliminate information no longer applicable due to the passage of the 2004 Act, and (c) explain and expand important concepts in an orderly, coherent manner with the use of defined terms. The title of the section has been changed from *Lending areas and modification of lending areas* to *Addition of lending areas; merger of RLFs,* which highlights the increased flexibility that PWEDA affords to RLF Recipients for consolidating and merging RLF Grants. Subsection (a)(1) lays out the preconditions that must be met in order for EDA to approve the creation of a ''*New Lending Area.*'' Some of these conditions are: (a) EDA must have disbursed the full amount of its Investment Assistance to the RLF Recipient, and (b) the RLF Recipient must show that the ''*Additional Lending Area*'' is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, both of which were not in the Former Regulations. Subsections (a)(1) and (2) have been deleted, as February 1, 1999 was the effective date of the Economic Development Administration Reform Act of 1998 (the ''*1998 Act*''). The purpose of the language was to ensure that no disparity would exist between RLFs in various stages of funding at the time of the passage of the 1998 Act. With the enactment of the 2004 Act on October 27, 2004, the February 1, 1999 reference is no longer applicable.

Section 307.11(b) lays out the preconditions for EDA to approve a single RLF Recipient's or multiple RLF Recipients' merger of RLFs. The requirements in subparagraphs (1) and (2) are substantively the same. For example, a single RLF Recipient and multiple RLF Recipients must meet the requirements to obtain annual report status (set forth in § 307.14) and amend and consolidate the RLF Plans to account for the merger. Prior to EDA's disbursement of additional funds to the RLF Recipient (or surviving RLF Recipient), EDA must determine a new Investment Rate for the New Lending Area.

The revisions to § 308.12 in the Former Regulations make explicit in § 307.12 in the Interim Final Rule the general rule that RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. The text of subsections (b) and (e) are incorporated into subsection (a), which lays out the general rule. Subsection (b) follows the substance of subsection (d) (in the Former Regulations), with a subheading called *Compliance Guidelines* for efficient referencing. In subsection (c), subtitled *Priority of Payments on Defaulted RLF Loans,* the consideration of proceeds on defaulted RLF loans has been clarified and expounded by including priority payment specifications.

The next three sections, §§ 307.13, 307.14 and 307.15 (titled *Record and retention; Revolving Loan Fund semi-annual and annual reports;* and *Prudent management of Revolving Loan Funds*), are substantively the same as §§ 308.13, 308.14 and 308.15 in the Former Regulations. The main focus in revising these sections has been to incorporate defined terms to improve the understanding of specific documentation, accounting and reporting requirements. For example, § 308.13(a) in the Former Regulations refers to ''loan files'' when discussing documents and records that an RLF

Recipient must retain. The correct phrase that should be referenced is ''Closed Loan files'' because this term includes the defined term ''*Closed Loan,*'' which refers to a loan for which all required documentation has been received, reviewed and executed by an RLF Recipient. The conflicts of interest provisions in § 308.15(e) in the Former Regulations have been moved to § 302.17(c) in the Interim Final Rule to improve organization and referencing facility. Section 302.17(c) also has been condensed by the use of defined terms.

Section 307.16 (titled *Disbursement of funds to Revolving Loan Funds*) is a considerably revised and reorganized adaptation of § 308.16 in the Former Regulations. As a matter of organization, subsection (d) (subtitled *Pre-Disbursement Requirements*) in the Former Regulations has been moved to subsection (a). Former subsections (a), (b) and (c) have been re-numbered accordingly. The subtitle of subsection (d) has been changed from *Interest-bearing account* to *EDA Funds Account*. The degree of detail in subsection (e) on delayed disbursements of Grant funds was considered inappropriate for a set of regulations, and, therefore, reduced from two paragraphs to one paragraph. Similarly, subsection (f) on the terms that govern the cash Local Share and/or In-Kind Contributions in an RLF has been shortened.

The section titled *Effective utilization of Revolving Loan Funds* (§ 307.17) is a marginal rewording of § 308.17 in the Former Regulations. The revisions largely incorporate the use of defined terms (*e.g.*, Closed Loan; RLF Capital). In contrast, portions of § 307.18 on the *Uses of Capital* have been significantly modified from § 308.18 in the Former Regulations. For example, the first paragraph under § 308.18 in the Former Regulations has been made into subsection (a), which states two general premises that (a) RLF Capital must be used to make RLF loans that are consistent with an RLF Plan and (b) each loan agreement must clearly present the purpose of the loan. Subsection (b) follows subtitled *Restrictions on the Use of RLF Capital* and therein, subsection (b)(6)(i) has been reworded for clarity to the following:

''The RLF Recipient sufficiently demonstrates in the loan documentation a ''*sound economic justification*'' for the refinancing (*e.g.*, the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification;''

The content of subsection (c) has been condensed and the subtitle has been changed for accuracy from *Credit otherwise available* to *Credit Not Otherwise Available*. Additionally, § 307.18 adds an additional subsection (subsection (d), *Use of In-Kind Contributions*) to clarify that In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs. Last, subsection (e) encompasses revised content of subsection (a) in the Former Regulations, concerning loan guaranty agreements. The subtitle has been changed to refer to *Loan Guaranty Agreements* rather than *Loan guarantees.*

The next two sections, 307.19 and 307.20, are entirely new provisions that are written to accomplish the authorization, as provided in PWEDA, for EDA's Assistant Secretary to ''assign or transfer assets of a revolving loan fund to a third party for the purpose of liquidation'' and ''take such actions as are appropriate to enable revolving loan fund operators to sell or securitize loans'' (Section 209(d)(2)(B) and (C)). First, in any Sale or Securitization in which an RLF Recipient may participate, § 307.19 (*RLF loan portfolio Sales and Securitization*) requires compliance with the Securities Act of 1933, the Securities Exchange Act of 1934 and any rule or regulation made public by the Securities and Exchange Commission (PWEDA, Section 209(d)(4)). The RLF Recipient must use all proceeds from any Sale or Securitization to make additional RLF loans. Second, § 307.20 (*Partial liquidation and liquidation upon termination*) provides the terms that will govern any partial or full liquidation of an RLF Recipient's RLF loans. In the case of an EDA-approved termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation. Section § 307.20 also contains a subsection on the priority of payments applicable to proceeds resulting from a liquidation upon termination.

The provisions of the next section, § 307.21 on the *Termination of Revolving Loan Funds,* have been expanded from the provisions set forth in § 314.4(c) (titled *Unauthorized use*) in the Former Regulations. However, § 307.21(b) introduces a new EDA authority: EDA may approve a request from an RLF Recipient to terminate an RLF Grant. With respect to variances, the last section, § 307.22, is rephrased for clarity and completeness and covers the same material found at § 308.19 in the Former Regulations.

Part 308—Performance Incentives

Part 308 of the Interim Final Rule has been incorporated based on new Sections 215 and 216 of PWEDA. For any Public Works or Economic Adjustment Assistance Investment that is completed under projected cost, § 308.1(a) states that EDA may in its discretion allow the Recipient to use the excess funds to either (i) increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of the Interim Final Rule for which the Project was eligible at the time of the Investment award or (ii) further improve the Project consistent with its purpose.

Additionally, PWEDA now authorizes the Assistant Secretary to make performance awards in connection with grants to Recipients for construction-related Public Works or Economic Adjustment Assistance Investments. Section 308.2(a) provides that, with respect to any such Investment, the Assistant Secretary may grant a performance award to the Recipient (on a discretionary basis) no later than three (3) years following the Project's closeout in an amount not to exceed ten (10) percent of the Project's Investment award. As required by Section 215(b)(2) of PWEDA, § 308.2(b) specifies factors that the Assistant Secretary will consider in making performance awards, including whether the Recipient meets or exceeds (i) targeted start and completion dates and (ii) projections for job creation and private sector capital investment.

The provisions of § 308.2(c) mirror those in Section 215(e) and (f) of PWEDA. Performance awards may fund up to one hundred (100) percent of the cost of eligible Projects or any other authorized activities under PWEDA. Further, for the purpose of meeting the non-federal share requirement of PWEDA or any other statute, the amount of a performance award will be treated as non-federal funds.

With respect to planning performance awards, § 308.3 tracks the language of Section 216 of PWEDA. Section 308.3 introduces, as stated in Section 216(a) of PWEDA, that a District Organization may be eligible to receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment. As with performance awards made to Recipients of Public Works or Economic Adjustment Assistance Investments, the

Assistant Secretary will make such awards on a discretionary basis. As set forth in § 308.3(a), such awards are predicated on a finding that the Recipient actively participated in the economic development activities of the District and that the Project demonstrated exceptional fulfillment of one (1) or more components of the applicable CEDS. Performance awards and planning performance awards are mutually exclusive, although not specifically designated as such in part 308.

Part 309—Redistributions of Investment Assistance

Similar to part 308, the provisions of part 309 are new and were not in the Former Regulations. Information with respect to redistributions of Investment funds under parts 303, 305 and 306 (for Planning, Public Works, and Training, Research and Technical Assistance Investments) is presented in § 309.1. In some instances, a Recipient may need to fund specific components of the scope of work that EDA has approved for the Project. These situations may necessitate the need to redistribute EDA Investment funds to another entity, in order to get the specific component completed.

Under a new section of PWEDA, Section 217, a Recipient under any program governed by parts 303, 305 and 306 may directly expend the Investment Assistance, or, with prior EDA approval, redistribute such funds in the form of a subgrant to another Eligible Recipient that qualifies for EDA Investment Assistance under the same applicable program part as the Recipient. Accordingly, § 309.1(a) presents this information; all subgrants must be subject to the same terms and conditions applicable to the Recipient under the original Investment award. Subsection 309.1(b) stipulates that Investment Assistance received under parts 303 or 305 may not be redistributed to a for-profit entity.

Section 309.2 addresses redistributions under part 307 for Economic Adjustment Assistance Investments. This section reads similarly to § 309.1. However, a Recipient under part 307 may redistribute Investment funds to (i) another Eligible Recipient in the form of a Grant or (ii) a non-profit and private for-profit entity in the form of a loan (or loan guarantee) under subpart B of part 307.

Part 310—Special Impact Areas

Part 310 of the Interim Final Rule corresponds to new Section 214 of PWEDA titled *Special Impact Areas,* which allows the Assistant Secretary to waive the requirements of Section 302 of PWEDA (regarding CEDS requirements) for Projects that fulfill a pressing need of the area or prominently address or alleviate area underemployment or unemployment. Section 310.1 of the Interim Final Rule generally tracks PWEDA Section 214, but makes clear that any waiver of the requirements of PWEDA Section 302 applies only to an individual Project, *not* to all Projects located within the area.

Section 310.2(a) interprets the ''pressing need'' language of the new PWEDA provision and reflects standard EDA policy priorities, based on, among other things, assistance to Indian Tribes, rural and severely distressed Regions, and the existence of a Special Need. Similarly, §§ 310.2 (b) and (c) set forth quantitative measures of excessive unemployment and as indicators of useful employment opportunities such as job creation, financial investment and application of innovative technology.

Part 311—[Reserved]

Part 312—[Reserved]

Part 313—[Reserved]

Part 314—Property

Part 314 of the Interim Final Rule sets forth the rules governing the uses of and EDA's interests in Property acquired, in whole or in part, or improved with EDA Investment Assistance. Substantive changes have been made to the Real Property provisions contained in subpart B primarily to reflect EDA policies regarding the increasing use of ''public-private'' partnerships to spur economic development. Section 314.1 contains the definitions specifically applicable to part 314 (many of these definitions appear in § 314.2 and other sections of part 314 in the Former Regulations). EDA has added new defined terms in part 314 for clarity and consistency.

Notably, the defined term ''*Adequate Consideration*'' now appears in § 314.1 and differs materially from the definition contained in § 314.3(c) of the Former Regulations. The concept of Adequate Consideration is revised to begin with a fair market value concept (*i.e.*, the purchase price agreed upon by a willing buyer and willing seller, both having full knowledge of the material facts and circumstances surrounding the contemplated sale/purchase). In determining Adequate Consideration, § 314.1 provides that EDA may adjust the Property's fair market value (which is usually established by a third party appraisal) to account for any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance that are received by the Recipient or Owner in exchange for such Property. In comparison, the Former Regulations use a ''fair and reasonable'' determination to establish Adequate Consideration. EDA believes that Adequate Consideration may be determined with greater precision by starting at fair market value and adjusting this amount downward (or possibly upward) to account for the facts and circumstances in a given case.

Additionally, the defined terms ''*Encumbrance*'' or ''*Encumber*,'' ''*Federal Share*,'' ''*Federal Interest*,'' ''*Successor Recipient*'' and ''*Unauthorized Use*'' are defined in § 314.1 by a cross-reference to the applicable section in part 314 and are discussed in turn below. Section 314.1 removes the defined terms of ''*Project*'' and ''*Recipient*,'' which are defined in § 314.2 of the Former Regulations, as these terms are now defined in § 300.3 since they have general applicability to all EDA programs. Subsection 314.2(a) is redrafted to clarify that (i) Property acquired or improved, in whole or in part, with Investment Assistance is held in trust by the Recipient for the benefit of the Project and (ii) EDA maintains an equitable reversionary interest in such Property for the Estimated Useful Life of the Project. Subsection 314.2(a) also illustrates the overarching scope of the Federal Interest by providing an example of how EDA's Real Property interest in a building construction Project protects the Federal Interest by securing the Recipient's compliance with matters such as the purpose, scope and use of the Project. Subsection 314.2(b) follows § 314.5(d) of the Former Regulations and provides that when the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

Section 314.3 of the Interim Final Rule is re-titled *Authorized use of Property* (§ 314.3 of the Former Regulations is titled *Use of property*) and provides the circumstances in which Recipients may use Property acquired or improved, in whole or in part, with Investment Assistance. Subsections 314.3(a), (b), (c) and (e) are substantively the same as the corresponding provisions in the Former Regulations (as discussed above, the definition of Adequate Consideration is revised to reflect a fair market value

concept). Subsection 314.3(d) allows EDA to approve the transfer of Property from a Recipient to a Successor Recipient (or between Successor Recipients) and clarifies the substitution concept (set forth in § 314.1(c) of the Former Regulations) by stating that the mechanism to effectuate a substitution of the Recipient (or Successor Recipient) is the transfer of the Project Property between the parties. Finally, new subsection 314.3(f) authorizes EDA to approve, and a Recipient to undertake, an incidental use of Property that does not interfere with the scope or economic purpose of the Project. This incidental use is conditioned upon the Recipient's compliance with applicable law and no adverse effect of the incidental use on the economic useful life of the Property.

Subsection 314.4(a) of the Interim Final Rule generally follows § 314.4(a) of the Former Regulations and provides that, with certain exceptions, the Federal government must be compensated for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved (in whole in part) with Investment Assistance is Disposed of, Encumbered, or no longer used for the purpose of the Project. Section 314.4(b) provides additional Unauthorized Uses of Property prior to the release of EDA's interest. Subsection 314.4(b) is substantively the same as § 314.11(c)(1) of the Former Regulations with respect to the Unauthorized Use of Property prior to the release of EDA's interest in such Property, except that the Interim Final Rule now references ''any purpose prohibited by applicable law.'' EDA made this change to make clear that a Recipient may not use Project Property for any purpose in violation of applicable law. Subsection 314.4(c) of the Interim Final Rule generally tracks § 314.4(b) of the Former Regulations and sets forth the remedies available to EDA to recover the Federal Share in the event of an Unauthorized Use. Additionally, a specific cross-reference to the RLF Grant termination provisions contained in § 307.21 is added to § 314.4(c) to preserve EDA's remedies for the Unauthorized Use of RLF Grant funds.

Section 314.5 explains the definition of ''*Federal Share*'' and is substantively the same as § 314.5(a) of the Former Regulations. EDA added an example of a Federal Share calculation to assist the user in understanding the Federal Share concept. Subsection 314.5(b) of the Former Regulations is removed, as EDA believes that discounting the Federal Share for a Recipient's leasehold interest in Property (where such leasehold interest is less than the remaining depreciable life of the Property) does not accurately account for the current fair market value of the Property attributable to EDA's Investment in the Project and may, therefore, result in unjust enrichment to the owner of the Property. In such circumstances, a Recipient may wish to seek a contribution or reimbursement from the owner of the Property for that portion of the Federal Share attributable to the Property's value that will ultimately benefit the owner.

Subsection 314.5(c) of the Former Regulations is removed, as EDA believes that requiring the Recipient to compensate EDA for the Federal Share in the event of an EDA-approved transfer of Project Property is inconsistent with § 314.3(d), which provides that a Successor Recipient is subject to the terms and conditions of the Investment Assistance (*i.e.*, the Successor Recipient takes the place of the Recipient and the Project continues). If a Recipient were to reimburse EDA for the Federal Share upon an EDA-approved transfer, EDA would have no further interest in the Property pursuant to § 314.2(b) of the Interim Final Rule and the Recipient would in essence be effectuating a ''buyout'' of EDA's interest and not a transfer of the Property. Section 314.6 is substantively the same as § 314.6 of the Former Regulations (although the provisions are reordered to present the general rule and exceptions in a more logical sequence) and, with certain exceptions, prohibits the Encumbrance of Recipient-owned Property.

Subsection 314.7(a) sets forth the general rule (with certain exceptions which are discussed below) that a Recipient must hold title to the Real Property required for a Project at the time Investment Assistance is awarded and must maintain title at all times during the Estimated Useful Life of the Project (the ''*General Rule*''). Subsection 314.7(a) clarifies § 314.7(a) of the Former Regulations, which did not provide for when and how long a Recipient must hold title to Real Property. In addition, § 314.7(a) follows § 314.7(a) of the Former Regulations by providing that a Recipient must furnish satisfactory evidence to EDA that title to Real Property required for a Project (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an EDA-determined acceptable time period. Subsection 314.7(b) is substantively the same as § 314.7(b) of the Former Regulations and requires the Recipient to disclose to EDA all Encumbrances with respect to Real Property.

In general, § 314.7(c) sets forth the exceptions to the General Rule. Subsection 314.7(c)(1) is added to address situations where Investment Assistance will be used to purchase Real Property required for a Project. Pursuant to § 314.7(c)(1), EDA may determine that certain Real Property purchase agreements, along with reasonable assurances from the Recipient that it will obtain fee title for the Real Property needed for a Project, will be acceptable for purposes of the Recipient meeting the title ownership requirements. Subsections 314.7(c)(2), (3) and (4) are substantively the same as the introduction and subsections (c)(1) and (2) of § 314.7(c) in the Former Regulations.

Subsections 314.7(c)(5) and (6) address situations where the EDA-approved purpose of a Project is to construct facilities benefiting Real Property owned by the Recipient (§ 314.7(c)(5)) or privately owned Real Property (§ 314.7(c)(6)), where the benefited Real Property will ultimately be sold or leased to private parties. These provisions replace §§ 314.7(c)(3) and (4) in the Former Regulations and generally apply to all types of Real Property, including but not limited to industrial and commercial parks. In comparison, the Former Regulations apply only to industrial or commercial parks. The Interim Final Rule intends to balance established principles of Federal grant law that prevent direct private benefits resulting from EDA Investment Assistance with marketplace realities of public-private partnerships in developing private property and subsequent alienations of such Real Property to spur economic development. EDA is interested in receiving comments from economic development practitioners and property developers concerning whether these provisions present a workable framework in which to facilitate these types of public-private partnerships.

Section 314.8 is substantively the same as § 314.8 of the Former Regulations and generally provides that for all Projects involving the acquisition, construction or improvement of a building, the Recipient must execute a lien, covenant or other statement of EDA's interest in such Real Property. Any lien, covenant or statement of EDA's interest must be perfected and recorded (in accordance with local law) in the jurisdiction in which the Real Property is located. Subsection 314.8(c) tracks § 314.8(c) of the Former Regulations and provides an exemption from this requirement where the EDA

Investment is only a small part of a larger project.

Section 314.9 is substantively the same as § 314.9 of the Former Regulations and generally provides that for all Projects involving the acquisition or improvement of significant items of Personal Property, the Recipient must execute a security interest or other statement of EDA's interest in such Personal Property. Any security interest or statement must be perfected and recorded in accordance with applicable law and with continuances re-filed, as appropriate. Section 314.10 of the Former Regulations (providing rules relating to RLFs) has been incorporated into the RLF provisions contained in subpart B of part 307 of the Interim Final Rule.

Subsections 314.10(a) through (c) are substantively the same as §§ 314.11(a) through (c) of the Former Regulations. Subsection 314.10(d) is new to the Interim Final Rule and sets forth the procedures for requesting a release of EDA's Real Property or tangible Personal Property interest pursuant to Section 601(d)(2) of PWEDA and § 314.10.

Under subsection 314.10(d), a Recipient must disclose to EDA the intended future use of the Real Property or tangible Personal Property for which the release is sought. A Recipient not intending to use the Real Property or tangible Personal Property for inherently religious activities following EDA's release will be required to execute a covenant of use prohibiting (at a minimum) the use of the Real Property or tangible Personal Property for (i) inherently religious activities in violation of applicable federal law, and (ii) any purpose in violation of the nondiscrimination requirements set forth in § 302.20. The covenant of use must be recorded in the appropriate jurisdiction in accordance with §§ 314.8 or 314.9, as applicable (*see* § 314.10(d)(2)(i)). A Recipient (or successor Recipient) who intends or foresees the use of the Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest may be required to compensate EDA for the Federal Share of such Property. In subsection 314.10(d)(2)(ii), EDA recommends that a Recipient who intends or foresees the use of the Real Property or tangible Personal Property (including by any successor Recipient) for inherently religious activities should contact EDA well in advance of requesting a release pursuant to § 314.10.

Part 315—Trade Adjustment Assistance for Firms

Part 315 substantially revises the Former Regulations for the Trade Adjustment Assistance for Firms (''*TAA*'') program, pursuant to Chapter 3 of Title II of the Trade Act. The new part reorganizes, clarifies and simplifies the Former Regulations, primarily by expanding the use of defined terms and by adding a new subpart D on Adjustment Proposals.

Among the new definitions in § 315.2, the defined terms ''*Increase in Imports*'' and ''*Contributed Importantly*'' greatly enhance the readability of the part by incorporating in single defined terms two (2) of the most important concepts of the TAA program. An Increase in Imports that Contributed Importantly to a petitioning Firm's (i) decline in sales or production and (ii) loss of employment is a necessary component of every finding of injury under the TAA program. These definitions track the Trade Act precisely and intend to provide for more consistent application in injury determinations.

The new defined term ''*Decreased Absolutely*'' imposes a five percent (5%) threshold minimum injury requirement in the measurement of a Firm's decline in sales or production. EDA has imposed this threshold to eliminate certification of Firms whose decline in sales or production is *de minimis*, and therefore less certain to be attributable to an Increase in Imports. Similarly, new definitions of ''*Predecessor*'' and ''*Successor*'' Firms provide new guidance for the circumstance, often encountered in administration of the TAA program, where a petitioning Firm relies on the economic injury suffered by a corporate predecessor. The new definitions make clear that the Successor must have been in business less than two (2) years and must have purchased substantially all of the assets of the Predecessor. Further, the Successor must have continued virtually all of the Predecessor's operations by producing the same type of products, in the same plant, utilizing most of the same machinery and most of its former workers; finally, the Predecessor may no longer be in operation.

Section 315.5 consolidates into one (1) section the scope of operations, selection, evaluation and award requirements of Trade Adjustment Assistance Centers (''*TAACs*''), the non-profit organizations that administer the TAA program nationwide through Cooperative Agreements with EDA. While the substance of these provisions remains essentially unchanged, the consolidation of these provisions into one (1) section should enhance understanding and operation of this key program relationship.

Section 315.6 consolidates into one (1) section the selection, evaluation and award requirements for Firms seeking Adjustment Assistance under the TAA program. As with § 315.5, the substance of these provisions has not changed significantly from the Former Regulations, but the re-organization and presentation greatly clarifies basic program requirements.

Section 315.7 consolidates and simplifies TAA program certification requirements. This section outlines the requirements for injury determinations based on a twelve-month (12) decline (§ 315.7(a)), an interim sales decline (§ 315.7(b)) and an interim employment decline (§ 315.7(c)). The section makes clear that in order to be certified under any of these subsections, a Firm must meet all of the requirements of that subsection; a Firm cannot meet some of the requirements of one (1) subsection and some of another to attain certification. Substantively, in addition to the minimum injury threshold requirement for a decline in sales or production incorporated into the defined term ''*Decreased Absolutely*'' described above, this section increases the injury periods for interim sales or production decline and interim employment decline to ''the most recent six-month (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period.'' This change adds consistency and integrity to these injury determination requirements by ensuring that (i) injury has occurred recently and (ii) injury is not due to seasonal fluctuations in sales, production or employment.

Section 315.8, titled *Processing petitions for certification*, generally tracks current § 315.10. Among the minor changes is confirmation in subsection (a) of the TAAC's mandatory role in processing the certification petition. Section 315.9, titled *Hearings*, and § 315.11, titled *Appeals, final determinations and termination of certification*, divide § 315.11 in the Former Regulations to address separately these distinct topics. Further, § 315.11 in the Interim Final Rule incorporates the provisions of former § 315.12, given the logical connection of appeals, final determinations and terminations. While § 315.9 continues to track the statutory hearing requirements of the Trade Act, it eliminates many of the procedural provisions of former

§ 315.11, since EDA has no record of any hearings having been requested or conducted during its administration of the TAA program.

Section 315.10, titled *Loss of Certification Benefits*, eliminates the extension currently available to Firms in § 315.13(b) of the Former Regulations to provide supplemental documentation for its Adjustment Proposal according to an amended schedule. EDA believes that this provision is inconsistent with the provisions of the Trade Act.

New subpart C, titled *Protective Provisions*, incorporates new but standard provisions, all consistent with the Trade Act and EDA policy, on recordkeeping (§ 315.12), audit and examination (§ 315.13), certifications (§ 315.14) and conflicts of interest (§ 315.15). Subpart D, titled *Adjustment Proposals*, presents new provisions reflecting long-standing practices of EDA and the TAACs in evaluating Adjustment Proposals. Essentially, the Adjustment Proposal must: (i) Be reasonably calculated to contribute materially to the economic well-being of the Firm; (ii) give adequate consideration to the interests of a sufficient number of separated workers of the Firm; and (iii) demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery. Finally, subpart E, titled *Assistance to Industries*, remains effectively unchanged from the Former Regulations, tracking the current statutory provisions of the Trade Act.

Classification

Prior notice and opportunity for public comment are not required for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Executive Order No. 12866

It has been determined that this rule is economically significant for purposes of Executive Order 12866.

Congressional Review Act

This Interim Final Rule is not ''major'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*)

Executive Order No. 13132

Executive Order 13132 requires agencies to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in Executive Order 13132 to include regulations that have ''substantial direct effects 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.'' It has been determined that this interim final rule does not contain policies that have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''*PRA*'') requires that a Federal agency consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA Section 3507(d), obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations.

The following table provides a list of collections of information and the corresponding OMB Control Numbers. Public comments are sought regarding whether these proposed collections of information are necessary for the proper performance and function of the agency, including (i) the practical utility of the information; (ii) the accuracy of the burden estimate; (iii) the opportunities to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of each collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collections of information to EDA and OMB as provided under **ADDRESSES**.

Part or section in IFR	Nature of request	Form/OMB control number
301.2, 301.10	Along with an application for Investment Assistance, a non-profit Eligible Applicant must include a resolution passed by an authorized representative of a political subdivision of a State.	ED–900A (0610–0094).
301.3(a), 301.10, 305.3(a)(1)	Eligible Applicant must describe the economic distress levels justifying the Investment Assistance (unemployment, per capita income, Special Need, substantial direct benefit or pocket of poverty).	ED–900P (0610–0094).
301.4(b)(1)(i), 305.3(a)(1)	Eligible Applicant must provide information on the severity of the Region's unemployment rate and its duration, the per capita income levels and extent of Region's unemployment or outmigration.	ED–900P (0610–0094).
301.4(b)(3)	Eligible Applicant must provide information to show that the Project merits an otherwise increased Investment Rate because of a Project's infeasibility with the normal Investment Rate or the lack of benefit to the Eligible Applicant.	ED–900P (0610–0094).
301.5, 301.10	Eligible Applicant must provide information to show that Matching Share funds will be available to the Project.	ED–900A (0610–0094).
301.7	Eligible Applicant must submit its Investment proposal on a preapplication form.	ED–900P (0610–0094).
301.7(a)	Eligible Applicant must submit information on a formal application	ED–900A (0610–0094).
301.10(a), (b)	Eligible Applicant must submit a formal application for Investment Assistance.	ED–900A (0610–0094).
301.10(b)(3)	Eligible Applicant must provide CEDS acceptable to EDA pursuant to part 303.	ED–900P (0610–0094).
302.7(a)	Recipients must submit requests for amendments to Investment awards and provide such information and documentation as EDA deems necessary.	0610–0102.
302.9(a)	Eligible Applicant must furnish comments on the Project from the relevant government authority or proof of efforts to receive comments if none were provided.	ED–900A (0610–0094).

Part or section in IFR	Nature of request	Form/OMB control number
302.10(b)(1)	Eligible Applicant must certify the names of persons involved in expediting applications made to EDA.	ED–900A (0610–0094).
302.14(a)	Recipients shall keep records of the amount and disposition of awards of Investment Assistance, the total cost of the Project, ''the amount and nature of the portion of the Project costs provided by other sources'' and other records for an effective audit.	OMB Circular A–133.
302.15	Eligible Applicant must certify that it meets the requirements for Investment Assistance.	ED–900P (0610–0094).
302.16(b)	Recipients are required to submit reports consisting of data-specific evaluations of the Project's effectiveness.	GPRA Performance Validation Forms (0610–0098).
302.16(c)	Recipient may be required to provide a ''Project service map'' to determine which segments of the Region are being assisted.	0610–0102.
302.20(d)	Recipients and Other Parties must submit written assurances to EDA that they will comply with anti-discriminatory laws and regulations.	ED–900A (0610–0094).
303.9(c)	Eligible Applicant for a short-term Planning Investment must provide performance measures and program reports to EDA.	GPRA Performance Validation Forms (0610–0098).
304.1; 304.4(a)	To have a Region certified as an EDD, a District Organization must submit information showing that the Region contains at least one area subject to the relevant economic distress criteria, is able to foster development on a larger scale than in a single area, has an EDA-approved CEDS and obtains commitments from a majority of the relevant counties and States.	Comprehensive Economic Development Strategy Guidelines (0610–0093).
304.2(c)(2); 304.4(b)	The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region.	ED–900A (0610–0094); Comprehensive Economic Development Strategy Guidelines (0610–0093).
304.2(c)(4)	The District Organization must notify the public of its annual meetings, its decisions, the results of programs, and as reasonably requested, the results of audited statements, annual budgets, and minutes of public meetings.	Comprehensive Economic Development Strategy Guidelines (0610–0093).
305.2(b); 305.3(a)(3)	An Eligible Applicant must show that the Public Works Project will promote: the growth of industrial or commercial plants, the creation of long-term employment opportunities primarily for low-income families, and the fulfillment of the Region's pressing needs.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.4(c)	In order to receive any portion of the Investment Assistance for design and engineering work, an Eligible Applicant must submit and certify information that documents compliance with the Investment awards of all design and engineering contracts.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.5	To allow a District Organization to administer the Project for another Recipient, the Recipient must make this request and submit information to EDA showing that the Recipient does not have the current staff capacity to administer the project, the District Organization would be more effective than another local business or organization, the District Organization would not subcontract the work, and the costs of District Organization administration will not exceed the allowable costs were the Recipient administering it.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.6	The Recipient must submit a construction services procurement plan if using an alternate method.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.7	The Recipient may use ''in-house forces'' for design, construction, inspection, legal services or other work on the Project if it submits a sufficient justification to EDA.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.8(a); 305.8(b)	Recipients wishing to use their own equipment and materials must have them approved by EDA, may be required to submit a statement regarding their expected useful life, and may be required to establish that their price is competitive with current market value.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.9	To award construction contracts in phases, a Recipient must submit information to EDA regarding why phasing is necessary, a description of the phasing, its costs, its schedule, and certifications that the Recipient will pay for overruns and that it is capable of paying for incurred costs before the first disbursement.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.10	Recipient must notify EDA if there is a bid underrun	Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–0096).
305.13	Recipients involved in a contract change order must submit them to EDA for review.	Requirements for Approved Construction Investments—Ninth Edition (Revised), (0610–0096).
306.2	EDA selects Projects for Local and National Technical Assistance based on the criteria in part 301 and the extent to which the Project achieves more specific, related objectives in the Region and meets the criteria in the applicable FFO.	ED–900P (0610–0094).

Part or section in IFR	Nature of request	Form/OMB control number
306.5	University Center Projects receive Investment Assistance based on the selection criteria in part 301, the selection process in the relevant FFO, and other more specific, related criteria.	ED–900P (0610–0094).
307.5(a)	Each application for Economic Adjustment Assistance must include or incorporate by reference (if so approved by EDA) a CEDS.	ED–900A (0610–0094).
307.9	All RLF Recipients must submit to EDA an RLF Plan	RLF Standard Terms and Conditions (0610–0095).
307.12(a)(4)	RLF Recipients must complete an RLF Income and Expense Statement.	ED–209I (0610–0095).
307.13(a)	RLF Recipients must maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year period from the date of final disposition of such Closed Loan.	RLF Standard Terms and Conditions (0610–0095).
307.13(b)	RLF Recipients must maintain adequate accounting records to substantiate the amount of RLF Income expended for eligible administrative costs and retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF.	RLF Standard Terms and Conditions (0610–0095).
307.14(a)	All RLF Recipients must provide EDA with semi-annual reports	ED–209S (0610–0095).
307.14(a)	Submission to EDA of an annual report	ED–209A (0610–0095).
307.14(b)	All Recipients must certify as part of the semi-annual or annual report that the RLF is operating in accordance with the RLF Plan, and describe any modifications to the RLF Plan to ensure effective use of the RLF.	ED–209S (0610–0095). ED–209A (0610–0095).
307.14(c)	An RLF Recipient using either fifty percent or more (or more than $100,000) of RLF Income for administrative costs in a 12-month reporting period must submit a completed Income and Expense Statement annually to the appropriate EDA regional office.	ED–209I (0610–0095).
307.15(b)(1)	Within 60 days prior to the initial disbursement of EDA funds, an independent accountant familiar with the Recipient's accounting system shall certify to EDA and the Recipient that such system is adequate to identify, safeguard and account for all RLF operations.	RLF Standard Terms and Conditions (0610–0095).
307.15(b)(2)	Prior to the disbursement of any EDA funds, an RLF Recipient must certify that standard loan documents necessary for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law.	RLF Standard Terms and Conditions (0610–0095).
307.16(a)	Prior to the disbursement of EDA funds, RLF Recipients must provide in a form acceptable to EDA evidence of fidelity bond coverage and evidence of certification in accordance with § 307.15(b)(1).	RLF Standard Terms and Conditions (0610–0095).
307.16(e)	If the Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA.	RLF Standard Terms and Conditions (0610–0095).
307.17(b)	Recipients must promptly notify EDA in writing of any condition that may adversely affect their ability to meet prescribed schedule deadlines. Recipients must submit a written request for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds.	RLF Standard Terms and Conditions (0610–0095).
307.18(e)	After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the Recipient has obtained prior written approval from EDA of its proposed loan activities and submitted to EDA the three listed items. The Recipient must also amend its RLF Plan to accommodate any EDA-approved loan guaranty activities.	RLF Standard Terms and Conditions (0610–0095).
307.19	With prior approval from EDA, a Recipient may enter into a Sale or Securitization of all or a portion of its RLF loan portfolio.	RLF Standard Terms and Conditions (0610–0095).
307.21(b)	EDA may approve a request from a Recipient to terminate an RLF Grant.	RLF Standard Terms and Conditions (0610–0095).
Part 310	Upon the application of an Eligible Applicant, EDA may designate the Region which the Project will serve as a Special Impact Area if the Eligible Applicant demonstrates that its proposed Project will directly fulfill a pressing need and assist in preventing excessive unemployment.	0610–0104.
314.3(f)	With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided it satisfies the conditions set forth in § 314.3(f).	0610–0103.
314.6(b)	In order to use EDA-funded property to secure a mortgage or deed of trust or encumber the property, the Recipient must provide information that satisfies one or more of the exceptions set forth in § 314.6(b).	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–096).

Part or section in IFR	Nature of request	Form/OMB control number
314.7(a) and 314.7(c)	The Recipient must provide information that satisfies EDA that the Recipient has title to the Real Property and all easements, rights-of-way, permits or long-term leases, unless it can provide information proving it meets an exception to the rule.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–096).
314.7(b)	The Recipient must provide information regarding all encumbrances on the Real Property to EDA.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–096).
314.8	Recipients must execute a lien, covenant or other statement of EDA's interest in all Property acquired or improved with EDA Investment Assistance and record it in the proper jurisdiction.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–096).
314.9	Recipients must execute a security interest or other statement of EDA's interest in Personal Property acquired or improved by EDA funds and record the interest in accordance with applicable law.	ED–900A (0610–0094); Requirements for Approved Construction Investments—Ninth Edition (Revised) (0610–096).
314.10	If a Recipient wishes for EDA to release its Real Property or tangible Personal Property interest before the expiration of the Property's Estimated Useful Life, it must submit a request to EDA and either file a covenant of use precluding inherently religious activities or purchase EDA's Federal Share in such Property.	0610–0103.
315.5(b)	Current or prospective TAAC's must submit either new or amended applications to EDA along with a budget, narrative scope of work and other information.	ED–900A (0610–0094).
315.5(c)	TAACs must submit information regarding performance to be evaluated by EDA.	GPRA Performance Validation Form (0610–0098).
315.6(a)(1), 315.7, 315.8	Firms must supply information to be certified for participation in TAA	ED–840P (0610–0091).
315.6(a)(2), 315.6(a)(3), 315.16	Certified firms must submit an adjustment proposal to the TAAC and EDA and, if approved, may then request assistance from the TAAC.	0610–0105.
315.9	In order to have a public hearing, a Person with a Substantial Interest in an accepted petition for TAA certification must submit a request that follows the section's procedures.	0610–0106.
315.12	Each TAAC shall keep records disclosing the use of all TAA funds	GPRA Performance Validation Form (0610–0098).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the PRA unless that collection displays a currently valid OMB Control Number.

List of Subjects

13 CFR Part 300

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

13 CFR Part 301

Community development, Grant programs—housing and community development.

13 CFR Part 302

Community development, Grant programs—business, Grant programs—housing and community development, Technical assistance.

13 CFR Part 303

Community development, Reporting and recordkeeping requirements.

13 CFR Part 304

Community development.

13 CFR Part 305

Community development, Community facilities, Grant programs—housing and community development.

13 CFR Part 306

Community development, Grant programs—housing and community development, Research, Technical assistance.

13 CFR Part 307

Business and industry, Community development, Grant programs—business, Grant programs—housing and community development, Reporting and recordkeeping requirements, Research, Technical assistance.

13 CFR Part 308

Community development, Grant programs—business, Grant programs—housing and community development, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 309

Community development, Grant programs—housing and community development.

13 CFR Part 310

Community development, Grant programs—housing and community development, Manpower training programs.

13 CFR Part 314

Community development, Grant programs—housing and community development.

13 CFR Part 315

Administrative practice and procedure, Community development, Grant programs—business, Reporting and recordkeeping requirements, Trade adjustment assistance.

Regulatory Text

■ For reasons discussed above, 13 CFR Chapter III is revised to read as follows:

13 CFR Chapter III—Economic Development Administration, Department of Commerce

Part

300 General Information
301 Eligibility, Investment Rate and Proposal and Application Requirements
302 General Terms and Conditions for Investment Assistance
303 Planning Investments and Comprehensive Economic Development Strategies
304 Economic Development Districts
305 Public Works and Economic Development Investments
306 Training, Research and Technical Assistance Investments

307 Economic Adjustment Assistance Investments
308 Performance Incentives
309 Redistributions of Investment Assistance
310 Special Impact Areas
311 [Reserved]
312 [Reserved]
313 [Reserved]
314 Property
315 Trade Adjustment Assistance for Firms

PART 300—GENERAL INFORMATION

Sec.
300.1 Introduction and mission.
300.2 EDA Headquarters and regional offices.
300.3 Definitions.

Authority: 42 U.S.C. 3121; 42 U.S.C. 3122; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 300.1 Introduction and mission.

EDA was created by Congress pursuant to the Public Works and Economic Development Act of 1965 to provide financial assistance to both rural and urban distressed communities. EDA's mission is to lead the federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. EDA will fulfill its mission by fostering entrepreneurship, innovation and productivity through Investments in infrastructure development, capacity building and business development in order to attract private capital investments and higher-skill, higher-wage jobs to Regions experiencing substantial and persistent economic distress. EDA works in partnership with distressed Regions to address problems associated with long-term economic distress as well as to assist those Regions experiencing sudden and severe economic dislocations, such as those resulting from natural disasters, conversions of military installations, changing trade patterns and the depletion of natural resources. EDA Investments generally take the form of Grants to or Cooperative Agreements with Eligible Recipients.

§ 300.2 EDA Headquarters and regional offices.

(a) EDA's Headquarters Office is located at: U.S. Department of Commerce, Economic Development Administration, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

(b) EDA has regional offices throughout the United States and each regional office's contact information may be found on EDA's Internet Web site at http://www.eda.gov or in the notice of Federal Funding Opportunity published annually by EDA. Please contact the appropriate regional office to learn about EDA Investment opportunities in your Region.

§ 300.3 Definitions.

As used in this chapter, the following terms shall have the following meanings:

Assistant Secretary means the Assistant Secretary for Economic Development within the Department.

Comprehensive Economic Development Strategy or *CEDS* means a strategy that meets the requirements of § 303.7 of this chapter.

Cooperative Agreement means the financial assistance award of EDA funds to an Eligible Recipient under PWEDA, where substantial involvement is expected between EDA and the Eligible Recipient in carrying out the activities contemplated in an agreement between the parties. *See* 31 U.S.C. 6305.

Department means the U.S. Department of Commerce.

District Organization means an organization meeting the requirements of § 304.2 of this chapter.

Economic Development District or District or *EDD* means any Region in the United States designated by EDA as an Economic Development District under § 304.1 of this chapter and also includes any economic development district designated as such under Section 403 of PWEDA, as in effect on February 10, 1999.

EDA means the Economic Development Administration within the Department.

Eligible Applicant means an entity qualified to be an Eligible Recipient or its authorized representative.

Eligible Recipient means a(n):

(1) City or other political subdivision of a State, including a special purpose unit of State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions;

(2) State;

(3) Institution of higher education or a consortium of institutions of higher education;

(4) Public or private non-profit organization or association, including a community or faith-based non-profit organization, acting in cooperation with officials of a political subdivision of a State;

(5) District Organization;

(6) Indian Tribe; or

(7) Private individual or for-profit organization, but only for Training, Research and Technical Assistance Investments under part 306 of this chapter.

Federal Agency means a department, agency or instrumentality of the United States government.

Federal Funding Opportunity or *FFO* means the notice EDA publishes annually at *http://www.grants.gov* and on EDA's Internet Web site at *http://www.eda.gov* that describes the amounts, particular application procedures, funding priorities, special circumstances and other relevant information concerning EDA's Investment programs for the year. EDA may also periodically publish FFOs on specific programs or initiatives.

Federally-Declared Disaster means a Presidentially-Declared Disaster, a fisheries resource disaster pursuant to Section 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)), or other federally-declared disasters pursuant to applicable law.

Grant means the financial assistance award of EDA funds to an Eligible Recipient under PWEDA, where the Eligible Recipient bears responsibility for carrying out the activities contemplated in an agreement between the parties. *See* 31 U.S.C. 6304.

Immediate Family means a person's spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.

In-Kind Contribution(s) means non-cash contributions, which may include contributions of space, equipment, services and assumptions of debt that are fairly evaluated by EDA and that satisfy applicable federal cost principles and the Uniform Administrative Requirements of 15 CFR parts 14 and 24 (as applicable).

Indian Tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation as defined in or established under the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601 *et seq.*), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Interested Party means any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes the Interested Party's Immediate Family and other persons directly connected to the

Interested Party by law or through a business arrangement.

Investment or *Investment Assistance* means an EDA Grant or Cooperative Agreement entered into by EDA and a Recipient.

Investment Rate(s) means, as set forth in § 301.4 of this chapter, the amount of the EDA Investment in a particular Project expressed as a percentage of the total Project costs.

Local Share or *Matching Share* means the non-EDA funds and any In-Kind Contributions that are approved by EDA and provided by Recipients or third parties as a condition of an Investment. The Matching Share may include funds from other Federal Agencies only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority.

Presidentially-Declared Disaster means a major disaster or emergency declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*).

Private Sector Representative means, with respect to any for-profit enterprise, any senior management official or executive holding a key decision-making position.

Project means the proposed or authorized activity (or activities) the purpose of which fulfills EDA's mission and program requirements as set forth in PWEDA and this chapter and which may be funded in whole or in part by EDA Investment Assistance.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*), including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (Public Law 108–373).

Recipient means an entity receiving EDA Investment Assistance, including any EDA-approved successor to the entity.

Region or *Regional* means an economic unit of human, natural, technological, capital or other resources, defined geographically. Geographic areas comprising a Region need not be contiguous or defined by political boundaries, but should constitute a cohesive area capable of undertaking self-sustained economic development. For the limited purposes of determining economic distress levels and Investment Rates pursuant to part 301 of this chapter, a Region may also comprise a specific geographic area defined solely by its level of economic distress, as set forth in §§ 301.3(a)(2) and 301.3(a)(3) of this chapter.

Regional Commission means any of the following:

(1) The Appalachian Regional Commission established under chapter 143 of title 40, United States Code;

(2) The Delta Regional Authority established under subtitle F of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009aa *et seq.*);

(3) The Denali Commission established under the Denali Commission Act of 1998 (42 U.S.C. 3121 note; 112 Stat. 2681–637 *et seq.*); or

(4) The Northern Great Plains Regional Authority established under subtitle G of the Consolidated Farm and Rural Development Act (7 U.S.C. 2009bb *et seq.*).

Special Impact Area means a Region served by a Project for which the requirements of Section 302 of PWEDA and § 303.7 of this chapter have, upon an application filed by an Eligible Recipient pursuant to Section 214 of PWEDA and part 310 of this chapter, been waived in whole or in part by the Assistant Secretary.

Special Need means a circumstance or legal status arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, including:

(1) Substantial outmigration or population loss;

(2) Underemployment; that is, employment of workers at less than full-time or at less skilled tasks than their training or abilities permit;

(3) Military base closures or realignments, defense contractor reductions-in-force, or U.S. Department of Energy defense-related funding reductions;

(4) Natural or other major disasters or emergencies;

(5) Extraordinary depletion of natural resources;

(6) Closure or restructuring of industrial firms;

(7) Negative effects of changing trade patterns; or

(8) Other circumstances set forth in an FFO.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Trade Act means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et seq.*).

United States means all of the States.

PART 301—ELIGIBILITY, INVESTMENT RATE AND PROPOSAL AND APPLICATION REQUIREMENTS

Subpart A—General

Sec.
301.1 Overview of eligibility requirements.

Subpart B—Applicant Eligibility

301.2 Applicant eligibility.

Subpart C—Economic Distress Criteria

301.3 Economic distress levels.

Subpart D—Investment Rates and Matching Share Requirements

301.4 Investment Rates.
301.5 Matching Share requirements.
301.6 Supplementary Investment Assistance.

Subpart E—Proposal and Application Requirements; Evaluation Criteria

301.7 Investment Assistance proposal.
301.8 Proposal evaluation criteria.
301.9 Proposal selection.
301.10 Formal application requirements.

Authority: 42 U.S.C. 3121; 42 U.S.C. 3141–3147; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3175; 42 U.S.C. 3192; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3233; Department of Commerce Delegation Order 10–4.

Subpart A—General

§ 301.1 Overview of eligibility requirements.

In order to receive EDA Investment Assistance, an applicant and the Project proposed by the applicant must satisfy each of the following requirements:

(a) The applicant must be an Eligible Applicant as set forth in subpart B of this part;

(b) The Region in which the Project will be located must meet the economic distress criteria set forth in subpart C of this part;

(c) The sources of funding for the Project must fulfill the Investment Rate and Matching Share requirements set forth in subpart D of this part;

(d) EDA must select the Eligible Applicant's Project and the Eligible Applicant must satisfy the formal application requirements set forth in subpart E of this part; and

(e) The Project must meet the general requirements set forth in part 302 (General Terms and Conditions for Investment Assistance) and the specific program requirements (as applicable) set forth in part 303 (Planning Investments and Comprehensive Economic Development Strategies), part 304 (Economic Development Districts), part 305 (Public Works and Economic Development Investments), part 306 (Training, Research and Technical Assistance Investments), or part 307 (Economic Adjustment Assistance Investments) of this chapter.

Subpart B—Applicant Eligibility

§ 301.2 Applicant eligibility.

(a) An Eligible Applicant for EDA Investment Assistance is defined in § 300.3 of this chapter.

(b) An Eligible Applicant that is a non-profit organization must include in its application for Investment Assistance a resolution passed by (or a letter signed by) an authorized representative of a general purpose political subdivision of a State, acknowledging that it is acting in cooperation with officials of such political subdivision. EDA may waive this cooperation requirement for certain Projects of a significant Regional or national scope under parts 306 or 307 of this chapter. *See* §§ 306.3(b), 306.6(b) and 307.5(b) of this chapter.

Subpart C—Economic Distress Criteria

§ 301.3 Economic distress levels.

(a) *Part 305 (Public Works and Economic Development Investments) and Part 307 (Economic Adjustment Assistance Investments).*

(1) Except as otherwise provided by this paragraph (a), for a Project to be eligible for Investment Assistance under parts 305 or 307 of this chapter, the Project must be located in a Region that, on the date EDA receives an application for Investment Assistance, is subject to one (or more) of the following economic distress criteria:

(i) An unemployment rate that is, for the most recent twenty-four (24) month period for which data is available, at least one (1) percent greater than the national average unemployment rate;

(ii) Per capita income that is, for the most recent period for which data is available, eighty (80) percent or less of the national average per capita income; or

(iii) A Special Need, as determined by EDA.

(2) A Project located within an Economic Development District, which is located in a Region that does not meet the economic distress criteria of paragraph (a)(1) of this section, is also eligible for Investment Assistance under parts 305 or 307 of this chapter if EDA determines that the Project will be of ''substantial direct benefit'' to a geographical area within the District that meets the criteria of paragraph (a)(1) of this section. For this purpose, a Project provides a ''substantial direct benefit'' if it provides significant employment opportunities for unemployed, underemployed or low-income residents of the geographical area within the District.

(3) A Project located in a geographical area of poverty or high unemployment that meets the requirements of paragraph (a)(1) of this section, but which is located in a Region that overall does not meet the requirements of paragraph (a)(1) of this section, is eligible for Investment Assistance under parts 305 or 307 of this chapter without regard to political or other subdivisions or boundaries.

(4) EDA will determine the economic distress levels pursuant to this subsection at the time EDA receives an application for Investment Assistance as follows:

(i) For economic distress levels based upon the unemployment rate or per capita income requirements, EDA will base its determination upon the most recent American Community Survey (''*ACS*'') published by the U.S. Census Bureau for either: the Region where the Project will be located (paragraph (a)(1) of this section), the geographical area where substantial direct Project benefits will occur (paragraph (a)(2) of this section), or the geographical area of poverty or high unemployment (paragraph (a)(3) of this section), as applicable. Where a recent ACS is not available, EDA will base its decision upon the most recent federal data from other sources (including data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, Indian Affairs or any other federal source determined by EDA to be appropriate). If no federal data is available, an Eligible Applicant must submit to EDA the most recent data available through the government of the State in which the Region is located.

(ii) For economic distress based upon a Special Need, EDA will conduct the independent analysis it deems necessary under the facts and circumstances of a given case. Eligible Applicants are encouraged to submit reliable data substantiating their claim of a Special Need.

(b) *Part 303 (Planning Investments) and Part 306 (Training, Research and Technical Assistance Investments).* There are no minimum economic distress level requirements for Investment Assistance awarded to Projects under parts 303 or 306 of this chapter.

(c) *Part 304 (Economic Development Districts).* For EDA to designate a Region as an Economic Development District under part 304 of this chapter, such Region must:

(1) Contain at least one (1) geographical area that fulfills the economic distress criteria set forth in paragraph (a)(1) of this section and is identified in an approved CEDS; and

(2) Meet the Regional eligibility requirements set forth in § 304.1 of this chapter.

(d) EDA reserves the right to reject any documentation of Project eligibility that it determines is inaccurate or otherwise unreliable.

Subpart D—Investment Rates and Matching Share Requirements

§ 301.4 Investment Rates.

(a) *Minimum Investment Rate.* There is no minimum Investment Rate for a Project.

(b) *Maximum Investment Rate.*

(1) *General rule.* Except as otherwise provided by this paragraph (b) or (c) of this section, the maximum EDA Investment Rate for all Projects shall, after the application of Table 1 in paragraph (b)(i)(ii) of this section, not exceed the sum of: (x) fifty (50) percent, plus (y) up to an additional thirty (30) percent based on the relative needs of the Region in which the Project is located, as determined by EDA.

(i)(A) *Relative needs.* In determining the relative needs of the Region in which the Project is located, EDA will prioritize allocations of its Investment Assistance to ensure that the level of economic distress of a Region, rather than a preference for a specific geographic area or a specific type of economic distress, is the primary factor in allocating its Investment Assistance. In making this determination, EDA will take into consideration the following measures of economic distress:

(*1*) The severity of the unemployment rate and the duration of the unemployment in the Region;

(*2*) The per capita income levels and the extent of underemployment in the Region;

(*3*) The outmigration of population and the extent to which such outmigration is causing economic injury in the Region; and

(*4*) Such other factors as EDA deems relevant in determining the relative needs of the Region in which the Project is located.

(B) A Project is eligible for the maximum allowable Investment Rate as determined by EDA between the time EDA receives the application for Investment Assistance and the time that EDA awards Investment Assistance to the Project; however, the burden is on the Eligible Applicant to establish the relative needs of the Region in which the Project is located.

(ii) *Table 1.* Table 1 of this paragraph sets forth the maximum allowable Investment Rate for Projects located in Regions subject to certain levels of economic distress. In cases where Table

1 produces divergent results (*i.e.*, where Table 1 produces more than one (1) maximum allowable Investment Rate based on the Region's levels of economic distress), the higher Investment Rate produced by Table 1 shall be the maximum allowable Investment Rate for the Project.

TABLE 1

Projects located in regions in which:	Maximum allowable investment rates (percentage)
(A) The twenty-four (24) month unemployment rate is at least 225% of the national average; or	80
(B) The per capita income is not more than 50% of the national average	80
(C) The twenty-four (24) month unemployment rate is at least 200% of the national average; or	70
(D) The per capita income is not more than 60% of the national average	70
(E) The twenty-four (24) month unemployment rate is at least 175% of the national average; or	60
(F) The per capita income is not more than 65% of the national average	60
(G) The twenty-four (24) month unemployment rate is at least150% of the national average; or	50
(H) The per capita income is not more than 70% of the national average	50
(I) The twenty-four (24) month unemployment rate is at least 133% of the national average; or	40
(J) The per capita income is not more than 75% of the national average	40
(K) The twenty-four (24) month unemployment rate is at least 1% greater than the national average; or	30
(L) The per capita income is not more than 80% of the national average	30

(2) *Projects subject to a Special Need.* EDA shall determine the maximum allowable Investment Rate for Projects subject to a Special Need (as determined by EDA pursuant to § 301.3(a)(1)(iii)) based on the actual or threatened overall economic situation of the Region in which the Project is located. However, unless the Project is eligible for a higher Investment Rate pursuant to paragraphs (b)(3) or (4) of this section, the maximum Investment Rate for any Project subject to a Special Need shall be eighty (80) percent.

(3) *Projects under part 306.* The maximum allowable Investment Rate for Projects under part 306 of this chapter shall generally be determined based on the relative needs (as determined under paragraph (b)(1) of this section) of the Region which the Project will serve. However, for Projects of a national scope under part 306 of this chapter and for all other Projects under part 306 of this chapter (after the application of paragraph (b)(1) of this section), the Assistant Secretary has the discretion to establish a maximum Investment Rate of up to one hundred (100) percent where the Project:

(i) Merits, and is not otherwise feasible without, an increase to the Investment Rate; or

(ii) Will be of no or only incidental benefit to the Eligible Recipient.

(4) *Special Projects.* Table 2 of this paragraph sets forth the maximum allowable Investment Rate for certain special Projects as follows:

TABLE 2

Projects	Maximum allowable investment rates (percentage)
Projects of Indian Tribes	100
Projects under part 307 of this chapter located in Presidentially-Declared Disaster areas for which EDA receives an application for Investment Assistance for post-disaster economic recovery efforts pursuant to a supplemental appropriation within eighteen (18) months of the date of such declaration	100
Projects of States or political subdivisions of States that the Assistant Secretary determines have exhausted their effective taxing and borrowing capacity or Projects of non-profit organizations that the Assistant Secretary determines has exhausted its effective borrowing capacity	100
Projects under parts 305 or 307 that receive performance awards pursuant to § 308.2 of this chapter	100
Projects located in a District that receive planning performance awards pursuant to § 308.3 of this chapter	100

(c) Federal Funding Opportunity notices may provide additional Investment Rate criteria and standards to ensure that the level of economic distress of a Region, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating Investment Assistance.

§ 301.5 Matching Share requirements.

The required Matching Share of a Project's eligible costs may consist of cash or In-Kind Contributions. In addition, the Eligible Applicant must show that the Matching Share is committed to the Project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Investment Assistance.

§ 301.6 Supplementary Investment Assistance.

(a) Pursuant to a request by an Eligible Applicant, EDA Investment Assistance may supplement grants awarded in another ''designated federal grant program,'' if the Eligible Applicant qualifies for financial assistance under such program, but is unable to provide the required non-federal share because of the Eligible Applicant's economic situation. For purposes of this section, a ''designated federal grant program'' means any federal grant program that:

(1) Provides assistance in the construction or equipping of public works, public service or development facilities;

(2) Is designated by EDA as eligible for supplementary Investment Assistance under this section; and

(3) Assists Projects that are otherwise eligible for Investment Assistance and consistent with the Eligible Applicant's CEDS.

(b) For Projects located in Regions meeting the criteria of § 301.3(a), the EDA Investment Assistance, combined with funds from a designated federal grant program, may be at the maximum allowable Investment Rate, even if the designated federal grant program has a lower grant rate. If the designated federal grant program has a grant rate higher than the maximum EDA Investment Rate, the combination of EDA Investment and other federal funds may exceed the EDA Investment Rate; provided, the EDA share of total funding does not exceed the maximum allowable Investment Rate.

Subpart E—Proposal and Application Requirements; Evaluation Criteria

§ 301.7 Investment Assistance proposal.

The EDA Investment Assistance process begins with the submission of an Investment Assistance proposal. Investment proposals are submitted on an EDA Pre-application for Federal Assistance (Form ED–900P or any successor form) that may be obtained from EDA's Internet Web site at *http://www.eda.gov* or from the appropriate regional office. EDA generally accepts proposals on a competitive and continuing basis to respond to market forces in Regional economies. The timing with which competitive investment opportunities arise, as determined by the criteria set forth in § 301.8, paired with the availability of funds in a given fiscal year, will affect EDA's ability to participate in any given Project. EDA will evaluate all proposals using the criteria set forth in § 301.8 and will:

(a) Solicit a formal application from the proponent;

(b) Return the proposal to the proponent for specified deficiencies and suggest resubmission upon corrections; or

(c) Deny the proposal for specifically stated reasons and notify the proponent.

§ 301.8 Proposal evaluation criteria.

EDA will screen all proposals for the feasibility of the budget presented and conformance with EDA statutory and regulatory requirements. EDA will assess the economic development needs of the affected Region in which the proposed Project will be located (or will service) as well as the capability of the proponent to implement the proposed Project. Furthermore, EDA will select proposals competitively based on strategic areas of interest and priority considerations identified in the applicable FFO. EDA may also consider the degree to which an Investment in the proposed Project will satisfy one (1) or more of the following criteria:

(a) Is market-based and results driven. An Investment will capitalize on a Region's competitive strengths and will positively move a Regional economic indicator measured and evaluated by EDA on a performance matrix system, such as EDA's Balanced Scorecard or other performance matrix. These Regional economic indicators include measures such as an increased number of higher-skill, higher-wage jobs, increased tax revenue, or increased private sector investment resulting from an Investment.

(b) Has strong organizational leadership. An Investment will have strong leadership, relevant Project management experience and a significant commitment of human resources talent to ensure a Project's successful execution.

(c) Advances productivity, innovation and entrepreneurship. An Investment will embrace the principles of entrepreneurship, enhance Regional industry clusters and leverage and link technology innovators and local universities to the private sector to create the conditions for greater productivity, innovation, and job creation.

(d) Looks beyond the immediate economic horizon, anticipates economic changes and diversifies the local and Regional economy. An Investment will be part of an overarching, long-term Comprehensive Economic Development Strategy that enhances a Region's success in achieving a rising standard of living by supporting existing industry clusters, developing emerging new clusters or attracting new Regional economic drivers.

(e) Demonstrates a high degree of local commitment. An Investment will exhibit:

(1) High levels of local government or non-profit Matching Share and private sector leverage;

(2) Clear and unified leadership and support by local elected officials; and

(3) Strong cooperation between the business sector, relevant Regional partners and Federal, State and local governments.

(f) Other criteria as set forth in the applicable FFO.

§ 301.9 Proposal selection.

(a) EDA will review completed proposal materials for compliance with the requirements set forth in PWEDA, this chapter, the applicable FFO and other applicable federal statutes and regulations. From those proposals meeting EDA's technical and legal requirements, EDA will select proposals for further consideration based on:

(1) The availability of funds; and

(2) The competitiveness of the proposals, judging by the criteria and priorities set forth in § 301.8; and

(3) The applicable FFO.

(b) EDA will endeavor to notify proponents regarding whether their proposals are selected as soon as practicable.

§ 301.10 Formal application requirements.

(a) *General.* For Projects selected from successful proposals, EDA will invite the proponents to submit a formal application for Investment Assistance. The appropriate regional office will provide application materials and guidance in completing them. The applicant will generally have thirty (30) days to submit the completed application materials to the applicable regional office. EDA staff will work with the applicant to resolve application deficiencies.

(b) *Formal application.* Each formal application for EDA Investment Assistance must:

(1) Include evidence of applicant eligibility (as set forth in § 301.2) and of economic distress (as set forth in § 301.3);

(2) Identify the sources of funds, both eligible federal and non-EDA, and In-Kind Contributions that will constitute the required Matching Share for the Project (*see* the Matching Share requirements under § 301.5); and

(3) For construction Projects under parts 305 or 307 of this chapter, include a CEDS acceptable to EDA pursuant to part 303 of this chapter or otherwise incorporate by reference a current CEDS that EDA approves for the Project. The requirements of the preceding sentence shall not apply to:

(i) Strategy Grants, as defined in § 307.3 of this chapter; and

(ii) Projects located in a Region designated as a Special Impact Area pursuant to part 310 of this chapter.

PART 302—GENERAL TERMS AND CONDITIONS FOR INVESTMENT ASSISTANCE

Sec.

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302.19 Indemnification.
302.20 Civil Rights.

Authority: 19 U.S.C. 2341 *et seq.*; 42 U.S.C. 3150; 42 U.S.C. 3152; 42 U.S.C. 3153; 42 U.S.C. 3192; 42 U.S.C. 3193; 42 U.S.C. 3194; 42 U.S.C. 3211; 42 U.S.C. 3212; 42 U.S.C. 3216; 42 U.S.C. 3218; 42 U.S.C. 3220; 42 U.S.C. 5141; Department of Commerce Delegation Order 10–4.

§ 302.1 Environment.

EDA will undertake environmental reviews of Projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190; 42 U.S.C. 4321 *et seq.*, as implemented under 40 CFR Chapter V) (''*NEPA*''), and all applicable federal environmental statutes, regulations and Executive Orders. These authorities include the implementing regulations of NEPA requiring EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 CFR 1506.6(b). Depending on the Project's location, environmental information concerning specific Projects can be obtained from the Environmental Officer in the appropriate EDA regional office as listed in the annual FFO.

§ 302.2 Procedures in disaster areas.

When non-statutory EDA administrative or procedural conditions for Investment Assistance awards under PWEDA cannot be met by an Eligible Applicant as the result of a disaster, EDA may waive such conditions.

§ 302.3 Project servicing for loans, loan guaranties and Investment Assistance.

EDA will provide Project servicing to borrowers who received EDA loans or EDA-guaranteed loans and to lenders who received EDA loan guaranties under any EDA-administered program. Project servicing includes but is not limited to loans made under PWEDA prior to the effective date of the Economic Development Administration Reform Act of 1998, the Trade Act and the Community Emergency Drought Relief Act of 1977 (Pub. L. 95–31; 42 U.S.C. 5184 note).

(a) EDA will continue to monitor such loans and loan guaranties in accordance with the applicable loans or loan guaranty program(s).

(b) Borrowers and lenders shall submit to EDA any requests for modifications of their loan or loan guaranty agreements with EDA, as applicable. EDA shall consider and respond to such modification requests in accordance with applicable laws and policies, including the budgetary constraints imposed by the Federal Credit Reform Act of 1990, as amended (2 U.S.C. 661c(e)).

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans, loan guaranties or evidence of purchased debt, EDA may:

(1) Assign or sell at public or private sale or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance extended under PWEDA;

(2) Collect or compromise all obligations assigned to or held by it in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA until such time as such obligations may be referred to the Attorney General of the United States for suit or collection; and

(3) Take any and all other actions determined to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively processing or disposing of loans or loan guaranties made or evidence of purchased debt in connection with any EDA loans, EDA-guaranteed loans or Investment Assistance awarded under PWEDA.

§ 302.4 Public Information.

The rules and procedures regarding public access to EDA's records pursuant to the Freedom of Information Act of 1967, as amended (5 U.S.C. 552), and the Privacy Act of 1974, as amended (5 U.S.C. 552a), are at 15 CFR part 4.

§ 302.5 Relocation assistance and land acquisition policies.

Recipients of EDA Investment Assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits organizations, as applicable) are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. 91–646; 42 U.S.C. 4601 *et seq.*). *See* 15 CFR part 11 and 49 CFR part 24 for specific compliance requirements.

§ 302.6 Additional requirements; federal policies and procedures.

Recipients are subject to all federal laws and to federal, Department and EDA policies, regulations and procedures applicable to federal financial assistance awards, including but not limited to 15 CFR part 14, the Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations, and 15 CFR part 24, the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, as applicable.

§ 302.7 Amendments and changes.

(a) Recipients shall submit requests for amendments to Investment awards in writing to EDA for approval and shall provide such information and documentation as EDA deems necessary to justify the request.

(b) Any changes to Projects made without EDA's approval are made at the Recipient's risk of non-payment of costs, suspension, termination or other applicable EDA action with respect to the Investment.

§ 302.8 Pre-approval Investment Assistance costs.

Project activities carried out before approval of Investment Assistance shall be carried out at the sole risk of the Eligible Applicant. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of non-compliance with EDA or federal requirements, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or federal environmental, historic preservation and related requirements.

§ 302.9 Inter-governmental review of Projects.

(a) When an Eligible Applicant is not a State, Indian Tribe or other general purpose governmental authority, the Eligible Applicant must afford the appropriate general purpose local

governmental authority (the ''*Authority*'') in the Region a minimum of fifteen (15) days to review and comment on a proposed Project under EDA's Public Works and Economic Development program or a proposed construction Project or RLF Grant under EDA's Economic Adjustment Assistance program. Under these programs, Eligible Applicants shall furnish the following with their applications: if no comments are received from the Authority, a statement of efforts made to obtain such comments; or, if comments are received from the Authority, a copy of the comments and a statement of any actions taken to address such comments.

(b) As required by 15 CFR part 13 and Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' as amended, if a State has adopted a process under Executive Order 12372 to review and coordinate proposed federal financial assistance and direct federal development (commonly referred to as the ''single point of contact review process''), all Eligible Applicants must also give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13.

§ 302.10 Attorneys' and consultants' fees; employment of expediters and administrative employees.

(a) *General.* Investment Assistance awarded under PWEDA shall not directly or indirectly reimburse any attorneys' or consultants' fees incurred in connection with obtaining Investment Assistance and contracts under PWEDA.

(b) *Employment of Expediters and Administrative Employees.* Investment Assistance under PWEDA shall not be awarded to any Eligible Applicant, unless the owners, partners or officers of the Eligible Applicant:

(1) Certify to EDA the names of any attorneys, agents and other persons engaged by or on behalf of the Eligible Applicant for the purpose of expediting applications made to EDA in connection with obtaining Investment Assistance under PWEDA and the fees paid or to be paid to the person for expediting the applications; and

(2) Upon EDA's request, execute an agreement binding the Eligible Applicant, for the two-year (2) period beginning on the date on which the Investment Assistance is awarded to the Eligible Applicant, to refrain from employing, offering any office or employment to or retaining for professional services any person who, on the date on which the Investment Assistance is awarded or within the one-year (1) period ending on that date:

(i) Served as an officer, attorney, agent or employee of the Department; and

(ii) Occupied a position or engaged in activities that the Assistant Secretary determines involved discretion with respect to the award of Investment Assistance under PWEDA.

§ 302.11 Economic development information clearinghouse.

Pursuant to Section 502 of PWEDA, EDA maintains an economic development information clearinghouse on its Internet Web site at *www.eda.gov*.

§ 302.12 Project administration, operation and maintenance.

EDA shall approve Investment Assistance awards only if, as determined in its sole discretion, the Project for which such Investment Assistance is awarded will be properly and efficiently administered, operated and maintained.

§ 302.13 Maintenance of standards.

All laborers and mechanics employed by contractors or subcontractors on Projects receiving Investment Assistance under PWEDA shall be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. EDA shall not extend any Investment Assistance under this chapter for a Project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The U.S. Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan No. 14 of 1950 (15 FR 3176 May 25, 1950; (64 Stat. 1267)) and Section 3145 of title 40, United States Code.

§ 302.14 Records and audits.

(a) *Records.* Recipients of Investment Assistance under PWEDA shall keep such records as EDA shall require, including records that fully disclose:

(1) The amount and the disposition by the Recipient of the proceeds of the awarded Investment Assistance;

(2) The total cost of the Project that the Investment Assistance funds;

(3) The amount and nature of the portion of Project costs provided by other sources; and

(4) Such other records as EDA determines will facilitate an effective audit.

(b) *Audits.* The Recipient shall permit the Assistant Secretary, the Inspector General of the Department, the Comptroller General of the United States and/or any of their respective agents or representatives access to its properties in order to examine all books, correspondence, and records, including without limitation computer programs and data processing software, to verify the Recipient's compliance with Investment Assistance requirements.

§ 302.15 Acceptance of certifications by Eligible Applicants.

EDA will accept an Eligible Applicant's certifications, accompanied by evidence satisfactory to EDA, that the Eligible Applicant meets the requirements for receiving Investment Assistance.

§ 302.16 Reports by Recipients.

(a) In general, each Recipient must submit reports to EDA at intervals and in the manner that EDA shall require, except that EDA shall not require any report to be submitted more than ten (10) years after the date of closeout of the Investment Assistance.

(b) Each report must contain a data-specific evaluation of the effectiveness of the Investment Assistance provided in fulfilling the Project's purpose (including alleviation of economic distress) and in meeting the objectives of PWEDA. Data used by a Recipient in preparing reports shall be accurate and verifiable as determined by EDA, and from independent sources (whenever possible). EDA will use this data and report to fulfill its performance measurement reporting requirements under the Government Performance and Results Act of 1993 and to monitor internal, Investment and Project performance through an internal performance measurement system, such as the EDA Balanced Scorecard or other system.

(c) To enable EDA to determine the economic development effect of Projects that provide service benefits, EDA may require that Recipients submit a Project service map and information from which to determine whether services are provided to all segments of the Region being assisted.

§ 302.17 Conflicts of interest.

(a) *General.* It is EDA's and the Department's policy to maintain the highest standards of conduct to prevent conflicts of interest in connection with the award of Investment Assistance or its use for reimbursement or payment of costs (*e.g.*, procurement of goods or services) by or to the Recipient. A conflict of interest generally exists when

an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict may also exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

(b) *Prohibition on direct or indirect financial or personal benefits.*

(1) An Interested Party shall not receive any direct or indirect, financial or personal benefits in connection with the award of Investment Assistance or its use for payment or reimbursement of costs by or to the Recipient. Recipients shall establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or of personal gain. *See also* 15 CFR 14.42 and 24.36(b)(3); Forms SF–424B and SF–424D.

(2) An Interested Party shall also not, directly or indirectly, solicit or accept any gift, gratuity, favor, entertainment or other benefit having monetary value, for himself or herself or for another person or entity, from any person or organization which has obtained or seeks to obtain Investment Assistance from EDA.

(3) Costs incurred in violation of any conflict of interest rules contained in this chapter or in violation of any assurances by the Recipient may be denied for reimbursement.

(4) *See* § 315.15 of this chapter for special conflicts of interest rules for Trade Adjustment Assistance Investments.

(c) *Special Rules for Revolving Loan Fund (''RLF'') Grants.* In addition to the rules set forth in this section:

(1) An Interested Party of a Recipient of an RLF Grant shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans;

(2) A Recipient of an RLF Grant shall also not lend RLF funds to an Interested Party; and

(3) Former board members of a Recipient of an RLF Grant and members of his or her Immediate Family shall not receive a loan from such RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

§ 302.18 Post-approval requirements.

(a) *General.* A Recipient must comply with all financial, performance, progress report and other requirements set forth in the terms and conditions of the Investment Assistance, including any special terms and applicable federal cost principles (collectively, ''Post-Approval Requirements''). A Recipient's failure to comply with Post-Approval Requirements may result in the disallowance of costs, termination of the Investment Assistance award, or other adverse consequences to the Recipient.

(b) *Part 307 (Economic Adjustment Assistance Investments).* Recipients of Economic Adjustment Assistance Investments under part 307 of this chapter must comply with the Post-Approval Requirements set forth in § 307.6 of this chapter.

§ 302.19 Indemnification.

To the maximum extent permitted by law, a Recipient shall indemnify and hold EDA harmless from any liability that EDA may incur due to the actions or omissions of the Recipient.

§ 302.20 Civil rights.

(a) Discrimination is prohibited by a Recipient or Other Party (as defined in paragraph (b) of this section) with respect to a Project receiving Investment Assistance under PWEDA or by an entity receiving Adjustment Assistance (as defined in § 315.2 of this chapter) under the Trade Act, in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d *et seq.*) (proscribing discrimination on the basis of race, color, or national origin), and the Department's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex in Investment Assistance provided under PWEDA) and 42 U.S.C. 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 CFR 8.7 through 8.15;

(3) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) (proscribing discrimination on the basis of disabilities), and the Department's implementing regulations found at 15 CFR part 8b;

(4) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*) (proscribing discrimination on the basis of age), and the Department's implementing regulations found at 15 CFR part 20; and

(5) Other federal statutes, regulations and Executive Orders, as applicable.

(b) *Definitions.* (1) For purposes of this section, an ''*Other Party*'' means an ''other party subject to this part,'' as defined in 15 CFR 8.3(l), and includes an entity which (or which is intended to) creates and/or saves fifteen (15) or more permanent jobs as a result of Investment Assistance; provided that such entity is also either specifically named in the application as benefiting from the Project, or is or will be located in an EDA building, port, facility, or industrial, commercial or business park constructed or improved in whole or in part with Investment Assistance prior to EDA's final disbursement of Investment Assistance funds.

(2) Additional applicable definitions are provided in 15 CFR part 8.

(c) No Recipient or Other Party shall intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with any right or privilege secured by 42 U.SC. 3123 or 42 U.S.C. 6709, or because the person has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this section.

(d) All Recipients of Investment Assistance under PWEDA, all Other Parties and all entities receiving Adjustment Assistance under the Trade Act must submit to EDA written assurances that they will comply with applicable laws, EDA regulations, Department regulations, and such other requirements as may be applicable, prohibiting discrimination.

(e) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8a, 8b, 8c and 20.

PART 303—PLANNING INVESTMENTS AND COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGIES

Sec.

303.1 Purpose and scope.
303.2 Definitions.
303.3 Application requirements.
303.4 Award requirements.
303.5 Eligible administrative expenses.
303.6 EDA-funded CEDS process.
303.7 Requirements for Comprehensive Economic Development Strategies.
303.8 Requirements for State plans.
303.9 Requirements for short-term Planning Investments.

Authority: 42 U.S.C. 3143; 42 U.S.C. 3162; 42 U.S.C. 3174; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 303.1 Purpose and scope.

The purpose of EDA Planning Investments is to provide support to Planning Organizations for the development, implementation, revision or replacement of Comprehensive Economic Development Strategies (CEDS), related to short-term Planning Investments and State plans designed to create and retain higher-skill, higher-wage jobs, particularly for the unemployed and underemployed in the nation's most economically distressed Regions. EDA's Planning Investments support partnerships with Economic Development Districts, Indian Tribes, community development corporations, non-profit regional planning organizations and other Eligible Recipients. Planning activities supported by these Investments must be part of a continuous process involving the active participation of Private Sector Representatives, public officials and private citizens, and include:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining Project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 303.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Planning Investment means the award of EDA Investment Assistance under Section 203 of PWEDA and this part.

Planning Organization means a Recipient whose purpose is to develop a CEDS for a specific EDA-approved Region under Section 203 of PWEDA.

Strategy Committee means the committee or other entity identified by the Planning Organization as responsible for the development, implementation, revision or replacement of the CEDS for the Planning Organization.

§ 303.3 Application requirements.

(a) For Planning Investment awards, EDA uses the general application evaluation criteria set forth in § 301.8 of this chapter. In addition, EDA evaluates Planning Investment applications based on the following criteria:

(1) Quality of the proposed scope of work for the development, implementation, revision or replacement of the CEDS, or the relation of the CEDS to the proposed short-term planning activities or the State plan;

(2) Qualifications of the Eligible Applicant to implement the goals and objectives resulting from the CEDS, short-term planning activities or the State plan;

(3) The involvement of the Region's business leadership at each stage of the preparation of the CEDS, short-term planning activities or State plan;

(4) Extent of broad-based representation and involvement of the Region's civic, business, labor, minority and other interests in the Eligible Applicant's economic development activities; and

(5) Feasibility of the proposed scope of work to create and retain higher-skill, higher-wage jobs during implementation of the CEDS.

(b) In addition to the requirements of paragraph (a) of this section, funded Recipients are evaluated on the basis of the extent of continuing economic distress within the Region, their past performance, and the overall effectiveness of their CEDS.

(c) For Planning Investment awards to a State, the Assistant Secretary shall also consider the extent to which the State will integrate and coordinate its CEDS with local and Economic Development District plans.

(d) The Investment Rate for Planning Investments will be determined in accordance with § 301.4 of this chapter.

§ 303.4 Award requirements.

(a) Planning Investments shall function in conjunction with any other available federal, State or local planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Except in compelling circumstances as determined by the Assistant Secretary, EDA will not provide Planning Investments for multiple CEDS that address the needs of an identical or substantially similar Region.

(c) EDA will provide Planning Investments for the period of time required to develop, revise, or replace, and implement a CEDS, generally not to exceed thirty-six (36) months.

§ 303.5 Eligible administrative expenses.

(a) *General.* In accordance with applicable federal cost principles and as set forth in this section, EDA Planning Investments may be used to pay the direct and indirect costs incurred by a Planning Organization in the development and implementation of a CEDS.

(b) *Direct costs.* For purposes of this part, EDA Planning Investments may be used to pay costs of those activities directly attributable to a scope of work, as approved by EDA, for the purpose of developing and implementing a CEDS.

(c) *Indirect costs.* Costs of the Planning Organization's operation, including utilities, rent, technical assistance to customers and clients (*e.g.*, grant writing, planning assistance, other economic development assistance, training, travel expenses), and miscellaneous expenses (*e.g.*, supplies, insurance, overhead), may be eligible for reimbursement, but only to the extent that such costs relate to the development and implementation of a CEDS, involving a proactive continuous planning process that addresses the economic opportunities and constraints of a Region.

§ 303.6 EDA-funded CEDS process.

If EDA awards Investment Assistance to a Planning Organization to develop, revise or replace a CEDS, the Planning Organization must follow the procedures set forth in this section:

(a) The Planning Organization must appoint a Strategy Committee. The Strategy Committee must represent the main economic interests of the Region and must include Private Sector Representatives as a majority of its membership. In addition, the Planning Organization should ensure that the Strategy Committee includes public officials, community leaders, representatives of workforce development boards, institutions of higher education, minority and labor groups, and private individuals. The Strategy Committee representing Indian Tribes or States may vary.

(b) The Planning Organization must develop and submit to EDA a CEDS that:

(1) Complies with the requirements of § 303.7; and

(2) Was made available for review and comment by the public for a period of at least thirty (30) days prior to submission to EDA.

(c)(1) After obtaining EDA approval of the CEDS, the Planning Organization must submit annually an updated CEDS performance report to EDA.

(2) The Planning Organization must submit a new or revised CEDS to EDA at least every five (5) years, unless EDA or the Planning Organization determines that a new or revised CEDS is required earlier due to changed circumstances.

(3) Any updated CEDS performance report that results in a change of the requirements set forth in § 303.7(b)(3) of the EDA-accepted CEDS or any new or revised CEDS, must be available for review and comment by the public in accordance with paragraph (b)(2) of this section.

(d) If EDA determines that implementation of the CEDS is inadequate, it will notify the Planning Organization in writing and the

Planning Organization shall submit to EDA a new or revised CEDS.

(e) If any part of a Region is covered by one or more of the Regional Commissions as set forth in Section 404 of PWEDA, the Planning Organization shall ensure that a copy of the CEDS is provided to the Regional Commission(s).

§ 303.7 Requirements for Comprehensive Economic Development Strategies.

(a) *General.* CEDS are designed to bring together the public and private sectors in the creation of an economic roadmap to diversify and strengthen Regional economies. The CEDS should analyze the Regional economy and serve as a guide for establishing Regional goals and objectives, developing and implementing a Regional plan of action, identifying investment priorities and funding sources, and assigning lead organizations responsibilities for execution of the CEDS. Public and private sector partnerships are critical to the implementation of the integral elements of a CEDS set forth in paragraph (b) of this section. As a performance-based plan, the CEDS will serve a critical role in a Region's efforts to defend against economic dislocations due to global trade, competition and other events resulting in the loss of jobs and private investment.

(b) *Technical requirements.* A CEDS must be the result of a continuing economic development planning process, developed with broad-based and diverse public and private sector participation, and shall contain the following:

(1) A background of the economic development situation of the Region with a discussion of the economy, population, geography, workforce development and use, transportation access, resources, environment and other pertinent information;

(2) An in-depth analysis of economic and community development problems and opportunities, including:

(i) Incorporation of relevant material from other government-sponsored or supported plans and consistency with applicable State and local workforce investment strategies; and

(ii) An identification of past, present and projected future economic development investments in the Region covered;

(3) A section setting forth goals and objectives necessary to solve the economic development problems of the Region;

(4) A discussion of community and private sector participation in the CEDS effort;

(5) A section listing all suggested Projects and the projected numbers of jobs to be created as a result thereof;

(6) A section identifying and prioritizing vital Projects, programs and activities that address the Region's greatest needs or that will best enhance the Region's competitiveness, including sources of funding for past and potential future Investments;

(7) A section identifying economic clusters that are growing or in decline within the Region;

(8) A plan of action to implement the goals and objectives of the CEDS, including:

(i) Promoting economic development and opportunity;

(ii) Fostering effective transportation access;

(iii) Enhancing and protecting the environment;

(iv) Maximizing effective development and use of the workforce consistent with any applicable State or local workforce investment strategy;

(v) Promoting the use of technology in economic development, including access to high-speed telecommunications;

(vi) Balancing resources through sound management of physical development; and

(vii) Obtaining and utilizing adequate funds and other resources; and

(9) A list of performance measures used to evaluate the Planning Organization's successful development and implementation of the CEDS, including but not limited to the following:

(i) Number of jobs created after implementation of the CEDS;

(ii) Number and types of investments undertaken in the Region;

(iii) Number of jobs retained in the Region;

(iv) Amount of private sector investment in the Region after implementation of the CEDS; and

(v) Changes in the economic environment of the Region; and

(10) A section outlining the methodology for cooperating and integrating the CEDS with a State's economic priorities.

(c) *Consideration of non-EDA funded CEDS.*

(1) In determining the acceptability of a CEDS prepared independently of EDA Investment Assistance or oversight for Projects under parts 305 and 307 of this chapter, EDA may in its discretion determine that the CEDS is acceptable without fulfilling all the requirements of paragraph (b) of this section. In doing so, EDA shall consider the circumstances surrounding the application for Investment Assistance, including emergencies or natural disasters and the fulfillment of the requirements of Section 302 of PWEDA.

(2) If the CEDS for a Project under parts 305 and 307 of this chapter is developed under another federally-supported program, it must include acceptable performance measures similar to those set forth in paragraph (b) of this section and information on the state of the Regional economy. To the maximum extent practicable, the CEDS shall be consistent and coordinated with any existing economic development plan for the Region.

§ 303.8 Requirements for State plans.

(a) As a condition of a State receiving a Planning Investment:

(1) The State must have or develop a CEDS that meets the requirements of § 303.7;

(2) Any State plan developed with Planning Investment Assistance must, to the maximum extent practicable, be developed cooperatively by the State, political subdivisions of the State, and the Economic Development Districts located wholly or partially in the State; and

(3) The State must submit to EDA an annual report on any State plan receiving Planning Investment Assistance.

(b) Before awarding a Planning Investment to a State, EDA shall consider the extent to which the State will take into account local and District economic development plans.

§ 303.9 Requirements for short-term Planning Investments.

(a) In addition to providing support for CEDS and State plans, EDA may also provide Investment Assistance to support short-term planning activities. EDA may provide such Investment Assistance to:

(1) Develop the economic development planning capacity of States, cities and other Eligible Applicants experiencing economic distress;

(2) Assist in institutional capacity building; or

(3) Undertake innovative approaches to economic development.

(b) Eligible activities may include but are not limited to updating a portion of a CEDS, economic analysis, development of economic development policies and procedures, and development of economic development goals.

(c) Applicants for short-term Planning Investments must provide performance measures acceptable to EDA that can be used to evaluate the success of the program and provide EDA with program

reports during the term of the Planning Investment, as set forth in the Investment agreement.

PART 304—ECONOMIC DEVELOPMENT DISTRICTS

Sec.

304.1 Designation of Economic Development Districts: Regional eligibility.
304.2 District Organizations: Formation, organizational requirements and operations.
304.3 District modification and termination.
304.4 Performance evaluations.

Authority: 42 U.S.C. 3122; 42 U.S.C. 3171; 42 U.S.C. 3172; 42 U.S.C. 3196; Department of Commerce Organization Order 10–4.

§ 304.1 Designation of Economic Development Districts: Regional eligibility.

Upon the request of a District Organization (as defined in § 304.2), EDA may designate a Region as an Economic Development District if such Region:

(a) Contains at least one (1) geographical area that is subject to the economic distress criteria set forth in § 301.3(a)(1) of this chapter and is identified in an approved CEDS;

(b) Is of sufficient size or population and contains sufficient resources to foster economic development on a scale involving more than a single geographical area subject to the economic distress criteria set forth in § 301.3(a)(1) of this chapter;

(c) Has an EDA-approved CEDS that

(1) Meets the requirements under § 303.7 of this chapter;

(2) Contains a specific program for intra-District cooperation, self-help, and public investment; and

(3) Is approved by each affected State and by the Assistant Secretary;

(d) Obtains commitments from at least a majority of the counties or other areas within the proposed District, as determined by EDA, to support the economic development activities of the District; and

(e) Obtains the concurrence with the designation request from the State (or States) in which the proposed District will be wholly or partially located.

§ 304.2 District Organizations: Formation, organizational requirements and operations.

(a) *General.* A ''*District Organization*'' is an entity that satisfies the formation and organizational requirements under paragraphs (b) and (c) of this section.

(b) *Formation.* A District Organization must be organized as one of the following:

(1) A public organization formed through an inter-governmental agreement providing for the joint exercise of local government powers; or

(2) A public organization established under State-enabling legislation for the creation of multi-jurisdictional area-wide planning organizations; or

(3) A non-profit organization incorporated under the applicable non-profit statutes of the State in which it is incorporated.

(c) *Organization and Governance.*

(1) Each District Organization must meet the requirements of this paragraph (c) concerning membership composition, the maintenance of adequate staff support to perform its economic development functions, and its authorities and responsibilities for carrying out economic development functions. The District Organization's board of directors (or other governing body) must also meet these requirements.

(2) The District Organization must demonstrate that its governing body is broadly representative of the principal economic interests of the Region, and, unless otherwise prohibited by applicable State or local law, must include Private Sector Representatives as a majority of its board of directors. The governing body of a District Organization should include, to the extent possible, members of:

(i) Workforce development boards;

(ii) Institutions of higher education;

(iii) Minority groups; and

(iv) Labor groups.

(3) The District Organization must be assisted by a professional staff drawn from qualified persons in economic development, planning, business development or related disciplines.

(4) The governing bodies of District Organizations must provide access for persons who are not members to make their views known concerning ongoing and proposed District activities in accordance with the following requirements:

(i) The District Organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of such meetings sufficiently in advance to allow the public a reasonable time to prepare in order to participate effectively.

(ii) The District Organization shall adopt a system of parliamentary procedures to assure that board members and others have access to an effective opportunity to participate in the affairs of the District.

(iii) The District Organization shall provide information sufficiently in advance of decisions to give the public adequate opportunity to review and react to proposals. District Organizations should communicate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

(iv) The District Organization must make available to the public such audited statements, annual budgets and minutes of public meetings, as may be reasonably requested.

(v) The District Organization and its board of directors must comply with all federal and State financial assistance reporting requirements and the conflicts of interest provisions set forth in § 302.17 of this chapter.

(d) *Operations.* The District Organization may contract for services to accomplish approved scopes of work for Planning Investments funded under part 303 of this chapter.

§ 304.3 District modification and termination.

(a) *Modification.* Upon the request of a District Organization and with the concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), EDA may modify the geographical boundaries of a District, if it determines that such modification will contribute to a more effective program for economic development.

(b) *Termination.* EDA may, upon sixty (60) days prior written notice to the District Organization, member counties and other areas determined by EDA and each affected State, terminate a Region's designation as an Economic Development District when:

(1) A District or District Organization no longer meets the requirements of §§ 304.1 or 304.2; or

(2) EDA determines that the District Organization fails to execute its CEDS according to the development, implementation and other performance measures set forth therein; or

(3) A District Organization has requested termination.

(c) EDA may further modify or terminate a Region's designation as a District according to the standards set forth in an FFO.

§ 304.4 Performance evaluations.

(a) EDA shall evaluate the management standards, financial accountability and program performance of each District Organization within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as the District Organization continues to receive Investment Assistance. EDA's evaluation shall assess:

(1) The continuing Regional eligibility of the District, as set forth in § 304.1;

(2) The management of the District Organization, as set forth in § 304.2; and

(3) The implementation of the CEDS, including the District Organization's performance and contribution towards the retention and creation of employment, as set forth in § 303.7 on this chapter.

(b) For peer review, EDA shall ensure the participation of at least one (1) other District Organization in the performance evaluation on a cost-reimbursement basis.

PART 305—PUBLIC WORKS AND ECONOMIC DEVELOPMENT INVESTMENTS

Subpart A—General

Sec.

305.1 Purpose and scope.
305.2 Award requirements.
305.3 Application requirements.
305.4 Projects for design and engineering work.

Subpart B—Requirements for Approved Projects

305.5 Project administration by District Organization.
305.6 Allowable methods of procurement for construction services.
305.7 Services performed by the Recipient's own forces.
305.8 Recipient-furnished equipment and materials.
305.9 Project phasing and Investment disbursement.
305.10 Bid underrun.
305.11 Contract awards; early construction start.
305.12 Project sign.
305.13 Contract change orders.
305.14 Occupancy prior to completion.

Authority: 42 U.S.C. 3211; 42 U.S.C. 3141; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 305.1 Purpose and scope.

Public Works and Economic Development Investments (''Public Works Investments'') intend to help the nation's most distressed communities revitalize, expand and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies and generate or retain long-term private sector jobs and investments. The primary goal of these Investments is the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by chronic high unemployment, underemployment, low per capita income, outmigration, or a Special Need. These Investments also intend to assist communities in attracting private capital investment and higher-skill, higher-wage job opportunities and to promote the successful long-term economic recovery of a Region.

§ 305.2 Award requirements.

(a) *Project scope.* Public Works Investments may fund the following activities:

(1) Acquisition or development of land and improvements for use in a public works, public service or other type of development facility; or

(2) Acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) *Requirements.* A Public Works Investment may be made if EDA determines that:

(1) The Project will, directly or indirectly:

(i) Improve the opportunities for the successful establishment or expansion of industrial or commercial plants or facilities in the Region where the Project is located;

(ii) Assist in the creation of additional long-term employment opportunities in the Region; or

(iii) Primarily benefit the long-term unemployed and members of low-income families in the Region;

(2) The Project will fulfill a pressing need of the Region, or a part of the Region, in which the Project is located; and

(3) The Region in which the Project is located has a CEDS and the Project is consistent with the CEDS.

(c) Not more than fifteen (15) percent of the annual appropriations made available to EDA to fund Public Works Investments may be made in any one (1) State.

§ 305.3 Application requirements.

(a) Each application for Public Works Investment Assistance must:

(1) Include evidence of eligibility, as provided in part 301 of this chapter;

(2) Include, or incorporate by reference, a CEDS (as provided in § 303.7 of this chapter);

(3) Demonstrate how the proposed Project meets the criteria of § 305.2; and

(4) Demonstrate how the proposed Project meets the proposal evaluation criteria set forth in § 301.8 of this chapter.

(b) The Investment Rate for Public Works Investments will be determined in accordance with § 301.4 of this chapter.

§ 305.4 Projects for design and engineering work.

In the case of Public Works Investment Assistance awarded solely for design and engineering work, the following additional application requirements and terms shall apply:

(a) EDA may determine that a separate Investment for design and engineering is warranted due to the technical complexity or environmental sensitivity of the construction Project;

(b) The purpose of the Investment may be limited to the development and production of all documents required for the construction of the proposed construction Project in a format and in sufficient quantity to permit advertisement and award of a construction contract soon after securing construction financing for the Project;

(c) EDA will not disburse any portion of the Investment Assistance until it receives and certifies compliance with the Investment award of all design and engineering contracts; and

(d) EDA's funding of the Project for design and engineering work does not in any way commit EDA to fund construction of the Project.

Subpart B—Requirements for Approved Projects

§ 305.5 Project administration by District Organization.

(a) When a District Organization is not the Recipient or co-Recipient of Investment Assistance, the District Organization may administer the Project for the Recipient if EDA determines fulfillment of the following conditions:

(1) The Recipient has requested (either in the application or by separate written request) that the District Organization for the Region in which the Project is located administer the Project;

(2) The Recipient certifies and EDA finds that:

(i) Administration of the Project is beyond the capacity of the Recipient's current staff and would require hiring additional staff or contracting for such services;

(ii) No local organization or business exists that could administer the Project in a more efficient or cost-effective manner than the staff of the District Organization; and

(iii) The staff of the District Organization would administer the Project without sub-contracting the work; and

(3) The allowable costs for the administration of the Project by the District Organization's staff will not exceed the amount that would be allowable to the Recipient.

(b) EDA must approve the request either by approving the application in which the request is made or by separate specific written approval.

§ 305.6 Allowable methods of procurement for construction services.

(a) Recipients may use alternate construction procurement methods to the traditional design/bid/build procedures (including lump sum or unit price-type construction contracts). These methods include but are not limited to design-build, construction management at risk and force account. If an alternate method is used, the Recipient shall submit to EDA for approval a construction services procurement plan and the Recipient must use a design professional to oversee the process. The Recipient shall submit the plan to EDA prior to advertisement for bids and shall include the following, as applicable:

(1) Justification for the proposed method for procurement of construction services;

(2) The scope of work with cost estimates and schedules;

(3) A copy of the proposed construction contract;

(4) The name and qualifications of the selected design professional; and

(5) Procedures to be used to ensure full and open competition, including the selection criteria.

(b) For all procurement methods, the Recipient must comply with the procurement standards set forth in 15 CFR parts 14 or 24, as applicable.

§ 305.7 Services performed by the Recipient's own forces.

In certain circumstances, the Recipient may wish to consider having a portion or all of the design, construction, inspection, legal services or other work and/or services in connection with the Project performed by personnel who are employed by the Recipient either full-time or part-time. EDA may approve the use of such ''in-house forces'' if:

(a) The services are routinely performed by the Recipient for all construction Projects performed by the Recipient (for example, inspection or legal); or

(b) The Recipient has a special skill required for the construction of the Project (for example, construction of unique Indian structures); or

(c) The Recipient has made all reasonable efforts to obtain a contractor but has failed to do so because of uncontrollable factors such as the remoteness of the Project site or an overabundance of construction work in the Region; or

(d) The Recipient demonstrates substantial cost savings.

§ 305.8 Recipient-furnished equipment and materials.

The Recipient may wish to incorporate into the Project equipment or materials that it will secure through its own efforts, subject to the following requirements:

(a) EDA must approve any use of Recipient-furnished equipment and materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value of such equipment;

(b) EDA may require the Recipient to establish that the expense claimed for such equipment or materials is competitive with current local market costs; and

(c) Acquisition of Recipient-furnished equipment and/or materials under this section is also subject to the requirements of 15 CFR parts 14 or 24, as applicable.

§ 305.9 Project phasing and Investment disbursement.

(a) EDA may authorize in advance the award of construction contracts in phases, provided the Recipient submits a request that includes each of the following:

(1) Valid reasons justifying why the Project must be phased;

(2) Description of the specific elements to be completed in each phase;

(3) Detailed construction cost estimates for each phase;

(4) Time schedules for completing all phases of the Project;

(5) Certification that the Recipient can and will fund any overrun(s); and

(6) Certification that the Recipient is capable of paying incurred costs prior to the first disbursement of EDA funds.

(b) EDA will begin disbursement of funds after receipt of evidence sufficient to EDA of compliance with all Investment award conditions. EDA may approve the disbursement of funds prior to the tender of all construction contracts if the Recipient can demonstrate to EDA's satisfaction that a severe financial hardship will result without such approval.

§ 305.10 Bid underrun.

If at the construction contract bid opening, the lowest responsive bid is less than the total Project cost, the Recipient will notify EDA to determine whether Investment funds should be deobligated from the Project.

§ 305.11 Contract awards; early construction start.

EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the terms and conditions of the Investment award in order for the costs to be eligible for EDA reimbursement. Pending this determination, the Recipient may issue a notice permitting construction under the contract to commence. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA review and concurrence. The EDA regional office will advise the Recipient of the requirements necessary to obtain EDA's determination.

§ 305.12 Project sign.

The Recipient shall be responsible for the construction, erection and maintenance in good condition throughout the construction period of a sign or signs at a conspicuous place at the Project site indicating that the Federal government is participating in the Project. The EDA regional office will provide mandatory specifications for the signage.

§ 305.13 Contract change orders.

(a) If it becomes necessary to alter the construction contracts post-execution, the Recipient and contractor shall agree to a formal contract change order.

(b) All contract change orders must receive EDA review for compliance with the terms and conditions of the Investment award, even if the Recipient is to pay for all additional costs resulting from the change or the change order reduces the contract price.

(c) Work on the Project may continue pending EDA review of the contract change order, but all such work will be at the Recipient's risk until EDA completes its review.

§ 305.14 Occupancy prior to completion.

Occupancy of any part of the Project prior to final acceptance is entirely at the Recipient's risk and must follow the requirements of local and State law.

PART 306—TRAINING, RESEARCH AND TECHNICAL ASSISTANCE INVESTMENTS

Subpart A—Local and National Technical Assistance

Sec.
306.1 Purpose and scope.
306.2 Award requirements.
306.3 Application requirements.

Subpart B—University Center Economic Development Program

306.4 Purpose and scope.
306.5 Award requirements.

306.6 Application requirements.
306.7 Performance evaluations of University Centers.

Authority: 42 U.S.C. 3147; 42 U.S.C. 3196; 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—Local and National Technical Assistance

§ 306.1 Purpose and scope.

(a) Local and National Technical Assistance Investments may:

(1) Determine the causes of excessive unemployment, underemployment, low per capita income, outmigration or other problems throughout the nation;

(2) Formulate and implement economic development tools, models, and innovative techniques that will alleviate or prevent conditions of excessive unemployment or underemployment;

(3) Formulate and implement economic development programs to increase local, regional and national capacity;

(4) Evaluate the effectiveness and economic impact of programs, projects and techniques to alleviate economic distress and promote economic development;

(5) Conduct project planning and feasibility studies;

(6) Provide management and operational assistance;

(7) Establish business outreach centers;

(8) Disseminate information about effective programs, projects and techniques that alleviate conditions of economic distress and promote economic development;

(9) Assess, market and establish business clusters and associations; or

(10) Perform other activities determined by EDA to be appropriate under the Local and National Technical Assistance program.

(b) Investment Assistance may not be used to start or expand a private business.

(c) EDA may identify specific training, research or technical assistance Projects it will fund, which will be subject to competition. Ordinarily, these Projects are specified in an FFO, which will provide the specific requirements, timelines and the appropriate points of contact and addresses.

(d) In providing Local and National Technical Assistance under this subpart, EDA, in addition to making Investments, may:

(1) Provide Local and National Technical Assistance through officers or employees of the Department;

(2) Pay funds made available to carry out this subpart to Federal Agencies; or

(3) Employ private individuals, partnerships, businesses, corporations, or appropriate institutions under contracts entered into for this purpose.

§ 306.2 Award requirements.

EDA selects Projects for Local and National Technical Assistance Investments in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter and the extent to which the Project:

(a) Strengthens the capacity of local, State or national organizations and institutions to undertake and promote effective economic development programs targeted to Regions of distress;

(b) Benefits distressed Regions;

(c) Demonstrates innovative approaches to stimulate economic development in distressed Regions;

(d) Is consistent with an EDA-approved CEDS, as applicable, for the Region in which the Project is located; and

(e) Meets the criteria outlined in the applicable FFO.

§ 306.3 Application requirements.

(a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, generally not to exceed twelve (12) to eighteen (18) months.

(b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

(c) The Investment Rate for Investments under this subpart shall be determined in accordance with § 301.4(b)(3) of this chapter.

Subpart B—University Center Economic Development Program

§ 306.4 Purpose and scope.

The University Center Economic Development Program is intended to help improve the economies of distressed Regions. Institutions of higher education have many assets, such as faculty, staff, libraries, laboratories and computer systems that can address local economic problems and opportunities. With Investment Assistance, institutions of higher education establish and operate research centers (''University Centers'') that provide technical assistance to public and private sector organizations with the goal of enhancing local economic development.

§ 306.5 Award requirements.

EDA provides Investment Assistance to University Center Projects in accordance with the general evaluation and selection criteria set forth in part 301 of this chapter, the competitive selection process outlined in the applicable FFO, and the extent to which the Project:

(a) Addresses the economic development needs, issues and opportunities of the Region and will benefit distressed areas in the Region;

(b) Provides service and value that are unique and will maximize coordination with other organizations in the Region;

(c) Has the commitment and support (both financial and non-financial) of the highest management levels of the sponsoring institution;

(d) Outlines activities consistent with the expertise of the proposed staff, academic programs and other resources available within the sponsoring institution; and

(e) Documents past experience of the sponsoring institution in operating technical assistance programs.

§ 306.6 Application requirements.

(a) EDA will provide Investment Assistance under this subpart for the period of time required to complete the Project's scope of work, as specifically outlined in the applicable FFO.

(b) For a Project of significant Regional or national scope, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

(c) The Investment Rate for Investments under this subpart shall be determined in accordance with § 301.4(b)(3) of this chapter.

(d) At least eighty (80) percent of EDA funding must be allocated to direct costs of program delivery.

§ 306.7 Performance evaluations of University Centers.

(a) EDA will:

(1) Evaluate each University Center within three (3) years after the initial Investment award and at least once every three (3) years thereafter, so long as such University Center continues to receive Investment Assistance; and

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, meeting program performance objectives (as evidenced by retention and creation of employment opportunities) and disseminating Project results in accordance with the scope of work funded during the evaluation period.

(b) The performance evaluation will determine in part whether a University

Center can compete to receive Investment Assistance under the University Center Economic Development Program for the following Investment Assistance cycle.

(c) For peer review, EDA shall ensure the participation of at least one (1) other University Center in the performance evaluation on a cost-reimbursement basis.

PART 307—ECONOMIC ADJUSTMENT ASSISTANCE INVESTMENTS

Subpart A—General

Sec.
307.1 Purpose and scope.
307.2 Criteria.
307.3 Use of Economic Adjustment Assistance Investments.
307.4 Award requirements.
307.5 Application requirements.
307.6 Economic Adjustment Assistance post-approval requirements.

Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds

307.7 Revolving Loan Funds established for business lending.
307.8 Definitions.
307.9 Revolving Loan Fund Plan.
307.10 Pre-loan requirements.
307.11 Addition of lending areas; merger of RLFs.
307.12 Revolving Loan Fund Income.
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307.14 Revolving Loan Fund semi-annual and annual reports.
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307.16 Disbursement of funds to Revolving Loan Funds.
307.17 Effective utilization of Revolving Loan Funds.
307.18 Uses of capital.
307.19 RLF loan portfolio Sales and Securitizations.
307.20 Partial liquidation and liquidation upon termination.
307.21 Termination of Revolving Loan Funds.
307.22 Variances.

Authority: 42 U.S.C. 3211; 42 U.S.C. 3149; 42 U.S.C. 3161; 42 U.S.C. 3162; 42 U.S.C. 3233; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 307.1 Purpose and scope.

(a) The purpose of Economic Adjustment Assistance Investments is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or U.S. Department of Energy defense-related funding reductions;

(2) Federally-Declared Disasters;

(3) International trade;

(4) Long-term economic deterioration;

(5) Loss of a major community employer; or

(6) Loss of manufacturing jobs.

(b) Economic Adjustment Assistance Investments are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help develop and implement a CEDS;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the CEDS;

(4) Enable communities to plan and coordinate the use of federal resources and other resources available to support economic recovery, development of Regional economies, or recovery from natural or other disasters; or

(5) Encourage the development of innovative public and private approaches to economic restructuring and revitalization.

§ 307.2 Criteria.

(a) Economic Adjustment Assistance Investments may be made when the Project funded by the Investment will help the Region meet a Special Need. The Region in which a Project is located must have a CEDS with which the Project is consistent (except that this requirement shall not apply to Strategy Grants described in § 307.3).

(b) Additional criteria or priority consideration factors for Economic Adjustment Assistance may be set forth in an FFO.

§ 307.3 Use of Economic Adjustment Assistance Investments.

Economic Adjustment Assistance Investments may be used to develop a CEDS to alleviate long-term economic deterioration or a sudden and severe economic dislocation (a ''*Strategy Grant*''), or to fund a Project implementing such a CEDS (an ''*Implementation Grant*'').

(a) Strategy Grants support developing, updating or refining a CEDS.

(b) Implementation Grants support the execution of activities identified in a CEDS. Specific activities may be funded as separate Investments or as multiple elements of a single Investment. Examples of Implementation Grant activities include:

(1) Infrastructure improvements, such as site acquisition, site preparation, construction, rehabilitation and equipping of facilities;

(2) Provision of business or infrastructure financing through the capitalization of Recipient-administered Revolving Loan Funds (''*RLFs*''), which may include loans, loan guaranties and interest rate buy-downs to facilitate business lending activities;

(3) Market or industry research and analysis;

(4) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(5) Public services;

(6) Training; and

(7) Other activities justified by the CEDS that satisfy applicable statutory and regulatory requirements.

§ 307.4 Award requirements.

(a) *General.* EDA will select Economic Adjustment Assistance Projects in accordance with part 301 of this chapter and the additional criteria provided in paragraphs (b) and (c) of this section, as applicable.

(b) *Strategy Grants.* EDA will review Strategy Grant proposals to ensure that the proposed activities conform to the CEDS requirements set forth in § 303.7 of this chapter.

(c) *Implementation Grants.*

(1) EDA will review Implementation Grant proposals for the extent to which:

(i) The applicable CEDS meets the requirements in § 303.7 of this chapter; and

(ii) The proposed Project is identified as a necessary element of or consistent with the applicable CEDS.

(2) *Revolving Loan Fund Grants.* For Eligible Applicants seeking to capitalize or recapitalize an RLF, EDA will review the proposals for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and locations described in the CEDS;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending activities, create networks between the business community and other financial providers, and implement the CEDS.

(d) Additional criteria or priority consideration factors for Economic Adjustment Assistance may be set forth in an FFO.

§ 307.5 Application requirements.

(a) Each application for Economic Adjustment Assistance must:

(1) Include or incorporate by reference (if so approved by EDA) a CEDS, except that a CEDS is not required when applying for a Strategy Grant; and

(2) Explain how the proposed Project meets the criteria set forth in § 307.2.

(b) For a technical assistance Project of significant Regional or national scope under this subpart, EDA may waive the requirement set forth in § 301.2(b) of this chapter that the non-profit organization act in cooperation with officials of a political subdivision of a State.

§ 307.6 Economic Adjustment Assistance post-approval requirements.

In addition to the post-approval requirements set forth in § 302.18 of this chapter:

(a) Strategy Grants shall comply with the applicable provisions of part 303 of this chapter;

(b) Implementation Grants involving construction shall comply with the provisions of subpart B of part 305 of this chapter;

(c) Implementation Grants not involving construction shall comply with the applicable provisions of subpart A of part 306 of this chapter; and

(d) RLF Grants shall comply with the requirements set forth in this part and in the following publications:

(1) EDA's RLF Standard Terms and Conditions and

(2) The Compliance Supplement to OMB Circular A–133 (the ''*Compliance Supplement*''). The Compliance Supplement is available via the Internet at *http://www.omb.gov.*

Subpart B—Special Requirements for Revolving Loan Funds and Use of Grant Funds

§ 307.7 Revolving Loan Funds established for business lending.

Economic Adjustment Assistance Grants to capitalize or recapitalize RLFs most commonly fund business lending, but may also fund public infrastructure or other authorized lending activities. The requirements in this subpart B apply to RLFs established for business lending activities. Special award conditions may contain appropriate modifications of these requirements to accommodate non-business RLF awards.

§ 307.8 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Closed Loan means any loan for which all required documentation has been, received, reviewed and executed by an RLF Recipient.

Exempt Security means a Security that is not subject to certain SEC or Federal Reserve Board rules.

Guaranteed Loan means a loan made and serviced by a third party lending institution under a loan guaranty agreement providing that an RLF Recipient will purchase the guaranteed portion of the loan in the event of borrower default.

Prudent Lending Practices means generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect federal and lender interests. Prudent Lending Practices include loan processing, documentation, loan approval, collections, servicing, administrative procedures, collateral protection and recovery actions. Prudent Lending Practices provide for compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

Recapitalization Grants are Investments of additional Grant funds to increase the capital base of an RLF.

Revolving Phase means that stage of the RLF's business lending activities that commences immediately after all Grant funds have been disbursed to the RLF Recipient.

RLF Capital means, at any point in time, the aggregate amount of cash held by the RLF Recipient from any of the following sources: Grant funds; Local Share; repayments of principal from RLF loans; and RLF Income. The initial RLF capital base is normally comprised of EDA funds and the cash Local Share.

RLF Income means interest earned on outstanding loan principal and RLF accounts holding RLF funds (excluding interest earned on excess funds pursuant to § 307.17(c)(2)), all fees and charges received by the RLF, and other income generated from RLF operations. An RLF Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Grant agreement or approved in writing by EDA. RLF Income excludes repayments of principal and any interest remitted to the U.S. Treasury pursuant to § 307.17(c)(2)(i).

RLF Third Party for purposes of this subpart B only, means an Eligible Recipient or for-profit entity selected by EDA through a request for proposals or Cooperative Agreement to facilitate and/or manage the intended liquidation of an RLF.

Sale means an EDA-approved sale by an RLF Recipient of its RLF loan portfolio (or a portion thereof) to a third party. A third party may participate in a subsequent Securitization offered in a secondary market transaction and collateralized by the underlying RLF loan portfolio (or a portion thereof).

SEC or the *Commission* means the U.S. Securities and Exchange Commission.

Securitization refers to the financing technique of securing an investment of new capital with a stream of income generated by aggregating similar instruments such as loans or mortgages into a new transferable Security.

Security means any investment instrument issued by a corporation, government or other organization which offers evidence of debt or equity.

§ 307.9 Revolving Loan Fund Plan.

All RLF Recipients shall manage RLFs in accordance with an RLF plan (the ''*RLF Plan*'' or ''*Plan*'') as described in this section. The Plan shall be submitted to and approved by EDA and passed by resolution of the RLF Recipient's governing board prior to initial disbursement of EDA funds.

(a) *Format and content.*

(1) Part I of the Plan titled ''Revolving Loan Fund Strategy'' shall summarize the CEDS and business development objectives and shall describe the RLF's financing strategy, policy and portfolio standards.

(2) Part II of the Plan titled ''Operational Procedures'' shall serve as the internal operating manual for the RLF Recipient. The administrative procedures for operating the RLF must be consistent with Prudent Lending Practices.

(b) *Evaluation of RLF Plans.* EDA will use the following criteria in evaluating Plans:

(1) The Plan must be consistent with the CEDS or EDA-approved strategy for the Region;

(2) The Plan must identify the strategic purpose of the RLF and must describe the selection of the financing strategy and lending criteria, including:

(i) An analysis of the local capital market and the financing needs of the targeted businesses; and

(ii) Financing policies and portfolio standards that are consistent with EDA policies and requirements; and

(3) The Plan must demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursements, collections, monitoring, and foreclosures. It shall also provide sufficient administrative procedures to prevent conflicts of interest and to ensure accountability, safeguarding of assets and compliance with federal and local laws.

(c) *Modification of RLF Plans.* An RLF Recipient must request and obtain EDA approval prior to any modification of the Plan.

§ 307.10 Pre-loan requirements.

(a) RLF Recipients must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The Plan must provide for compliance with applicable environmental laws and other regulations, including but not limited to parts 302 and 314 of this chapter. The RLF Recipient must also adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations.

(b) RLF Recipients must ensure that prospective borrowers, consultants, or contractors are aware of and comply with the federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements shall include applicable federal requirements to ensure compliance and RLF Recipients must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

(c) All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an RLF Grant to assist directly or indirectly in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the RLF Recipient or any of its borrowers, predecessors or successors.

§ 307.11 Addition of lending areas; merger of RLFs.

(a)(1) *Addition of lending areas.* An RLF Recipient shall make loans to implement and assist economic activity only within its EDA-approved lending area, as set forth and defined in the RLF Grant and the Plan. An RLF Recipient may add an additional lending area (an ''*Additional Lending Area*'') to its existing lending area to create a new merged lending area (the ''*New Lending Area*'') only with EDA's prior written approval and subject to the following provisions and conditions:

(i) EDA shall have disbursed the full amount of its Investment Assistance to the RLF Recipient;

(ii) The Additional Lending Area must fulfill the economic distress criteria for Economic Adjustment Investments under this part and in accordance with § 301.3(a) of this chapter;

(iii) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) The RLF Recipient must demonstrate that the Additional Lending Area is consistent with its CEDS, or modify its CEDS for any such Additional Lending Area, in accordance with § 307.9(b)(1);

(v) The RLF Recipient shall modify its Plan to incorporate the Additional Lending Area and revise its lending strategy, as necessary;

(vi) The RLF Recipient shall execute an amended RLF Grant award agreement, as necessary; and

(vii) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) The New Lending Area designation shall remain in place indefinitely following EDA approval.

(b) *Merger of RLFs.* (1) *Single RLF Recipient.* An RLF Recipient with more than one (1) EDA-funded RLF Grant may consolidate two (2) or more EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval and provided:

(i) It meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 307.14 of this chapter;

(ii) It demonstrates a rational basis for undertaking the merger (for example, the lending area(s) and borrower criteria identified in different RLF Plans are compatible, or will be compatible, for all RLFs to be consolidated);

(iii) It amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iv) Prior to EDA's disbursement of additional funds to the RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter; and

(v) The RLF Recipient fulfills any other conditions reasonably requested by EDA.

(2) *Multiple RLF Recipients.* Two (2) or more RLF Recipients may consolidate their EDA-funded RLFs into one (1) surviving RLF with EDA's prior written approval and provided:

(i) The surviving RLF Recipient meets the requirements to obtain annual report status identified in paragraphs (a)(2) through (a)(4) of § 307.14 of this chapter;

(ii) The surviving RLF Recipient amends and consolidates its Plan to account for the merger of RLFs, including items such as the New Lending Area (including any Additional Lending Area(s)), its lending strategy and borrower criteria;

(iii) Prior to EDA's disbursement of additional funds to the surviving RLF Recipient (for example, through a recapitalization), EDA shall determine a new Investment Rate for the New Lending Area based on the criteria set forth in § 301.4 of this chapter;

(iv) EDA must provide written approval of the merger agreement(s), modifications and revisions to the Plans and any other related amendments thereto;

(v) All applicable RLF Grant assets of the discharging RLF Recipient(s) transfer to the surviving RLF Recipient as of the merger's effective date; and

(vi) The surviving RLF Recipient becomes fully responsible for administration of the RLF Grant assets transferred and fulfills all surviving RLF Grant requirements and any other conditions reasonably requested by EDA.

§ 307.12 Revolving Loan Fund Income.

(a) *General requirements.* RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF's operations. RLF Income may fund administrative costs, provided:

(1) Such RLF Income and the administrative costs are incurred in the same twelve-month (12) reporting period;

(2) RLF Income that is not used for administrative costs during the twelve-month (12) reporting period is made available for lending activities;

(3) RLF Income shall not be withdrawn from the RLF Capital base in a subsequent reporting period for any purpose other than lending without the prior written consent of EDA; and

(4) The RLF Recipient completes an RLF Income and Expense Statement (the ''*Income and Expense Statement*'') as required under § 307.14(c).

(b) *Compliance guidelines.* When charging costs against RLF Income, RLF Recipients must comply with:

(1) Applicable OMB cost principles and RLF Audit Guidelines (as found in OMB Circular A–87 for State, Local, and Indian Tribal Governments, OMB Circular A–122 for non-profit organizations other than institutions of higher education, hospitals or organizations named in OMB Circular A–122 as not subject to such circular,

and OMB Circular A–21 for educational institutions) and

(2) The OMB Circular A–133 for Single Audit Act Requirements for State, Local Governments, and Non-Profit Organizations, and the Compliance Supplement, as appropriate.

(c) *Priority of payments on defaulted RLF loans.* When an RLF Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to § 307.20, such proceeds shall be applied in the following order of priority:

(1) First, towards any costs of collection;

(2) Second, towards outstanding penalties and fees;

(3) Third, towards any accrued interest to the extent due and payable; and

(4) Fourth, towards any outstanding principal balance.

§ 307.13 Records and retention.

(a) *Closed Loan files and related documents.* The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-year (3) period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the Closed Loan have occurred.

(b) *Administrative records.* RLF Recipients must at all times:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual or annual report that covers the period that such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less.

(3) Make available for inspection retained records, including those retained for longer than the required period. The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

§ 307.14 Revolving Loan Fund semi-annual and annual reports.

(a) *Frequency of reports.* All RLF Recipients, including those receiving Recapitalization Grants for existing RLFs, must submit semi-annual reports. EDA may approve the substitution of annual reports for semi-annual reports upon written request by the Recipient if the following conditions have been met:

(1) At least one (1) year has passed from the date that the RLF has loaned an aggregate amount equal to its initial RLF Capital base;

(2) The RLF Recipient has timely submitted accurate semi-annual reports for the preceding two (2) years;

(3) The RLF Recipient has ensured completion and submission to EDA of required periodic audits for the most recent audit period within the preceding two (2) years; and

(4) EDA determines that the RLF is in compliance with all applicable RLF requirements.

(b) *Report contents.* RLF Recipients must certify as part of the semi-annual or annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. RLF Recipients must also describe (and propose pursuant to § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool.

(c) *RLF Income and Expense Statement.*

(1) An RLF Recipient using either fifty (50) percent or more (or more than $100,000) of RLF Income for administrative costs in the twelve-month (12) reporting period must submit a completed Income and Expense Statement annually to the appropriate regional office within ninety (90) days of the end of its fiscal year. An RLF Recipient using less than fifty (50) percent and less than $100,000 of RLF Income for administrative costs in the twelve-month (12) reporting period must prepare and retain for four (4) years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request.

(2) *Performance measures.* As part of the semi-annual or annual report, RLF Recipients shall submit to EDA the information identified as the ''Core Performance Measures'' in the special award conditions of the Grant documents. EDA will advise RLF Recipients within a reasonable time of any required modifications to the information submitted.

§ 307.15 Prudent management of Revolving Loan Funds.

(a) *Accounting principles.* (1) RLFs shall operate in accordance with generally accepted accounting principles (''GAAP'') as in effect from time to time in the United States and the provisions outlined in the OMB Circular A–133 and the Compliance Supplement, as applicable.

(2) In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient's financial statements to show the fair market value of an RLF's loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries.

(b) *Loan and accounting system documents.*

(1) Within sixty (60) days prior to the initial disbursement of EDA funds, an independent accountant familiar with the RLF Recipient's accounting system shall certify to EDA and the RLF Recipient that such system is adequate to identify, safeguard and account for all RLF Capital, outstanding RLF loans and other RLF operations.

(2) Prior to the disbursement of any EDA funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Grant and applicable State and local law. The standard loan documents must include, at a minimum, the following:

(i) Loan application;

(ii) Loan agreement;

(iii) Promissory note;

(iv) Security agreement(s);

(v) Deed of trust or mortgage (as applicable);

(vi) Agreement of prior lien holder (as applicable); and

(vii) Guaranty agreement (as applicable).

(c) *Interest rates.* An RLF Recipient may make loans and may guarantee loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the lesser of the current money center prime interest rate quoted in the *Wall Street Journal*, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than four (4) percent. However, should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so

compromises the ability of the RLF Recipient to implement its financing strategy.

(d) *Private leveraging.* (1) RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months prior to approval of an RLF loan, as part of the same business development Project, and may include:

(i) Capital invested by the borrower or others;

(ii) Financing from private entities; or

(iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

(2) Private investments shall not include accrued equity in a borrower's assets.

§ 307.16 Disbursement of funds to Revolving Loan Funds.

(a) *Pre-disbursement requirements.* Prior to any disbursement of EDA funds, RLF Recipients are required to provide in a form acceptable to EDA:

(1) Evidence of fidelity bond coverage for persons authorized to handle funds under the Grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the duration of the RLF's operation; and

(2) Evidence of certification in accordance with § 307.15(b)(1).

(b) *Timing of request for disbursements.* An RLF Recipient shall request disbursements of Grant funds only to close a loan or disburse RLF funds to a borrower. The RLF Recipient must disburse the RLF funds to a borrower within thirty (30) days of receipt of the Grant funds. Any Grant funds not disbursed within the thirty (30) day period shall be refunded to EDA pursuant to paragraph (e) of this section.

(c) *Amount of disbursement.* The amount of a disbursement of Grant funds shall not exceed the difference, if any, between the RLF Capital and the amount of a new RLF loan, less the amount, if any, of the Local Share required to be disbursed concurrent with the Grant funds. However, RLF Income held to reimburse eligible administrative costs need not be disbursed in order to draw additional Grant funds.

(d) *EDA funds account.* The RLF Recipient shall establish and maintain an interest-bearing account designated as the ''EDA funds account,'' indicating that monies deposited therein are held for funding approved Closed Loans. The RLF Recipient shall withdraw funds or order a transfer from the EDA funds account for lending to eligible borrowers or return of funds to EDA.

(e) *Delays.* If the RLF Recipient receives Grant funds and the RLF loan disbursement is subsequently delayed beyond thirty (30) days, the RLF Recipient must notify the applicable grants officer and return such non-disbursed funds to EDA. Grant funds returned to EDA shall be available to the RLF Recipient for future draw-downs. When returning prematurely drawn Grant funds, the RLF Recipient must clearly identify on the face of the check or in the written notification to the applicable grants officer ''EDA,'' the Grant award number, the words ''Premature Draw,'' and a brief description of the reason for returning the Grant funds.

(f) *Local share.* (1) Cash Local Share of the RLF may only be used for lending purposes. The cash Local Share must be used either in proportion to the Grant funds or at a faster rate than the Grant funds.

(2) When an RLF has a combination of In-Kind Contributions and cash Local Share, the cash Local Share and the Grant funds will be disbursed proportionately as needed for lending activities, provided that the last twenty (20) percent of the Grant funds may not be disbursed until all cash Local Share has been expended. The full amount of the cash Local Share shall remain for use in the RLF.

§ 307.17 Effective utilization of Revolving Loan Funds.

(a) *Loan closing and disbursement schedule.* (1) RLF loan activity must be sufficient to draw down Grant funds in accordance with the schedule prescribed in the award conditions for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires that the RLF Recipient lend the entire amount of the initial RLF Capital base within three (3) years of the Grant award.

(2) If an RLF Recipient fails to meet the prescribed lending schedule, EDA may de-obligate the non-disbursed balance of the RLF Grant. EDA may allow exceptions where:

(i) Closed Loans approved prior to the schedule deadline will commence and complete disbursements within forty-five (45) days of the deadline;

(ii) Closed Loans have commenced (but not completed) disbursement obligations prior to the deadline; or

(iii) EDA has approved a time schedule extension pursuant to § 307.17(b).

(b) *Time schedule extensions.* (1) RLF Recipients shall promptly inform EDA in writing of any condition that may adversely affect their ability to meet the prescribed schedule deadlines. RLF Recipients must submit a written request to EDA for continued use of Grant funds beyond a missed deadline for disbursement of RLF funds. RLF Recipients must provide good reason for the delay in their extension requests and must demonstrate that:

(i) The delay was unforeseen or beyond the control of the RLF Recipient;

(ii) The financial need for the RLF still exists;

(iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and

(iv) The proposal of a revised time schedule is reasonable. An extension request must also provide an explanation as to why no further delays are anticipated.

(2) EDA is under no obligation to grant a time extension and in the event an extension is denied, EDA may deobligate all or part of the unused Grant funds and terminate the Grant.

(c) *Capital utilization standard.* (1) During the Revolving Phase, RLF Recipients must manage their repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. The following exceptions apply:

(i) An RLF Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and

(ii) EDA may require an RLF Recipient with an RLF Capital base in excess of $4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

(2) When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned and the applicable capital utilization percentage is referred to as ''excess funds.''

(i) *Sequestration of excess funds.* If the RLF Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA may require the RLF Recipient to deposit excess funds in an interest-bearing account separate from the EDA funds account. The

portion of interest earned on the account holding excess funds attributable to the RLF Grant shall be remitted to the U.S. Treasury. RLF Recipients must obtain EDA's written authorization to withdraw any sequestered funds.

(ii) *Persistent non-compliance.* An RLF Recipient will generally be allowed a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if an RLF Recipient fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

§ 307.18 Uses of capital.

(a) *General.* RLF Capital shall be used for the purpose of making RLF loans that are consistent with an RLF Plan or such other purposes approved by EDA. To ensure that RLF funds are used as intended, each loan agreement must clearly state the purpose of each loan.

(b) *Restrictions on use of RLF Capital.* RLF Capital shall not be used to:

(1) Acquire an equity position in a private business;

(2) Subsidize interest payments on an existing RLF loan;

(3) Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;

(4) Enable borrowers to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;

(5) Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investment unrelated to the RLF; or

(6) Refinance existing debt, unless:

(i) The RLF Recipient sufficiently demonstrates in the loan documentation a ''*sound economic justification*'' for the refinancing (*e.g.*, the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or

(ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing;

(c) *Credit not otherwise available.* RLF Recipients must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

(d) *Use of In-Kind Contributions.* In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the terms and provisions of the RLF Grant and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs.

(e) *Loan guaranty agreements.* Prior to the full disbursement of Grant funds, the RLF Recipient shall not use RLF Capital to guarantee loans made by other lending institutions. After the full disbursement of Grant funds, RLF Capital may be used to guarantee loans of private lenders, provided the RLF Recipient has obtained prior written approval from EDA of its proposed loan guaranty activities and submitted to EDA:

(1) The maximum guaranty percentage offered by the RLF Recipient and accepted by the lender;

(2) The loan guaranty agreement which must (at a minimum) document:

(i) The RLF Recipient's maximum liability;

(ii) The respective rights, representations and obligations of the RLF Recipient and lender with regard to collection procedures, servicing requirements, borrower delinquency, events of defaults and termination of the loan guaranty agreement;

(iii) The responsible party's obligations in the event of any foreclosure, bankruptcy or insolvency proceeding;

(iv) The responsible party's obligations with respect to collateral disposition and the call provisions for the Guaranteed Loan; and

(v) The distribution of interest income and loan fees, if any, to the RLF; and

(3) Certification from the RLF Recipient's legal counsel that the loan guaranty agreement is valid and enforceable under applicable State law; and

(4) An amended RLF Plan accommodating the loan guaranty activities approved by EDA (as necessary).

§ 307.19 RLF loan portfolio Sales and Securitizations.

EDA may take such actions as appropriate to enable an RLF Recipient to sell or securitize RLF loans, except that EDA may not issue a federal guaranty covering any issued Security. With prior approval from EDA, an RLF Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided:

(a) An RLF Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans;

(b) An RLF Recipient must request EDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized;

(c) No Security collateralized by RLF loans and other RLF property and offered in a secondary market transaction pursuant to a Securitization shall be treated as an Exempt Security for purposes of the Securities Act of 1933, as amended (15 U.S.C. 77a *et seq.*), or the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a *et seq.*) (the ''Exchange Act''), unless exempted by a rule or regulation issued by the Commission; and

(d) Except as provided in paragraph (c), no provision of this section supersedes or otherwise affects the application of the ''securities laws'' (as such term is defined in Section 3(a)(47) of the Exchange Act) or the rules, regulations or orders issued by the Commission or a self-regulatory organization under the Commission.

§ 307.20 Partial liquidation and liquidation upon termination.

(a) *Partial liquidation.* EDA may require an RLF Recipient to transfer any RLF loans that are more than one hundred and twenty (120) days delinquent to an RLF Third Party for liquidation.

(b) *Liquidation upon termination.* When EDA approves the termination of an RLF Grant, EDA may assign or transfer assets of the RLF to an RLF Third Party for liquidation.

(c) *Terms.* The following terms will govern any liquidation:

(1) EDA shall have sole discretion in choosing the RLF Third Party;

(2) The RLF Third Party may be an Eligible Applicant or a for-profit organization not otherwise eligible for Investment Assistance;

(3) EDA may enter into an agreement with the RLF Third Party to liquidate

the assets of one (1) or more RLFs or RLF Recipients;

(4) EDA may allow the RLF Third Party to retain a portion of the RLF assets, consistent with the agreement referenced in paragraph (c)(3) of this section, as reasonable compensation for services rendered in the liquidation; and

(5) EDA may require additional reasonable terms and conditions.

(d) *Distribution of proceeds.* The proceeds resulting from any liquidation upon termination shall be distributed in the following order of priority:

(1) *First,* for any third party liquidation costs;

(2) *Second,* for the payment of EDA's Federal Share (as defined in § 314.5 of this chapter); and

(3) *Third,* if any proceeds remain, to the RLF Recipient.

§ 307.21 Termination of Revolving Loan Funds.

(a) EDA may suspend or terminate an RLF Grant for cause, including but not limited to the following reasons:

(1) Failure to operate the RLF in accordance with the Plan, the RLF Grant or this part;

(2) Failure to obtain prior EDA approval for material changes to the Plan, including provisions for administering the RLF;

(3) Failure to submit timely progress, financial and audit reports as required by the RLF Grant and § 307.14; and

(4) Failure to comply with the conflicts of interest provisions set forth in § 302.17.

(b) EDA may approve a request from an RLF Recipient to terminate an RLF Grant. The RLF Recipient must compensate the Federal government for the Federal Share of the RLF property, including the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the RLF Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income.

(c) Upon termination, distribution of proceeds shall occur in accordance with § 307.20(d).

§ 307.22 Variances.

EDA may approve variances to the requirements contained in this subpart, provided such variances:

(a) Are consistent with the goals of the Economic Adjustment Assistance program and with an RLF Plan;

(b) Are necessary and reasonable for the effective implementation of the RLF;

(c) Are economically and financially sound; and

(d) Do not conflict with any applicable legal requirements, including federal, State and local law.

PART 308—PERFORMANCE INCENTIVES

Sec.

308.1 Use of funds in Projects constructed under projected cost.
308.2 Performance awards.
308.3 Planning performance awards.

Authority: 42 U.S.C. 3151; 42 U.S.C. 3154a; 42 U.S.C. 3154b; Department of Commerce Delegation Order 10–4.

§ 308.1 Use of funds in Projects constructed under projected cost.

(a) If the Assistant Secretary determines before closeout of a construction Project funded under parts 305 or 307 of this chapter that the cost of the Project, based on the designs and specifications that were the basis of the Investment Assistance, has decreased because of a decrease in costs, EDA may in its discretion approve the use of the excess funds (or a portion of the excess funds) by the Recipient to:

(1) Increase the Investment Rate of the Project to the maximum percentage allowable under § 301.4 of this chapter for which the Project was eligible at the time of the Investment award; or

(2) Further improve the Project consistent with its purpose.

(b) EDA, in its sole discretion, may use any amount of excess funds remaining after application of paragraph (a) of this section for other eligible Investments.

(c) In the case of Projects involving funds transferred from other Federal Agencies, EDA will consult with the transferring Agency regarding the use of any excess funds.

§ 308.2 Performance awards.

(a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance under parts 305 or 307 of this chapter that is awarded on or after the date of enactment of Section 215 of PWEDA may receive a performance award no later than three (3) years following the Project's closeout in an amount not to exceed ten (10) percent of the Project's Investment award.

(b) To qualify for a performance award, a Recipient must demonstrate exceptional Project performance in one (1) or more of the areas listed in this paragraph (b), weighted at the discretion of the Assistant Secretary:

(1) Meet or exceed the Recipient's projection of jobs created;

(2) Meet or exceed the Recipient's projection of private sector capital invested;

(3) Meet or exceed target dates for Project start and completion stated at the time of Investment approval;

(4) Demonstrate exceptional fulfillment of the proposal evaluation criteria set forth in § 301.8 of this chapter; or

(5) Demonstrate other unique Project performance characteristics as determined by the Assistant Secretary.

(c) A performance award may fund up to one hundred (100) percent of the cost of an eligible Project or any other authorized activity under PWEDA. For the purpose of meeting the non-federal share requirement of PWEDA or any other statute, the amount of a performance award shall be treated as non-federal funds.

(d) The applicable FFO may set forth additional requirements, qualifications and guidelines for performance awards.

§ 308.3 Planning performance awards.

(a) At the discretion of the Assistant Secretary, a Recipient of Investment Assistance awarded on or after the date of enactment of Section 216 of PWEDA located in an EDA-funded Economic Development District may receive a planning performance award in an amount not to exceed five (5) percent of the amount of the applicable Investment award if EDA determines no later than three (3) years following closeout of the Project that:

(1) The Recipient, through the Project, actively participated in the economic development activities of the District;

(2) The Project demonstrated exceptional fulfillment of one (1) or more components of, and is otherwise in accordance with, the applicable CEDS, including any job creation or job retention requirements; and

(3) The Recipient demonstrated exceptional collaboration with federal, State and local economic development entities throughout the development of the Project.

(b) The Recipient shall use the planning performance award to increase, up to one hundred (100) percent, the federal share of the cost of a Project under this chapter.

(c) The applicable FFO may set forth additional requirements, qualifications and guidelines for planning performance awards.

PART 309—REDISTRIBUTIONS OF INVESTMENT ASSISTANCE

Sec.

309.1 Redistributions under parts 303, 305 and 306.
309.2 Redistributions under part 307.

Authority: 42 U.S.C. 3154c; 42 U.S.C 3211; Department of Commerce Delegation Order 10–4.

§ 309.1 Redistributions under parts 303, 305 and 306.

(a) *General.* Except as provided by paragraph (b) of this section, a Recipient of Investment Assistance under parts 303, 305 or 306 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of a subgrant to another Eligible Recipient that qualifies for Investment Assistance under the same part of this chapter as the Recipient, to fund required components of the scope of work approved for the Project. All subgrants made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

(b) *Exception.* A Recipient may not make a subgrant of Investment Assistance received under parts 303 or 305 of this chapter to a for-profit entity.

§ 309.2 Redistributions under part 307.

(a) A Recipient of Investment Assistance under part 307 of this chapter may directly expend such Investment Assistance or, with prior EDA approval, may redistribute such Investment Assistance in the form of:

(1) A subgrant to another Eligible Recipient that qualifies for Investment Assistance under part 307 of this chapter; or

(2) Pursuant to part 307, subpart B, a loan or other appropriate assistance to non-profit and private for-profit entities.

(b) All redistributions of Investment Assistance made pursuant to this section shall be subject to the same terms and conditions applicable to the Recipient under the original Investment Assistance award and must satisfy the requirements of PWEDA and of this chapter.

PART 310—SPECIAL IMPACT AREAS

Sec.

310.1 Special Impact Area.
310.2 Pressing need; alleviation of unemployment or underemployment.

Authority: 42 U.S.C. 3154; Department of Commerce Organization Order 10–4.

§ 310.1 Special Impact Area.

Upon the application of an Eligible Recipient, and with respect to that Eligible Recipient's Project only, the Assistant Secretary may designate the Region which the Project will serve as a Special Impact Area if the Eligible Recipient demonstrates that its proposed Project will:

(a) Directly fulfill a pressing need and

(b) Be useful in alleviating or preventing conditions of excessive unemployment or underemployment, or assist in providing useful employment opportunities for the unemployed or underemployed residents of the Region.

§ 310.2 Pressing need; alleviation of unemployment or underemployment.

(a) The Assistant Secretary may find a pressing need to exist if the Region which the Project will serve:

(1) Has a unique or urgent circumstance that would necessitate waiver of the CEDS requirements of § 303.7 of this chapter;

(2) Involves a Project undertaken by an Indian Tribe;

(3) Is rural and severely distressed;

(4) Is undergoing a transition in its economic base as a result of changing trade patterns (*e.g.*, the Region is certified as eligible by the North American Development Bank Program or the Community Adjustment and Investment Program);

(5) Exhibits a substantial reliance on a natural resource for its economic well-being;

(6) Has been designated as a Federally-Declared Disaster area; or

(7) Has a Special Need.

(b) For purposes of this part, excessive unemployment exists if the twenty-four (24) month unemployment rate is at least 225% of the national average or the per capita income is not more than 50% of the national average. A Region demonstrates excessive underemployment if the employment of a substantial percentage of workers in the Region is less than full-time or at less skilled tasks than their training or abilities would otherwise permit. Eligible Recipients seeking a Special Impact Area designation under this criterion must present appropriate and compelling economic and demographic data.

(c) Eligible Recipients may demonstrate the provision of useful employment opportunities by quantifying and evidencing the Project's prospective:

(1) Creation of jobs;

(2) Commitment of financial investment by private entities; or

(3) Application of innovative technology that will lead to the creation of jobs or the commitment of financial investment by private entities.

PART 311—[RESERVED]

PART 312—[RESERVED]

PART 313—[RESERVED]

PART 314—PROPERTY

Subpart A—General

Sec.

314.1 Definitions.
314.2 Federal interest.
314.3 Authorized use of Property.
314.4 Unauthorized use of Property.
314.5 Federal Share.
314.6 Encumbrances.

Subpart B—Real Property

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Subpart C—Personal Property

314.9 Recorded statement—Title.

Subpart D—Release of EDA's Property Interest

314.10 Procedures for release of EDA's Property interest.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 314.1 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms shall have the following meanings:

Adequate Consideration means the fair market value at the time of sale or lease of any Property, as adjusted, in EDA's sole discretion, by any services, property exchanges, contractual commitments, acts of forbearance or other considerations that are in furtherance of the authorized purposes of the Investment Assistance, which are received by the Recipient or Owner in exchange for such Property.

Disposition or *Dispose* means the sale, lease, abandonment or other disposition of any Property and also includes the Unauthorized Use of such Property.

Encumbrance or *Encumber* have the meaning ascribed to them in § 314.6.

Estimated Useful Life means the period of years, as determined by EDA, that constitutes the expected useful lifespan of a Project.

Federal Interest has the definition ascribed to it in § 314.2(a).

Federal Share has the definition ascribed to it in § 314.5.

Owner means a fee owner, transferee, lessee or optionee of any Property. The term Owner also includes the holder of other interests in a Property where the interests are such that the holder effectively controls the use of such Property.

Personal Property means all tangible and intangible property other than Real Property.

Property means Real Property, Personal Property and mixed property.

Real Property means any land, whether raw or improved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment. Real Property includes land that is improved by the construction of Project infrastructure such as, but not limited to, roads, sewers and water lines that are not situated on or under the land, where the infrastructure contributes to the value of such land as a specific purpose of the Project.

Successor Recipient means an EDA-approved transferee of Property pursuant to § 314.3(d). A Successor Recipient must be an Eligible Recipient of Investment Assistance.

Unauthorized Use means any use of Property acquired or improved in whole or in part for purposes not authorized by EDA Investment Assistance, PWEDA or this chapter, as set forth in § 314.4.

§ 314.2 Federal interest.

(a) Property that is acquired or improved, in whole or in part, with Investment Assistance shall be held in trust by the Recipient for the benefit of the Project for the Estimated Useful Life of the Project, during which period EDA retains an undivided equitable reversionary interest in the Property (the ''*Federal Interest*''). The Federal Interest secures compliance with matters such as the purpose, scope and use of a Project and is often reflected by a recorded lien, statement or other recordable instrument setting forth EDA's Property interest in a Project (*e.g.*, a mortgage, covenant, or other statement of EDA's Real Property interest in the case of a Project involving the acquisition, construction or improvement of a building. *See* § 314.8.)

(b) When the Federal government is fully compensated for the Federal Share of Property acquired or improved, in whole or in part, with Investment Assistance, the Federal Interest is extinguished and the Federal government has no further interest in the Property.

§ 314.3 Authorized use of Property.

(a) The Recipient or Owner must use any Property acquired or improved in whole or in part with Investment Assistance only for the authorized purpose of the Project and such Property must not be Disposed of or Encumbered without EDA's prior written authorization.

(b) Where EDA and the Recipient determine that Property acquired or improved in whole or in part with Investment Assistance is no longer needed for the original purpose of the Investment Assistance, EDA, in its sole discretion, may approve the use of such Property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and by this chapter.

(c) Where EDA determines that the authorized purpose of the Investment Assistance is to develop Real Property to be leased or sold, such sale or lease is permitted provided it is for Adequate Consideration and the sale is consistent with the authorized purpose of the Investment Assistance and with all applicable Investment Assistance requirements including but not limited to nondiscrimination and environmental compliance.

(d) EDA, in its sole discretion, may approve the transfer of any Property from a Recipient to a Successor Recipient (or from one Successor Recipient to another Successor Recipient). The Recipient will remain responsible for complying with the rules of this part and the terms and conditions of the Investment Assistance for the period in which it is the Recipient. Thereafter, the Successor Recipient must comply with the rules of this part and with the same terms and conditions as were applicable to the Recipient (unless such terms and conditions are otherwise amended by EDA). The same rules apply to EDA-approved transfers of Property between Successor Recipients.

(e) When acquiring replacement Personal Property of equal or greater value than Personal Property originally acquired with Investment Assistance, the Recipient may, with EDA's approval, trade in such Personal Property originally acquired or sell the original Personal Property and use the proceeds for the acquisition of the replacement Personal Property; provided that the replacement Personal Property is for use in a Project. The replacement Personal Property is subject to the same requirements as the original Personal Property. In extraordinary and compelling circumstances, the Assistant Secretary may approve the replacement of Real Property used in a Project.

(f) With EDA's prior written approval, a Recipient may undertake an incidental use of Property that does not interfere with the scope of the Project or the economic purpose for which the Investment was made, provided that the Recipient is in compliance with applicable law and the terms and conditions of the Investment Assistance, and the incidental use of the Property will not violate the terms and conditions of the Investment Assistance or otherwise adversely affect the economic useful life of the Property. Eligible Applicants and Recipients should contact the appropriate regional office (whose contact information is available via the Internet at *www.eda.gov*) for guidelines on obtaining approval for incidental use of Property under this section.

§ 314.4 Unauthorized use of Property.

(a) Except as provided in §§ 314.3 (regarding the authorized use of Property) or 314.10 (regarding the release of EDA's interest in certain Property), or as otherwise authorized by EDA, the Federal government must be compensated by the Recipient for the Federal Share whenever, during the Estimated Useful Life of the Project, any Property acquired or improved in whole or in part with Investment Assistance is Disposed of, Encumbered, or no longer used for the purpose of the Project; provided that for equipment and supplies, the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24, including any supplements or amendments thereto, shall apply.

(b) Additionally, prior to the release of EDA's interest, Real Property or tangible Personal Property acquired or improved with EDA Investment Assistance may not be used:

(1) In violation of the nondiscrimination requirements of § 302.20 of this chapter or in violation of the terms and conditions of the Investment Assistance; or

(2) For any purpose prohibited by applicable law.

(c) Where the Disposition, Encumbrance or use of any Property violates paragraphs (a) or (b) of this section, EDA may assert its interest in the Property to recover the Federal Share for the Federal government and may take such actions as authorized by PWEDA and this chapter, including but not limited to the actions provided in §§ 302.3 and 307.21 of this chapter. EDA may pursue its rights under both paragraph (a) of this section and this paragraph (c) to recover the Federal Share, plus costs and interest.

§ 314.5 Federal Share.

For purposes of this part, ''Federal Share'' means that portion of the current fair market value of any Property (after deducting actual and reasonable selling and repair expenses, if any, incurred to put the Property into marketable condition) attributable to EDA's participation in the Project. The Federal Share excludes that portion of the

current fair market value of the Property attributable to acquisition or improvements before or after EDA's participation in the Project, which are not included in the total Project costs. For example, if the total Project costs are $100, consisting of $50 of Investment Assistance and $50 of Matching Share, the Federal Share is fifty (50) percent. If the Property is disposed of when its current fair market is $250, the Federal Share is $125 (*i.e.*, fifty (50) percent of $250). If $10 is spent to put the Property into salable condition, the Federal Share is $120 (*i.e.*, fifty (50) percent of ($250-$10)).

§ 314.6 Encumbrances.

(a) *General.* Except as provided in paragraph (b) of this section or as otherwise authorized by EDA, Recipient-owned Property acquired or improved in whole or in part with Investment Assistance must not be used to secure a mortgage or deed of trust or in any way collateralized or otherwise encumbered (collectively, an ''Encumbrance'' or to ''Encumber''). An Encumbrance includes but is not limited to easements, rights-of-way or other restrictions on the use of any Property.

(b) *Exceptions.* Subject to EDA's approval, which will not be unreasonably withheld or unduly delayed, paragraph (a) of this section does not apply to:

(1) The use of Recipient-owned Property to secure a grant or loan made by a federal or State agency or other public body participating in the same Project;

(2) Recipient-owned Property that is subject to an Encumbrance at the time EDA approves the Project, where EDA determines that the requirements of § 314.7(b) are met;

(3) Encumbrances arising solely from the requirements of a pre-existing water or sewer facility or other utility Encumbrances, which by their terms extend to additional Property connected to such facilities; and

(4) Encumbrances in cases where all of the following are met:

(i) EDA, in its sole discretion, determines that there is good cause for a waiver of paragraph (a) of this section;

(ii) All proceeds secured by the Encumbrance on the Property shall be available only to the Recipient and shall be used only for the Project for which the Investment Assistance applies or for related activities of which the Project is an essential part;

(iii) A grantor/lender will not provide funds without the security of a lien on the Property; and

(iv) There is a reasonable expectation, as determined by EDA, that the Recipient will not default on its obligations.

(c) Encumbering Recipient-owned Property, other than as permitted in this section, is an Unauthorized Use of the Property under § 314.4.

Subpart B—Real Property

§ 314.7 Title.

(a) *General.* The Recipient must hold title to the Real Property required for a Project at the time the Investment Assistance is awarded or as provided by paragraph (c) of this section and must maintain title at all times during the Estimated Useful Life of the Project, except in those limited circumstances as provided in paragraph (c) of this section. The Recipient must also furnish evidence, satisfactory in form and substance to EDA, that title to Real Property required for a Project (other than property of the United States) is vested in the Recipient and that any easements, rights-of-way, State or local government permits, long-term leases or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by EDA.

(b)(1) The Recipient must disclose to EDA all Encumbrances, including but not limited to the following:

(i) Liens;

(ii) Mortgages;

(iii) Reservations;

(iv) Reversionary interests; and

(v) Other restrictions on title or on the Recipient's interest in the Property.

(2) No Encumbrance will be acceptable if, as determined by EDA, the Encumbrance interferes with the construction, use, operation or maintenance of the Project during its Estimated Useful Life.

(c) *Exceptions.* The following are exceptions to the requirements of paragraph (a) of this section that the Recipient hold title to the Real Property required for a Project.

(1) Where the acquisition of Real Property required for a Project is contemplated as part of an Investment Assistance award, EDA may determine that an agreement for the Recipient to purchase the Real Property will be acceptable for purposes of paragraph (a) of this section if:

(i) The Recipient provides EDA with reasonable assurances that it will obtain fee title to the Real Property prior to or concurrent with the initial disbursement of the Investment Assistance; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the purchase agreement adequately safeguard the Federal government's interest in the Real Property.

(2) EDA may determine that a long-term leasehold interest for a period not less than the Estimated Useful Life of the Real Property required for a Project will be acceptable for purposes of paragraph (a) of this section if:

(i) Fee title to the Real Property is not otherwise obtainable; and

(ii) EDA, in its sole discretion, determines that the terms and conditions of the lease adequately safeguard the Federal government's interest in the Real Property.

(3) When a Project includes construction within a railroad's right-of-way or over a railroad crossing, EDA may find it acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the Project, if required by the railroad; and provided that, the construction is a minor but essential component of the Project.

(4) When a Project includes construction on a State-owned or local government-owned highway (*i.e.*, where the Recipient is not the State or local government owner), EDA may find it acceptable for the State or local government to own, operate and maintain that portion of the Project, if required by the State or local government; provided that, construction is a minor but essential component of the Project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA that the:

(i) State or local government will operate and maintain the improvements for the Estimated Useful Life of the Project;

(ii) State or local government will not sell the improvements for the Estimated Useful Life of the Project; and

(iii) Use of the Property will be consistent with the authorized purposes of the Project.

(5)(i) When an authorized purpose of the Project is to construct facilities to serve Real Property owned by the Recipient, including but not limited to industrial or commercial parks, for sale or lease to private parties, such sale or lease is permitted so long as:

(A) In cases where an authorized purpose of the Project is to sell Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the disbursement of any portion of the Investment Assistance and will retain title until the sale of the Property;

(B) In cases where an authorized purpose of the Project is to lease Real Property, the Recipient provides evidence sufficient to EDA that it holds title to the Real Property required for such Project prior to the EDA disbursement of any portion of the Investment Assistance and will retain title for the entire Estimated Useful Life of the Project;

(C) The Recipient completes the Project according to the terms of the Investment Assistance;

(D) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after this period;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, purchaser or lessee to complete the Project by the later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient agrees that a violation of this paragraph by the Recipient, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition the sale or lease on the satisfaction by the Recipient, purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of the sale or lease.

(6)(i) When an authorized purpose of the Project is to construct facilities to serve privately-owned Real Property, including but not limited to industrial or commercial parks, the ownership, sale or lease of such Real Property is permitted so long as:

(A) The Owner provides evidence sufficient to EDA that it holds title to the Real Property improved or benefited by the EDA Investment Assistance prior to the disbursement of any portion of the Investment Assistance and will retain title to the Real Property for the entire Estimated Useful Life of the Property or until the sale of such Real Property;

(B) The Recipient and the Owner agree to use Real Property improved or benefited by the EDA Investment Assistance only for the authorized purposes of the Project and in manner consistent with the terms and conditions of the EDA Investment Assistance for the Estimated Useful Life of the Project;

(C) The Recipient must provide adequate assurances that the Owner will complete the Project according to the terms of the Investment Assistance;

(D) Any sale or lease of any portion of the Project within the later to occur of the (x) ten (10) year anniversary of the award date of the Investment Assistance or (y) third (3rd) transfer of the Project, must be for Adequate Consideration and the terms and conditions of the Investment Assistance and the purposes of the Project must continue to be fulfilled after such sale or lease; provided, however, that EDA may waive this provision for any sale or lease occurring after this period;

(E) The Recipient agrees that the termination, cessation, abandonment or other failure on behalf of the Recipient, Owner, purchaser or lessee to complete the Project by the later of the (x) five (5) year anniversary of the award date of the Investment Assistance, or (y) second (2nd) transfer of the Real Property by sale, lease or otherwise, constitutes a failure on behalf of the Recipient to use the Real Property for the economic purposes justifying the Project; and

(F) The Recipient further agrees that a violation of this paragraph by the Owner, purchaser or lessee constitutes an Unauthorized Use of the Real Property and the Recipient must further agree to compensate EDA for the Federal government's Federal Share of the Project in the case of such Unauthorized Use.

(ii) EDA may also condition its Investment Assistance on the satisfaction by the Recipient, Owner or by the purchaser or lessee (as the case may be) of any additional requirements that EDA may impose, including but not limited to EDA's pre-approval of a sale or lease.

§ 314.8 Recorded statement.

(a) For all Projects involving the acquisition, construction or improvement of a building, as determined by EDA, the Recipient shall execute a lien, covenant or other statement of EDA's interest in the Property acquired or improved in whole or in part with the EDA Investment Assistance. The statement shall specify the Estimated Useful Life of the Project and shall include, but not be limited to, the Disposition, Encumbrance and Federal Share requirements. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the Real Property records of the jurisdiction in which the Real Property is located, all in accordance with applicable law.

(c) Facilities in which the EDA Investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement—Title.

For all Projects which EDA determines involve the acquisition or improvement of significant items of Personal Property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the Recipient shall execute a security interest or other statement of EDA's interest in the Personal Property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law, with continuances re-filed as appropriate. Whether or not a statement is required by EDA to be recorded, the Recipient must hold title to the Personal Property acquired or improved as part of the Project, except as otherwise provided in this part.

Subpart D—Release of EDA's Property Interest

§ 314.10 Procedures for release of EDA's Property interest.

(a) *General.* Upon the request of a Recipient and before the expiration of the Estimated Useful Life of a Project, EDA may release, in whole or in part, any Real Property or tangible Personal Property interest held by EDA, in connection with Investment Assistance after the date that is twenty (20) years after the date on which the Investment Assistance was awarded.

(b) *Exception.* EDA releases all of its Real Property and tangible Personal Property interests in Projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94–369), as amended by the Public Works Employment Act of 1977 (Pub. L. 95–28).

(c)(1) *Unauthorized use.* Notwithstanding the release of EDA's interest pursuant to paragraph (a) of this section, Real Property or tangible Personal Property acquired or improved

with Investment Assistance may not be used:

(i) In violation of the nondiscrimination requirements set forth in § 302.20 of this chapter; or

(ii) For inherently religious activities prohibited by applicable federal law.

(2) Violation of this paragraph (c) constitutes an Unauthorized Use of the Real Property or of the tangible Personal Property.

(d) *Release.* (1) Except as provided in paragraph (b) of this section, the release of EDA's interest pursuant to this section is not automatic; it requires EDA's approval, which will not be withheld except for good cause, as determined in EDA's sole discretion. The release may be unconditional or may be conditioned upon some activity of the Recipient intended to be pursued as a consequence of the release.

(2) When requesting a release of EDA's interest pursuant to paragraph (a) of this section, the Recipient will be required to disclose to EDA the intended future use of the Real Property or the tangible Personal Property for which the release is requested.

(i) A Recipient not intending to use the Real Property or tangible Personal Property for inherently religious activities following EDA's release will be required to execute a covenant of use. A covenant of use with respect to Real Property shall be recorded in the jurisdiction where the Real Property is located in accordance with § 314.8. A covenant of use with respect to items of tangible Personal Property shall be perfected and recorded in accordance with applicable law, with continuances re-filed as appropriate. *See* § 314.9. A covenant of use shall (at a minimum) prohibit the use of the Real Property or the tangible Personal Property:

(A) For inherently religious activities in violation of applicable federal law; and

(B) For any purpose that would violate the nondiscrimination requirements set forth in § 302.20 of this chapter.

(ii) EDA may require a Recipient (or its successors in interest) who intends or foresees the use of Real Property or tangible Personal Property for inherently religious activities following the release of EDA's interest to compensate EDA for the Federal Share of such Property. EDA recommends that a Recipient who intends or foresees the use of Real Property or tangible Personal Property (including by successors of the Recipient) for inherently religious activities to contact EDA well in advance of requesting a release pursuant to this section.

PART 315—TRADE ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

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Subpart D—Adjustment Proposals

315.16 Adjustment Proposals.

Subpart E—Assistance to Industries

315.17 Assistance to Firms in import-impacted industries.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341 *et seq.*; Department of Commerce Organization Order 10–4.

Subpart A—General Provisions

§ 315.1 Purpose and scope.

The regulations in this part set forth the responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act concerning Trade Adjustment Assistance for Firms. The statutory authority and responsibilities of the Secretary of Commerce relating to Adjustment Assistance are delegated to EDA. EDA certifies Firms as eligible to apply for Adjustment Assistance, provides technical Adjustment Assistance to Firms and other recipients, and provides assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

In addition to the defined terms set forth in § 300.3 of this chapter, the following terms used in this part shall have the following meanings:

Adjustment Assistance means technical assistance provided to Firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment Proposal means a Certified Firm's plan for improving its economic situation.

Certified Firm means a Firm which has been determined by EDA to be eligible to apply for Adjustment Assistance.

Confidential Business Information means any information submitted to EDA or TAACs by Firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Contributed Importantly, with respect to an Increase in Imports, refers to a cause which is important but not necessarily more important than any other cause. Imports will not be considered to have Contributed Importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof or decline in sales or production would have been essentially the same, irrespective of the influence of imports.

Decreased Absolutely means a Firm's sales or production has declined by a minimum of five percent (5%) relative to its sales or production during the applicable prior time period, and:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the Firm.

Directly Competitive means:

(1) Articles which are substantially equivalent for commercial purposes (*i.e.*, are adapted to the same function or use and are essentially interchangeable); and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a Firm owns or controls other Firms as described in this definition, for purposes of receiving benefits under this part, the Firm and such other Firms may be considered a single Firm when they produce like or Directly Competitive articles or are exerting essential economic control over one or more production facilities. Such other Firms include:

(1) *Predecessor*—see the following definition for Successor;

(2) *Successor*—a newly established Firm (that has been in business less than two years) which has purchased substantially all of the assets of a previously operating company (or in some cases a whole distinct division) (such prior company, unit or division, a ''Predecessor'') and is able to demonstrate that it continued the operations of the Predecessor which has

operated as an autonomous unit, provided that there were no significant transactions between the Predecessor unit and any related parent, subsidiary, or affiliate that would have affected its past performance, and that separate records are available for the Predecessor's operations for at least two years before the petition is submitted. The Successor Firm must have continued virtually all of the Predecessor Firm's operations by producing the same type of products, in the same plant, utilizing most of the same machinery and equipment and most of its former workers, and the Predecessor Firm must no longer be in existence;

(3) *Affiliate*—a company (either foreign or domestic) controlled or substantially beneficially owned by substantially the same person or persons that own or control the Firm filing the petition; or

(4) *Subsidiary*—a company (either foreign or domestic) that is wholly owned or effectively controlled by another company.

Increase in Imports means an increase of imports of Directly Competitive or Like Articles with articles produced by such Firm that Contributed Importantly to the applicable Total or Partial Separation or threat thereof, and to the applicable decline in sales or production.

Like Articles means any articles which are substantially identical in their intrinsic characteristics.

Partial Separation means, with respect to any employment in a Firm, either:

(1) A reduction in an employee's work hours to eighty (80) percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to eighty (80) percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means an individual, organization or group.

Record means any of the following:

(1) A petition for certification of eligibility to qualify for Adjustment Assistance;

(2) Any supporting information submitted by a petitioner;

(3) The report of an EDA investigation with respect to petition; and

(4) Any information developed during an investigation or in connection with any public hearing held on a petition.

Significant Number or Proportion of Workers means five (5) percent of a Firm's work force or fifty (50) workers, whichever is less. An individual farmer or fisherman is considered a Significant Number or Proportion of Workers.

Substantial Interest means a direct material economic interest in the certification or non-certification of the petitioner.

TAAC means a Trade Adjustment Assistance Center, as more fully described in § 315.5.

Threat of Total or Partial Separation means, with respect to any group of workers, one or more events or circumstances clearly demonstrating that a Total or Partial Separation is imminent.

Total Separation means, with respect to any employment in a Firm, the laying off or termination of employment of an employee for lack of work.

§ 315.3 Confidential Business Information.

EDA will follow the procedures set forth in 15 CFR 4.7 for the submission of Confidential Business Information. Submitters should clearly mark and designate as confidential any Confidential Business Information.

§ 315.4 Eligible petitioners.

Eligible petitioners for assistance under this part shall be:

(a) Trade Adjustment Assistance Centers (''*TAACs*''). A TAAC can be a(n):

(1) University affiliate;

(2) State or local government affiliate; or

(3) Non-profit organization.

(b) Firms; or

(c) Organizations assisting or representing industries in which a substantial number of Firms or workers have been certified as eligible to apply for Adjustment Assistance under Sections 223 or 251 of the Trade Act, including:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 TAAC scope, selection, evaluation and awards.

(a) *TAAC purpose and scope.*

(1) TAACs are available to assist Firms in obtaining Adjustment Assistance in all fifty (50) U.S. states, the District of Columbia and the Commonwealth of Puerto Rico. TAACs provide Adjustment Assistance in accordance with this part either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas may be obtained from the TAAC Web site at *http://www.taacenters.org* or from EDA. *See* the annual FFO for the appropriate points of contact and addresses.

(2) Prior to submitting a petition for Adjustment Assistance to EDA, a Firm should determine the extent to which a TAAC can provide the required Adjustment Assistance. EDA will provide Adjustment Assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for Adjustment Assistance will normally be made through TAACs.

(3) TAACs generally provide Adjustment Assistance to a Firm by providing the following:

(i) Assistance to a Firm in preparing its petition for certification;

(ii) Assistance to a Certified Firm in diagnosing its strengths and weaknesses and developing its Adjustment Proposal; and

(iii) Assistance to a Certified Firm in the implementation of its Adjustment Proposal.

(b) *TAAC selection.* TAACs are selected in accordance with the following:

(1) EDA invites currently funded TAACs to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their Cooperative Agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a Cooperative Agreement does not assure funding by EDA; and

(2) EDA will invite new TAACs to submit proposals through an FFO, and if such proposals are acceptable, EDA will invite an application on a form approved by OMB. An application will contain a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(c) *TAAC evaluation.* (1) EDA generally evaluates currently funded TAACs based on:

(i) Performance under Cooperative Agreements with EDA and compliance with the terms and conditions of such Cooperative Agreements;

(ii) Proposed scope of work, budget and application or amended application; and

(iii) Availability of funds.

(2) EDA generally evaluates new TAACs based on:

(i) Competence in administering business assistance programs;

(ii) Background and experience of staff;

(iii) Proposed scope of work, budget and application; and

(iv) Availability of funding.

(d) *TAAC award requirements.*

(1) EDA generally funds TAACs for twelve (12) months.

(2) There are no Matching Share requirements for Adjustment Assistance provided by the TAACs to Firms for certification or for administrative expenses of the TAACs.

§ 315.6 Firm selection, evaluation and assistance.

(a) *Firm selection.* Firms participate in the Trade Adjustment Assistance program in accordance with the following:

(1) Firms apply for certification through a TAAC by completing a petition for certification. The TAAC will assist Firms in completing such petitions (at no cost to the Firms);

(2) Firms certified in accordance with the procedures described in §§ 315.7 and 315.8 must prepare an Adjustment Proposal for Adjustment Assistance from the TAAC, and submit it to EDA for approval;

(3) Certified Firms that have submitted approvable Adjustment Proposals within the time limits described in § 315.10 may begin implementation of their proposals. The Firm may submit a request to the TAAC for Adjustment Assistance in implementing an accepted Adjustment Proposal; and

(4) EDA determines whether the Adjustment Assistance requested in the Adjustment Proposal is eligible based upon the evaluation criteria set forth in subpart D of this part.

(b) *Firm evaluation.* For certification, EDA evaluates Firms' petitions strictly on the basis of fulfillment of the requirements set forth in § 315.7.

(c) *Firm award requirements.*

(1) Firms generally receive Adjustment Assistance over a two-year (2) period.

(2) Matching Share requirements are as follows:

(i) Each Firm must pay at least twenty-five (25) percent of the cost of the preparation of its Adjustment Proposal. Each Firm requesting $30,000 or less in total Adjustment Assistance in its approved Adjustment Proposal must pay at least twenty-five (25) percent of the cost of that Adjustment Assistance. Each Firm requesting more than $30,000 in total technical assistance in its approved Adjustment Proposal must pay at least fifty (50) percent of the cost of that Adjustment Assistance.

(ii) Organizations representing trade-injured industries must pay at least fifty (50) percent of the total cash cost of the Adjustment Assistance, in addition to appropriate in-kind contributions.

Subpart B—Certification of Firms

§ 315.7 Certification requirements.

(a) EDA may certify a Firm as eligible to apply for Adjustment Assistance under Section 251(c) of the Trade Act if it determines that the petition for certification meets one of the requirements set forth in paragraph (b) of this section. In order to be certified, a Firm must meet all of the criteria listed under any one of the three (3) requirements in paragraph (b) of this section.

(b)(1) *Twelve-month (12) decline.* Based upon a comparison of the most recent twelve-month (12) period for which data are available and the immediately preceding twelve-month (12) period:

(i) A Significant Number or Proportion of Workers in the Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation;

(ii) Either sales or production of the Firm has Decreased Absolutely; or sales or production, or both, of any article that accounted for not less than twenty-five (25) percent of the total production or sales of the Firm during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available have Decreased Absolutely; and

(iii) An Increase in Imports has occurred; or

(2) *Interim sales or production decline.* Based upon an interim sales or production decline:

(i) Sales or production has Decreased Absolutely for, at minimum, the most recent six-month (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period;

(ii) During the same base and comparative period of time as sales or production has Decreased Absolutely, a Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation; and

(iii) During the same base and comparative period of time as sales or production has Decreased Absolutely, an Increase in Imports has occurred; or

(3) *Interim employment decline.* Based upon an interim employment decline:

(i) A Significant Number or Proportion of Workers in such Firm has undergone Total or Partial Separation or a Threat of Total or Partial Separation during, at a minimum, the most recent six-month (6) period during the most recent twelve-month (12) period for which data are available as compared to the same six-month (6) period during the immediately preceding twelve-month (12) period; and

(ii) Either sales or production of the Firm has Decreased Absolutely during the twelve-month (12) period preceding the most recent twelve-month (12) period for which data are available; and

(iii) An Increase in Imports has occurred.

§ 315.8 Processing petitions for certification.

(a) Firms shall consult with a TAAC for guidance and assistance in the preparation of their petitions for certification.

(b) A Firm seeking certification shall complete a petition (OMB Control No. 0610–0091) in the form prescribed by EDA with the following information about such Firm:

(1) Identification and description of the Firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, Subsidiaries or Affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported Directly Competitive or Like Articles with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements, copies of its SEC Form 10–K annual reports, and federal income tax returns for the two (2) most recent years;

(6) Copies of unemployment insurance reports for the two (2) most recent years;

(7) Information concerning its major customers and their purchases (or its bids, if there are no major customers); and

(8) Such other information as EDA considers material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Promptly thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the TAAC that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been

corrected. Any resubmission will be treated as a new petition.

(d) EDA will publish a notice of acceptance of a petition in the **Federal Register**.

(e) EDA will initiate an investigation to determine whether the petitioner meets the requirements set forth in Section 251(c) of the Trade Act and § 315.7.

(f) A petitioner may withdraw a petition for certification if EDA receives a request for withdrawal before it makes a certification determination or denial. A Firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.7.

(g) Following acceptance of a petition, EDA will:

(1) Make a determination based on the Record as soon as possible after the petitioning Firm or TAAC has submitted all material. In no event may the determination period exceed sixty (60) days from the date on which EDA accepted the petition; and

(2) Either certify the petitioner as eligible to apply for Adjustment Assistance or deny the petition. In either event, EDA shall promptly give written notice of action to the petitioner. Any written notice to the petitioner or any parties as specified in § 315.10(d) of a denial of a petition shall specify the reason(s) for the denial. A petitioner shall not be entitled to resubmit a petition within one (1) year from the date of denial, provided, EDA may waive the one-year (1) limitation for good cause.

§ 315.9 Hearings.

EDA will hold a public hearing on an accepted petition if the petitioner, or any person, organization, or group found by EDA to have a Substantial Interest in the proceedings, submits a request for a hearing no later than ten (10) days after the date of publication of the Notice of Acceptance in the **Federal Register**, under the following procedures:

(a) The petitioner and other interested Persons shall have an opportunity to be present, to produce evidence and to be heard;

(b) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a Person other than the petitioner shall contain:

(1) The name, address and telephone number of the Person requesting the hearing; and

(2) A complete statement of the relationship of the Person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(c) If EDA determines that the requesting party does not have a Substantial Interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(d) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of the hearing; and

(e) EDA shall appoint a presiding officer for the hearing who shall respond to all procedural questions.

§ 315.10 Loss of certification benefits.

A Firm may fail to obtain benefits of certification, regardless of whether its certification is terminated, for any of the following reasons:

(a) Failure to submit an acceptable Adjustment Proposal within two (2) years after date of certification. While approval of an Adjustment Proposal may occur after the expiration of such two-year (2) period, a Firm must submit an acceptable Adjustment Proposal before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for Adjustment Assistance consistent with its Adjustment Proposal within six (6) months after approval of the Adjustment Proposal, where two (2) years have elapsed since the date of certification. If the Firm anticipates needing a longer period to submit documentation, it should indicate the longer period in its Adjustment Proposal. If the Firm is unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) EDA has denied the Firm's request for Adjustment Assistance, the time period allowed for the submission of any documentation in support of such request has expired, and two (2) years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved Adjustment Proposal where two (2) years have elapsed since the date of certification.

§ 315.11 Appeals, final determinations and termination of certification.

(a) Any petitioner may appeal in writing to EDA from a denial of certification, provided that EDA receives the appeal by personal delivery or by registered mail within sixty (60) days from the date of notice of denial under § 315.8(g). The appeal must state the grounds on which the appeal is based, including a concise statement of the supporting facts and applicable law. The decision of EDA on the appeal shall be the final determination within the Department. In the absence of an appeal by the petitioner under this paragraph, the determination under § 315.8(g) shall be final.

(b) A Firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within sixty (60) days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination, in accordance with Section 284 of the Trade Act.

(c) Whenever EDA determines that a Certified Firm no longer requires Adjustment Assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the published notice.

(d) EDA shall immediately notify the petitioner and shall state the reasons for any termination.

Subpart C—Protective Provisions

§ 315.12 Recordkeeping.

Each TAAC shall keep records that fully disclose the amount and disposition of Trade Adjustment Assistance funds so as to facilitate an effective audit.

§ 315.13 Audit and examination.

EDA and the Comptroller General of the United States shall have access for the purpose of audit and examination to any books, documents, papers, and records of a Firm, TAAC or other recipient of Adjustment Assistance pertaining to the award of Adjustment Assistance.

§ 315.14 Certifications.

EDA will provide no Adjustment Assistance to any Firm unless the owners, partners, members, directors or officers thereof certify:

(a) The names of any attorneys, agents, and other Persons engaged by or on behalf of the Firm for the purpose of expediting applications for such Adjustment Assistance; and

(b) The fees paid or to be paid to any such Person.

§ 315.15 Conflicts of interest.

EDA will provide no Adjustment Assistance to any Firm under this part unless the owners, partners, or officers execute an agreement binding them and the Firm for a period of two (2) years

after such Adjustment Assistance is provided, to refrain from employing, tendering any office or employment to, or retaining for professional services any Person who, on the date such assistance or any part thereof was provided, or within one (1) year prior thereto, shall have served as an officer, attorney, agent, or employee occupying a position or engaging in activities which involved discretion with respect to the provision of such Adjustment Assistance.

Subpart D—Adjustment Proposals

§ 315.16 Adjustment Proposals.

EDA evaluates Adjustment Proposals based on the following process:

(a) EDA must receive the Adjustment Proposal within two (2) years after the date of the certification of the Firm;

(b) The Adjustment Proposal must include a description of any Adjustment Assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(1) An analysis of the Firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(2) If EDA so determines, other available information; and

(c) The Adjustment Proposal must:

(1) Be reasonably calculated to contribute materially to the economic adjustment of the Firm (*i.e.*, that such proposal will constructively assist the Firm to establish a competitive position in the same or a different industry);

(2) Give adequate consideration to the interests of a sufficient number of separated workers of the Firm, by providing, for example, that the Firm will:

(i) Give a rehiring preference to such workers;

(ii) Make efforts to find new work for a number of such workers; and

(iii) Assist such workers in obtaining benefits under available programs; and

(3) Demonstrate that the Firm will make all reasonable efforts to use its own resources for its recovery, though under certain circumstances, resources of related Firms or major stockholders will also be considered.

Subpart E—Assistance to Industries

§ 315.17 Assistance to Firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under Section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the Firms in such industry assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such Firms.

(b) EDA may provide Adjustment Assistance, on such terms and conditions as EDA deems appropriate, for the establishment of industry-wide programs for new product development, new process development, export development or other uses consistent with the purposes of the Trade Act and this part.

(c) Expenditures for Adjustment Assistance under this section may be up to $10,000,000 annually per industry, subject to availability of funds, and shall be made under such terms and conditions as EDA deems appropriate.

Dated: July 29, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–15470 Filed 8–10–05; 8:45 am]

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DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No.: 050729211–5211–01]

Economic Development Administration Reauthorization Act of 2004 Implementation; Public Hearing

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of public hearing.

SUMMARY: In connection with the promulgation of its Interim Final Rule (the ''IFR''), also published in this separate part, the Economic Development Administration (''EDA'') will hold a public hearing to receive public comments on the IFR.

DATES: Thursday, September 1, 2005, beginning at 3 p.m. (e.d.t.) and ending at approximately 5 p.m. (e.d.t.). All registration requests must be received by the Office of Chief Counsel, Economic Development Administration (*see* **ADDRESSES**), no later than 4 p.m. (e.d.t.) on August 29, 2005.

ADDRESSES: The hearing will take place in Room 4830 of the Herbert C. Hoover Building, 1401 Constitution Avenue, NW., Washington, DC 20230. All registration requests must be submitted to the Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4687; facsimile (202) 482–5671; e-mail: *edaregs@eda.doc.gov.*

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, Economic Development Administration, Department of Commerce, Room 7005, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4687; facsimile (202) 482–5671; e-mail: *edaregs@eda.doc.gov.* Please note that any correspondence sent by regular mail may be substantially delayed or suspended in delivery, since all regular mail sent to the Department of Commerce (the ''Department'') is subject to extensive security screening.

SUPPLEMENTARY INFORMATION: On October 27, 2004, President Bush signed into law the Economic Development Administration Reauthorization Act of 2004 (Pub. L. 108–373) (the ''2004 Act''). Since reauthorization, EDA has conducted a full scale review and revision of its regulations leading to the promulgation of the IFR. The IFR provides a 60-day notice and comment period for interested members of the public to submit written comments. Individuals wishing to submit written comments only should follow the procedures set forth in the IFR. By way of this notice, EDA will also hold a public hearing to receive oral comments from interested members of the public.

Public comments will be limited to five minutes in duration. Due to time limitations, there is a possibility that not all persons wishing to make comments will be able to do so. Individuals who wish to make comments must register in advance of the hearing on a first-come, first-served basis by submitting a registration request to the Office of Chief Counsel at the addresses listed in the **ADDRESSES** heading no later than 4 p.m. (e.d.t.) on August 29, 2005. The registration request must include a written statement summarizing the public comments and the following contact information: name, address, telephone and fax numbers, e-mail address and organizational affiliation (if any). Upon receipt of a registration request, EDA will contact the individual to schedule a specific public comment time slot.

All comments submitted to EDA, whether oral or written, will become part of EDA's official administrative record in connection with the promulgation of its revised regulations. EDA will not respond to questions asked or oral comments delivered at the public hearing. EDA will respond in writing to all written and oral comments received on the IFR when it promulgates

a Final Rule following the 60 day notice and comment period.

For additional rules and guidance on the public hearing (including information on building security) or for a copy of the IFR, please visit EDA's Internet Web site at *http://www.eda.gov* or contact the Office of Chief Counsel.

Dated: July 29, 2005.

Benjamin Erulkar,

Chief Counsel, Economic Development Administration.

[FR Doc. 05–15471 Filed 8–10–05; 8:45 am]

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Thursday,
August 11, 2005

Part IV

Department of Agriculture

Food and Nutrition Service

7 CFR Part 247

Commodity Supplemental Food Program—Plain Language, Program Accountability, and Program Flexibility; Final Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584–AC84

Commodity Supplemental Food Program—Plain Language, Program Accountability, and Program Flexibility

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule rewrites the regulations for the Commodity Supplemental Food Program (CSFP) in ''plain language'' to help program operators and the general public better understand program requirements. It also reduces the time and paperwork burden for State and local agencies, increases their flexibility in program operations, and strengthens program accountability. Other changes have been made to incorporate legislative provisions and improve program service and caseload management. This final rule makes the CSFP easier to understand and administer, and more effective and efficient in providing benefits to eligible persons.

EFFECTIVE DATE: This final rule is effective September 12, 2005.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22303–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This action is needed in order to rewrite the regulations for the CSFP in a plain language format, while reflecting current program conditions. Furthermore, this action is needed in order to improve program accountability, increase flexibility in program administration, and reduce the paperwork burden on State and local agencies.

Benefits

Rewriting the regulations in plain language helps program operators and the general public better understand program requirements. The plain language format includes a question-and-answer structure under each section, and removal of the legalistic style that is currently reflected in the regulations. The regulatory amendments set forth in this rule, such as the amendment making the State Plan permanent instead of annual, with amendments submitted as needed, will benefit State and local agencies by reducing the paperwork burden and increasing flexibility in program administration. The establishment of more rigorous performance measures will have a positive impact on the program as whole, facilitating the assignment of caseload slots to those State agencies most likely to use them. Changes that increase flexibility in program administration include the establishment of income eligibility guidelines, the consideration of average income over the previous year, and, for a pregnant woman, the counting of each fetus or embryo in utero as a household member when considering income eligibility. Other changes improve program accountability by increasing the penalties for program violations and requiring the initiation and pursuit of claims against participants who fraudulently obtain program benefits.

Costs

The changes in this final rule will not result in appreciable adjustments in program participation or costs. Most of the changes in this final rule offer burden relief to State agencies and local program operators, and are generally insignificant to the costs of the overall operations of the program.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary of Food, Nutrition, and Consumer Services, Eric M. Bost, has certified that this action will not have a significant impact on a substantial number of small entities. While program participants, State agencies and Indian Tribal Organizations that administer the program will be affected by this rulemaking, the economic effect will not be significant.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The CSFP is listed in the Catalog of Federal Domestic Assistance under No. 10.565. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any

State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial action challenging the provisions of this rule or the application of its provisions, all applicable administrative remedies, as set out in § 247.33 of this final rule, must be exhausted. Unless otherwise indicated, all regulation citations set out in this preamble and final rule may be found, or will be codified, in Title 7, Part 247 of the Code of Federal Regulations.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that it will not in any way limit or reduce the ability of participants to receive program benefits on the basis of an individual's race, color, national origin, age, gender, or disability. The rule applies equally to all participants in the CSFP who are eligible to receive program benefits. All data available to FNS indicates that protected individuals have the same opportunity to participate in the CSFP as non-protected individuals, subject to the program eligibility requirements. Program civil rights requirements are detailed in § 247.37 of this final rule.

Discrimination by State and local agencies in any aspect of program administration is prohibited by this final rule, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). State and local agencies must also comply with 7 CFR Parts 15, 15a, and 15b of this title, and with the provisions of FNS Instruction 113–2. Enforcement action may be brought under any applicable Federal law.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. Implementation of the data collection elements of the rule is contingent upon OMB approval under the Paperwork Reduction Act. Information collections in this final rule have been previously approved under OMB #0584–0293. Although FNS sought public comments specific to the estimated reporting and recordkeeping burden detailed in the proposed rule, no comments were received. Thus, the provisions contained in this final rule do not differ with regard to information collection burden requirements from those set forth in the proposed rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The FNS–153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report, is available online at the FNS Web site and may be downloaded electronically by State and local agencies. The SF–269A, Financial Status Report, is currently available online at the OMB Web site and may be downloaded electronically as well. FNS is willing to provide electronic copies of this form to State agencies upon request. FNS is also exploring the possible development and use of an automated inventory system that would positively impact the efficiency of FNS–153 reporting by streamlining this process at the State and local levels. Finally, FNS will replace the current reporting system, the Special Nutrition Programs Integrated Information System, or SNPIIS, with the Web-based Food Programs Reporting System, or FPRS. FPRS should offer increased program efficiency.

Background

On October 31, 2003, the Department published a proposed rule in the **Federal Register** (68 FR 62164) that would have rewritten the regulations for the CSFP in ''plain language'' to help program operators and the general public better understand program requirements. The rule also proposed changes that would have reduced the time and paperwork burden for State and local agencies, increased their flexibility in program operations, established more rigorous performance measures for State agencies, and strengthened program accountability. Other proposed changes would have incorporated current legislative provisions and improved program service and caseload management. The specific changes made by this final rule were discussed in detail in the preamble to the proposed rule, which provided a 60-day comment period.

Analysis of Comments Received

The Department received a total of eleven comment letters. However, two of the comment letters were not received within the specified comment period and, therefore, were not considered in the comment analysis. Four State CSFP agencies, two CSFP local agencies, the National CSFP Association, one State association, and one non-CSFP State government organization submitted comment letters. Of those nine commenters, five were generally supportive of the proposed rule in its entirety, with a limited number of suggested revisions. The generally supportive comments from those five commenters are not included in the discussion of specific provisions contained in the preamble to this final rule. Most of the proposed rule provisions proved to be non-controversial, either receiving few or no comments, or receiving very few comments in opposition. Provisions contained in the proposed rule that are being amended in this final rule in response to these comments are discussed in detail below. For a complete understanding of the provisions contained in this final rule, the reader should refer to the preamble of the proposed rule, as well as the preamble to this final rule.

Definitions, Section 247.1

Section 247.1, as proposed, would have addressed definitions associated with the administration of the program. As discussed in the proposed rule, definitions of ''certification period,'' ''commodities,'' ''CSFP,'' ''7 CFR Part 250,'' ''7 CFR Part 3016,'' ''7 CFR Part 3019,'' and ''7 CFR Part 3052'' are not found in current regulations. As no comments were received referencing the additions of these definitions, these seven definitions have been retained in § 247.1 of this final rule as proposed. In addition to these seven definitions, it has been brought to our attention that the inclusion of definitions of ''applicant,'' ''disqualification,'' and ''proxy'' would serve to help readers and program administrators better understand the administration of the program. Therefore, definitions of these terms have been included in § 247.1 of this final rule.

While the meaning of ''applicant'' is self-explanatory, it has been included for the sake of clarity. The term ''disqualification'' is defined to ensure that readers are better aware of the penalties for certain program violations. The definition of ''proxy'' makes clear to the reader those individuals who are qualified to obtain food packages for eligible participants. These added definitions do not in any way alter regulatory requirements.

The Purpose and Scope of CSFP, Section 247.2

As discussed in § 247.2 of the proposed rule, the purpose of CSFP is to distribute nutritious foods, and provide nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, children ages 1 through 5, and the elderly. One commenter suggested that instead of referring to children as those individuals ''ages 1 through 5,'' that we refer to this applicant or participant group as ''children ages 1 up to the 6th birthday.'' For the sake of clarity, we have amended the language in § 247.2 to read ''children who are at least one year of age but have not reached their sixth birthday.'' Furthermore, in order to clarify the difference between ''infants'' and ''children'' for the purposes of the CSFP, we have amended language pertaining to infants in § 247.2 to read ''infants under one year of age.'' Since no other comments were received relative to the provisions contained in § 247.2, all other provisions are retained in this final rule as proposed.

Administering Agencies, Section 247.3

A description of responsible administering agencies and the Federal requirements that apply to administration of the program was included in § 247.3 of the proposed rule.

Since no comments were received relative to the proposed provisions contained in § 247.3, they are retained in this final rule as proposed.

Agreements, Section 247.4

Section 247.4, as proposed, addressed the requirements associated with the duration and contents of agreements between agencies administering the program. Section 247.4(b), as proposed, would have required that all agreements, with the exception of the Federal-State agreement (which is a standard form), contain a statement that the agreement may be terminated by either party upon 30 days' written notice.

Two commenters expressed concerns over the proposed requirement. The commenters questioned whether a 30-day timeframe is adequate notice for termination, particularly for the distributing agency. The commenters cited the challenges associated with locating and procuring alternate providers within the service area, the potential difficulties in shifting commodity inventories to other sites within the 30-day timeframe, and, finally, the difficulties in notifying participants of schedule and food package pick-up location changes within the 30-day timeframe. Both commenters recommended that agreements establish the 30-day notice as a regulatory minimum, with State agencies authorized to extend this minimum if circumstances warrant. We agree with the commenters' suggestion, and have amended § 247.4(b)(6) to specify that the 30-day notice requirement is a regulatory minimum.

In addition to requiring those elements listed in § 247.4(b)(6), § 247.4(c) of the proposed rule would have required agreements between State and local agencies to include certain assurances and information. No comments were received relative to the provisions contained in § 247.4(c) of the proposed rule. However, in order to make clear the civil rights requirements of the Department, a nondiscrimination assurance has been added to the required contents of agreements between State and local agencies. Section 247.4(d) of the proposed rule would have established the duration requirements for agreements between administering agencies. One commenter supported the proposed provision that would have made agreements between FNS and State agencies permanent. No other comments were received relative to this section of the proposed rule. However, in order to make clear to the reader the duration of other types of agreements, such as agreements with storage facilities, we have amended § 247.4(d) of this final rule to include reference to 7 CFR 250.12(c).

Since no comments were received relative to the other provisions contained in § 247.4 of the proposed rule, they are retained in this final rule as proposed.

State and Local Agency Responsibilities, Section 247.5

Section 247.5, as proposed, would have outlined the major responsibilities of State and local agencies in administering the program. No comments were received relative to the provisions contained in § 247.5 of the proposed rule. Those provisions are retained in this final rule with the clarification in § 247.5(b)(15) that States must ensure that program participation does not exceed the State agency's caseload allocation on an average monthly basis.

State Plan, Section 247.6

Section 247.6, as proposed, would have addressed those requirements associated with the State Plan. One commenter concurred with § 247.6(c) of the proposed rule, which would have required that the State CSFP agency collaborate with the State WIC agency in developing plans to prevent and detect dual participation. To review, ''dual participation'' is the simultaneous participation by an individual in CSFP and the WIC Program, or in CSFP at more than one distribution site. Another commenter, although in support of the requirement for collaboration in the area of dual participation, requested that we require collaboration of the State CSFP agency with the State WIC agency in the development of multiple elements of the State Plans for the respective programs. We believe this requirement would create an undue burden on State agencies, since most States have already implemented the most efficient, cost effective systems for collaboration between programs in this regard. Thus, the requirements in this final rule will not be extended to include additional mandatory elements of collaboration.

One commenter requested that we require CSFP State agencies to maintain updated Memoranda of Understanding with WIC State agencies, since State Plans would be permanent. We do not consider this change necessary since § 247.6(d) requires the State agency to submit amendments to FNS to reflect any changes in aspects of program operations or administration that are addressed in the State Plan. This includes any changes to any elements of the State plan listed in § 247.6(c).

Since no other comments were received relative to the provisions contained in § 247.6 of the proposed rule, they are retained in this final rule as proposed.

Selection of Local Agencies, Section 247.7

The provisions contained in § 247.7 of the proposed rule would have addressed requirements associated with the submission of local agency applications for participation in the program, criteria that the State agency must consider in approving or denying such applications, and the amount of time the State agency has to act on a local agency's application.

Section 247.7(b) of the proposed rule would have set forth the basic guidelines a State agency must consider in making a decision on a local agency's

application for participation in the program. Two commenters recommended that the proposed local agency selection criteria be regulatory minimums, and that the State agency be permitted to specify additional criteria in the State Plan. The commenters cited differences between State agencies in the administration of the program, and the need for additional State-specified criteria as warranted. We agree that varied administration of the program from State to State may warrant additional local agency selection criteria. Therefore, this final rule amends § 247.7(b) to permit State agencies to consider additional criteria in approving or denying a local agency's application to participate in the program.

Section 247.7 of the proposed rule would have removed the requirement that the State justify the need for approval of a local agency in an area already served by the WIC Program. One commenter opposed the proposed removal of this requirement due to the possibility of dual participation. In relation to the dual participation issue, another commenter recommended that the Memorandum of Understanding between the State CSFP agency and the State WIC agency require the State CSFP agency to inform the State WIC agency when a new CSFP program application has been received in order to prevent occurrences of dual participation. However, we believe the provision contained in § 247.6 of this final rule, which encourages State agencies to coordinate with the WIC State agency in formulating plans to serve women, infants, and children in common areas of service, is sufficient in this regard. In addition, a recent guidance memorandum issued by FNS on May 6, 2004, entitled ''Dual Participation in the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) and the Commodity Supplemental Food Program (CSFP)'' makes clear the discretion that CSFP and WIC State agencies have in establishing the most efficient and effective procedures for use in addressing the issue of dual participation.

Since no other comments were received relative to the other provisions contained in § 247.7, they are retained in this final rule as proposed.

Individuals Applying to Participate in CSFP, Section 247.8

Section 247.8 of the proposed rule would have described specific requirements associated with individuals applying for participation in the program. One commenter expressed support for the requirement in § 247.8(a) of the proposed rule that individuals applying to participate in the CSFP show some form of identification. No other comments were received relative to the provisions contained in § 247.8(a). However, we have amended § 247.8(a) of this final rule to clarify that those individuals determined by the local agency to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii) are not required to provide household size or income information. These individuals are eligible to participate in the program based on their participation in other Federal means-tested programs and are, therefore, not required to provide this information. In addition, § 247.8(a) of this final rule has been amended to clarify that household size must be ascertained for all households, except those determined to be automatically eligible, in order to establish an applicant's income limit under the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services (HHS).

One commenter requested that § 247.8(b) be amended to require that a statement specifically referencing dual participation as a program violation be added to the application form that is signed by the applicant, adult parent, or caretaker. We agree that, in order to deter program participants from committing dual participation, a statement should be included on the application form. Therefore, this final rule amends § 247.8(b) to require that the application form include reference to the prohibition of simultaneously receiving CSFP and WIC benefits, or CSFP benefits at more than one CSFP site. As the application form is modified to reflect this information, § 247.12(b)(1) of the proposed rule, which would have required local agencies to provide this information separately to the applicant, is not included in this final rule.

In addition, in order to make clear the applicant's civil rights, this final rule amends § 247.8(b) to require inclusion of the Department's nondiscrimination statement on all application forms. FNS Instruction 113–2 provides an approved example of a program nondiscrimination statement for the State agency's reference.

Since no other comments were received relative to other provisions contained in § 247.8, they are retained in this final rule as proposed.

Eligibility Requirements, Section 247.9

Section 247.9 of the proposed rule would have addressed the requirements that must be used in determining an individual's eligibility to participate in the program. One commenter enthusiastically supported the proposed provision in § 247.9(b)(3), which would have required that, for a pregnant woman, each embryo or fetus in utero be counted as a household member in determining if the household meets the income eligibility standards for the program.

Section 247.9(d) of the proposed rule would have included reference to the notification, by memorandum, of the annual adjustment of the income guidelines by household size, and the effective date of the adjustments. The notification provides the adjusted guidelines for 185 percent, 130 percent, and 100 percent of the poverty guidelines.

Section 247.9(d) of the proposed rule would have further required that the State agency implement the adjusted guidelines for the elderly immediately upon receipt of the memorandum, in order to minimize the time gap between the adjustment of the guidelines and the cost-of-living adjustment in Social Security benefits, which is made in January. This requirement would have decreased the likelihood that elderly persons receiving Social Security benefits would become temporarily ineligible for CSFP. Finally, § 247.9(d) of the proposed rule would have required that the adjusted guidelines be implemented for women, infants, and children at the same time that the State WIC agency implements the adjusted guidelines for WIC eligibility in order to reflect current practices.

One commenter specifically supported the proposed requirements for implementation of the adjusted income guidelines for participants. The same commenter requested that the Department specifically issue separate CSFP and WIC Program adjusted income guidelines for women, infants, and children. We agree that the Department should separately issue adjusted income guidelines for the CSFP and WIC Programs. As the WIC Program currently issues adjusted income guidelines for women, infants, and children on an annual basis, we plan to issue separate adjusted income guidelines for women, infants, and children participating in the CSFP. Since § 247.9(d) of the proposed rule would have permitted such action, no change in this regard is necessary.

Two commenters expressed support for the provision contained in § 247.9(e) of the proposed rule, which would have permitted State agencies to allow local agencies to consider the household's average income during the previous 12 months and current household income

to determine which more accurately reflects the household's status.

Based on the comments received, the provisions contained in § 247.9 of the proposed rule are retained in this final rule as proposed.

Distribution and Use of CSFP Commodities, Section 247.10

Section 247.10, as proposed, would have described the requirements associated with the distribution and use of commodities donated by the Department for use in the program. One commenter concurred with the proposed removal of the current requirement that the local agency choosing to distribute foods every other month provide the participant the option to continue to receive foods on a monthly basis. The commenter agreed that, as stated in the preamble to the proposed rule, although the local agency may provide this option, the requirement to do so may place an undue burden on the local agency. In addition, the commenter suggested that a tri-monthly commodity issuance be offered for those households with participants in both the CSFP and WIC Program. We appreciate the commenter's request to add a third commodity issuance option. However, there is no evidence that there would be broad interest in such an issuance option with the potential to benefit only a small portion of the CSFP population. In addition, the weight of the food packages renders it impractical for many CSFP participants to transport three months' worth of supplemental food packages to their homes. Finally, allowing the issuance of three month's worth of commodities, some of which require refrigeration, increases the risk of commodities going out of condition which, in turn, could negatively affect needy participants. Therefore, the proposed provision is retained without change in the final rule. Since no other comments were received relative to the provisions contained in § 247.10 of the proposed rule, they are retained in this final rule as proposed.

Applicants Exceed Caseload Levels, Section 247.11

Section 247.11 of the proposed rule would have described the order of priority in serving the various population groups, and the requirements associated with assigning applicants to a waiting list. Section 247.11(b), as proposed, would have listed the order of priority in service, and would have required that women, infants, and children receive priority of service over the elderly, per the requirements of the Agriculture and Consumer Protection Act of 1973, Public Law 93–86.

One commenter requested that the Department reorder its priorities in service to make service to the elderly the first priority. The commenter cited the limited availability of nutrition assistance programs for elderly individuals in her area and observed that women, infants, and children have access to many programs, including the WIC Program, which adequately meet the needs of that population group. However, since legislation requires that priority in service be given to women, infants, and children, the Department does not have authority to adopt this recommendation.

No other comments were received relative to the provisions contained in this section of the proposed rule. Those provisions are retained in this final rule with a cross-reference in § 247.11(a) that clarifies notification policy to the reader. Section 247.11(a) of the final rule cross-references § 247.15, since § 247.15 requires that applicants be notified of their placement on a waiting list, or their ineligibility or eligibility for benefits, within 10 days from the date of application.

Rights and Responsibilities, Section 247.12

Section 247.12 of the proposed rule would have included the most basic rights and responsibilities of program applicants. Section 247.12(a) of the proposed rule would have included the right of applicants to receive benefits without discrimination based on race, color, national origin, age, sex, or disability. One commenter suggested that program standards do in fact discriminate by age. The commenter cited difficulties in providing services to senior housing sites where some residents are under sixty years of age, the minimum age required for seniors to qualify for participation in the program. By law, participation in the program is limited to those individuals who are ''categorically'' eligible. Therefore, the regulatory age limitations are not discriminatory. Section 247.12(a) of the proposed rule is, however, amended in this final rule to remove the requirement to inform applicants of the right to participate without discrimination, since § 247.8(b) of this final rule requires that an approved nondiscrimination statement to be printed on all application forms.

Section 247.12(b) of the proposed rule would have required that applicants be informed of the prohibition on dual participation, and the possibility of a claim against an individual who receives benefits improperly as a result of dual participation or other program violations, in accordance with the provisions contained in § 247.30, which addresses claims. However, § 247.8(b) of the proposed rule has been amended in this final rule to require that information regarding the prohibition on dual participation be included on the application form. Therefore, the requirement that this information be provided to applicants separately is not included in § 247.12(b) of this final rule.

One commenter suggested that the concept of dual participation is not well understood by participants and that local agency staff should be required to explain the concept to applicants and participants. It has been determined that the provisions set forth in § 247.12(b) and § 247.8 of this final rule are sufficient to ensure that program applicants are made aware of what constitutes dual participation, the prohibition against dual participation, and the possible consequences of such action. Therefore, this requirement has not been included in § 247.12(b) of this final rule.

Provisions for Non-English or Limited-English Speakers, Section 247.13

Section 247.13, as proposed, would have described the provisions associated with providing non-English or limited-English speaking persons program information in an appropriate language. Section 247.13(b) of the proposed rule would have required that, in areas where a significant proportion of the population speak little or no English but have a language in common, the State agency ensure that local agencies provide applicants with program information in an appropriate language, not including application materials. One commenter recommended that all application materials be required in appropriate languages, as several different languages may be prevalent in a given area. Section 247.13(a) of the proposed rule would have required State and local agencies to provide bilingual staff members and interpreters in areas where a significant proportion of the population is comprised of non-English or limited-English speaking persons with a common language. Since this requirement adequately accommodates the needs of the most diverse range of population groups without significantly increasing program costs at the local level, the provisions contained in § 247.13(b) of the proposed rule are retained in this final rule as proposed. However, the phrase ''to such persons in an appropriate language'' in proposed rule § 247.13(b) has been amended in this final rule to read ''to such persons

in their appropriate language'' for clarification purposes.

Since no other comments were received relative to the remaining provisions contained in § 247.13 of the proposed rule, they are retained in this final rule as proposed. It is important to note that the Department plans to clarify its policy in the future regarding the provisions for non-English or limited-English speaking persons. FNS will implement this policy once received.

Other Public Assistance Programs, Section 247.14

Section 247.14 of the proposed rule would have described the requirements associated with the provision of information to program applicants. Section 247.14(a) of the proposed rule would have required that the local agency provide applicants with written information on the specific, locally available programs that may affect their health, nutrition, or general welfare, including the WIC Program. This would allow individuals eligible for both CSFP and WIC to choose the program in which they wish to participate.

Local agencies would also be required to make referrals to these programs, as appropriate. One commenter recommended that we take the referral process one step further, and require local agencies to forego CSFP certification of applicants eligible for the WIC Program, and refer those applicants to the WIC Program instead. The Agriculture and Consumer Protection Act of 1973 requires that eligible women, infants, and children be given priority in access to the CSFP. Therefore, the Department does not have the authority to deny participation to those women, infants, and children that choose to participate in CSFP rather than WIC.

Another commenter recommended that, in addition to providing general WIC Program information to individuals, the CSFP local agency should also be required to provide the individual with information about the WIC Program's assistance with gaining access to health care, the addresses and phone number of one or more nearby WIC offices, and specific details about how individuals can apply for participation in the WIC Program. We believe that imposing additional, more specific requirements in this regard would create an undue burden on CSFP State and local agencies. In addition, administration of the program varies significantly among State and local agencies. Therefore, State agencies are better able to determine the type of information that should be provided when referring applicants to other programs, including WIC.

Since no other comments were received in reference to the provisions contained in § 247.14 of the proposed rule, they are retained in this final rule as proposed.

Notification of an Applicant's Eligibility or Ineligibility, or Placement on a Waiting List, Section 247.15

Section 247.15 of the proposed rule would have required that the local agency notify applicants in writing of their eligibility or ineligibility, or placement on a waiting list within 10 days from the date of the application. One commenter recommended that 20 days is a more adequate timeframe for notifying applicants. We believe that 10 days is a reasonable amount of time for a decision to be made on eligibility for food assistance, and to allow ineligible applicants to receive the information they need to seek other forms of assistance. No other comments were received relative to the provisions contained in § 247.15 of the proposed rule. The provisions contained in § 247.15 of the proposed rule are retained in this final rule with the clarification that, in order to make clear the applicant's civil rights, an approved Department nondiscrimination statement must be included on all written notifications of an individual's eligibility, ineligibility, or placement on a waiting list.

Certification Period, Section 247.16

Section 247.16 of the proposed rule would have addressed the requirements associated with the establishment of certification periods, the right of individuals to receive benefits under a transfer of certification when they move to a new area, and notification of individuals of the expiration of their certification period. To reduce the burden on local agencies, § 247.16(a) of the proposed rule would have permitted State agencies to authorize local agencies to extend the certification period of elderly persons without a review of eligibility criteria for additional six-month periods (and not just for one six-month period) if, at each six-month interval, certain conditions are met. One commenter specifically supported this proposed provision. However, another commenter argued that, as elderly participants do not experience any major income adjustments, they should be permanently certified. We agree that elderly participants do not experience as many income adjustments as women, infants, and children in the program. However, we believe that changes in household composition and income do occur, regardless of participant age, and periodic checks of this information yield increased program efficiency and effectiveness.

Section 247.16(a) of the proposed rule would have also required that the State agency establish certification periods for infants that do not exceed six months in length. Two commenters requested that certification requirements for infants be modified to allow infants to be certified up to their first birthday, or for a period of six months, whichever is longer. We appreciate the comments received in reference to this issue. However, we believe that fluctuations in household income are more commonplace for this population group in comparison to the elderly, and that the proposed rule provision regarding the length of infant certification periods is not unduly burdensome. Therefore, the proposed provision regarding infant certification periods is retained in this final rule.

Section 247.16(c) of the proposed rule would have included the right of transfer of certification for individuals certified to participate in the programs who move to another area. The proposed rule would have removed the requirement that the State (or local) agency issue a verification of certification (VOC) form to the participant to facilitate this transfer. Instead, the proposed rule would have required that the local agency provide verification of the certification period to the participant upon request. One commenter did not agree with the proposal to eliminate the requirement that a VOC form be provided to all program participants moving to another area. Requiring the issuance of a VOC form to all such participants creates an undue burden on State and local agencies; transfer of participation can be more efficiently facilitated through communication between the local agency and the participant.

No other comments were received relative to the provisions proposed in § 247.16. For the reasons stated above, the provisions contained in § 247.16 of the proposed rule are retained in this final rule, with the clarification that the local agency which determined the participant's eligibility must, upon request, provide to the participant verification of the expiration date of the certification period, instead of the extent of the certification period. This provides the participant with the most relevant information necessary to effect an efficient transfer of certification. In addition, in order to make clear the participant's civil rights, the requirement that an approved Department nondiscrimination

statement be included in the notice advising individuals that their certification period is about to expire has been included in § 247.16(d) of this final rule.

Notification of Discontinuance of Participant, Section 247.17

Requirements associated with notifying participants that their participation in the program is discontinued would have been addressed in § 247.17 of the proposed rule. While no specific comments were received relative to the provisions contained in § 247.17 of the proposed rule, § 247.17 of the proposed rule has been amended in this final rule to clarify that local agencies must provide the participant with prior written notification of discontinuance in instances where a participant's participation in the program must be discontinued prior to the end of the certification period, due to the lack of resources necessary to continue providing benefits to the participant. In addition, in order to make clear the participant's civil rights, the requirement that an approved Department nondiscrimination statement must be included in the notice of discontinuance has been included in § 247.17(c) of this final rule.

Since no other comments were received in reference to the remaining provisions contained in § 247.17 of the proposed rule, they are retained in this final rule as proposed.

Nutrition Education, Section 247.18

Section 247.18, as proposed, would have described nutrition education requirements. Section 247.18(a) of the proposed rule would have required that the State agency establish an evaluation procedure to ensure that the nutrition education provided is effective. The evaluation procedure would have included participant input and would have been directed by a nutritionist or other qualified professional. The evaluation would have been performed by the State or local agency or by another agency under agreement with the State or local agency. Two commenters, although strong supporters of nutrition education, asserted that the proposed requirement that the State agency establish a nutrition evaluation procedure under the direction of a nutritionist may be difficult to achieve, as many State agencies may not have immediate access to a nutritionist. We appreciate the commenters' concerns. However, § 247.18(a), as proposed, would have permitted State agencies to use other qualified professionals, and would have provided State agencies adequate flexibility in developing evaluation procedures. The above provisions of § 247.18(a) of the proposed rule are retained in this final rule, with the clarification that State agencies may allow local agencies to share personnel and educational resources with other programs in order to provide the best nutrition education possible to program participants. The remaining nutrition education evaluation procedure requirements detailed in § 247.18(a) of the proposed rule are retained without change in this final rule.

Section 247.18(b) of the proposed rule would have required that the local agency provide the participant with nutrition education information on certain specified subjects. Two commenters asserted that most local agency staff are not qualified to provide nutritional education to participants, especially in terms of special nutritional needs and how these needs may be met. While we appreciate the commenters' concerns, local agencies have discretion with regard to the manner in which the information is provided. In instances in which a qualified professional is not available to provide such information, the information can be provided in the form of printed materials. Therefore, § 247.18(b) of the proposed rule is retained in this final rule without change.

Since no other comments were received relative to the other provisions contained in § 247.18 of the proposed rule, they are retained in this final rule as proposed.

Dual Participation, Section 247.19

Section 247.19(a) of the proposed rule would have included the requirements for the prevention and detection of dual participation, including the requirement that the State agency agree on a plan with the State WIC agency to detect and prevent dual participation. For clarification purposes, we have included in this final rule reference to § 247.8(a)(1), which requires local agencies to check the identification of all applicants when they are certified or recertified. In addition, we have included reference to § 247.8(b) of this final rule, which requires that the local agency ensure that the applicant, or the adult parent or caretaker of the applicant, signs an application form which includes a statement advising the applicant that he or she may not receive both CSFP and WIC benefits simultaneously, or CSFP benefits at more than one CSFP site at the same time. Because the provision that references informing the applicant of the prohibition on dual participation contained in proposed rule § 247.12(b)(1) is not included in this final rule, and since this information is now required on the application form per § 247.8(b) of this final rule, reference to § 247.12(b)(1) has not been included in § 247.19(a) of this final rule.

One commenter suggested that the administrative burden for detecting and preventing dual participation be equally shared between CSFP and WIC State agencies. We appreciate the commenter's input in reference to this issue. However, as provided in the recent WIC/CSFP Dual Participation Guidance Memorandum issued by FNS on May 6, 2004, we recommend that WIC State agencies take the lead role in the detection of dual participation. WIC has a much larger database of women, infants, and children, and individuals eligible for both programs increasingly participate in WIC rather than CSFP. As provided in that guidance memorandum, we realize that in a number of States, CSFP State agencies take the lead role in the detection of dual participation. If such a system is already in place and both CSFP and WIC State agencies are satisfied with it, then we do not expect the State agencies to change their policies. To prescribe equal detection and prevention efforts by both State agencies would create an undue burden on many CSFP and/or WIC State agencies. Consistent with the recent guidance memorandum, discretion is given to CSFP and WIC State agencies to determine the best policy for the detection of dual participation. Therefore, the remaining provisions contained in § 247.19(a) of the proposed rule are retained in this final rule as proposed.

Two commenters requested that a specific process be included in the regulations that would establish clear parameters for dual participation enforcement. Section 247.19(b) of the proposed rule would have required, consistent with the dual participation guidance memorandum, that a participant found to be committing dual participation be disqualified from one of the programs (WIC or CSFP). In addition, § 247.19(b) of the proposed rule would have required the local agency to initiate a claim against the participant to recover the value of CSFP benefits improperly received in accordance with § 247.30(c) of the proposed rule. If applied in conjunction with the guidelines set forth in the dual participation guidance memorandum, we believe that the provisions of § 247.19(b) of the proposed rule would have adequately addressed dual participation enforcement measures. Therefore, the provisions contained in

§ 247.19(b) are retained in this final rule as proposed.

Program Violations, Section 247.20

Section 247.20, as proposed, would have described the conditions under which applicants and participants may be disqualified from the program, the disqualification penalties, and the requirements for notifying individuals of their disqualification. In reference to § 247.20(b) of the proposed rule, one commenter specifically supported the proposal to extend the maximum disqualification period from three months to one year, as well as the proposal requiring local agencies to permanently disqualify participants who commit three program violations that involve fraud. Since no other comments were received relative to the provisions contained in § 247.20 of the proposed rule, they are retained in this final rule as proposed.

Caseload Assignment, Section 247.21

Section 247.21 of the proposed rule would have described provisions associated with the assignment of caseload. To ensure that additional caseload slots are allocated to States that are most likely to use them, § 247.21(a) of the proposed rule would have established more realistic, rigorous performance measures. The revised performance measures would have included an increase in the caseload utilization requirement to establish eligibility for additional caseload from 90 percent to 95 percent, and the removal of participation data during the month of September as an independent time period used to determine base caseload and a State's eligibility for additional caseload.

Prior to proposing these more rigorous performance measures, we analyzed the performance of State agencies over a period of three fiscal years, beginning with fiscal year 2000 program performance data. Based on this analysis, and the availability of a specific enhanced level of administrative funds, it has been determined that State agencies can reasonably be expected to meet these more demanding measures. While these measures may negatively impact a small number of States in any given year, they will have a positive impact on the program as a whole by facilitating assignment of caseload slots to State agencies most likely to utilize them based on past performance. The allocation of caseload slots to such State agencies will ensure that the nutritional needs of low-income women, infants, children, and elderly persons are more fully met.

We specifically requested comments on the removal of the month of September as an independent consideration. Of the comments received, two commenters expressed support for the proposed provision with changes, and one commenter did not support the removal of the month of September.

One of the commenters expressed support for the removal of the month of September only if the highest quarter's participation is included as a time period used to determine a State's base caseload and eligibility for additional caseload. The goal of the provisions contained in § 247.21(a) of the proposed rule was to establish performance standards that would result in the allocation of caseload to State agencies that are most likely to utilize it. We do not believe that using a State's highest quarter of participation will be helpful in achieving that goal. This approach is not appropriate because it undervalues current participation data relative to performance during a single past quarter after which significant decreases in participation may have occurred.

One of the commenters argued that removal of the month of September as an independent consideration either in establishing base caseload or in determining eligibility for additional caseload would be misguided and shows a lack of understanding for how caseloads are managed at the State level. Our analysis indicates that many State agencies' highest participation period over the past few years has been the month of September, and that their participation often decreases significantly in the immediately following months. Eliminating the month of September as an independent measure should decrease the spiking in caseload utilization that frequently takes place in September and strengthen the incentive for States to fill available caseload slots sooner. Ensuring a more accurate and precise appraisal of States' performance should facilitate allocation of caseload to States that are most likely to utilize it. This will increase overall program efficiency and ensure that the nutritional needs of more low-income women, infants, children, and elderly persons are met during that caseload cycle.

One of the commenters argued that when appropriations are not enacted by December 31, the month of September should be restored as an allowable stand-alone performance measure. The commenter asserted that the removal of September would discourage State agencies from making extraordinary efforts to serve clients in unserved areas, especially in years when caseload is assigned late. We agree that September participation should be included as an independent consideration, but only in circumstances that could reasonably lead to participation growth in that month. Even in a year of delayed appropriations, a State agency that has participated in two or more caseload cycles that receives only base caseload would be expected to maintain participation within a relatively narrow range throughout the year rather than peak in September. In contrast, a State agency entering its second year of program participation that is working to fully establish its program may exhibit a lower caseload utilization level at the beginning of its first year than other, more established States. Thus, participation growth through September can reasonably be expected for States entering their second year. Furthermore, when appropriations are unduly delayed and a State receives considerable expansion caseload, participation growth through September can reasonably be expected as well. Finally, the same factors that contribute to participation increases in September should serve to sustain that higher participation level at least through the following month.

Therefore, for each State that has participated in two or more caseload cycles, § 247.21(a) of this final rule includes September as an independent performance measure for determining a State's base caseload and eligibility for additional caseload only when, as of February 15 of the previous fiscal year, full-year appropriations were not enacted (thus delaying caseload assignment until after that date), the State received additional caseload in the previous caseload cycle that increased the State's total caseload by 10 percent or more over and above its assigned base caseload, and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. For example, State A was entering its third caseload cycle in 2004. Full-fiscal-year 2003 appropriations were not enacted until February 20, 2003. For the 2003 caseload cycle, 25 caseload slots were allocated to State A in addition to its base caseload of 100, giving the State a total caseload of 125. State A's program participation for the month of September, fiscal year 2003, was 120 persons, and the State's October participation in fiscal year 2004 was 122 persons. When allocating caseload for the 2004 caseload cycle, September would be used as an independent

performance measure for determining base caseload and eligibility for additional caseload for State A because the 2003 full-year appropriation was not enacted before February 15, the State received additional caseload which increased its total caseload allocation by 25 percent over and above base caseload, and the State achieved an October participation level in fiscal year 2004 which represented over 101 percent of its September participation level in the previous fiscal year.

To provide a contrasting example, State B was entering its fourth caseload cycle in 2004. For the previous caseload cycle, State B was assigned a base caseload of 90. The State received five additional caseload slots in the 2003 caseload cycle to bring its total caseload allocation to 95. Regardless of the timing of the full-year appropriation or State B's participation level in October, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle, because the additional caseload allocation of only five slots in the previous caseload cycle increased the State's total caseload allocation by less than six percent, which is under than the 10-percent required minimum.

Finally, State C was entering its seventh caseload cycle in 2004. For the previous caseload cycle, the State received 50 additional caseload slots over and above its base caseload of 25, bringing its total caseload to 75. State C's program participation for the month of September, fiscal year 2003, was 70 persons, but the State's October participation in the following fiscal year dropped to 50 persons. Because State C's October fiscal year 2004 participation was approximately 71 percent of its September fiscal year 2003 participation, and well below the required minimum of 95 percent, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle.

For each State entering its second caseload cycle, § 247.21(a) of this final rule includes September as an independent performance measure for determining a State's eligibility for additional caseload only when, as of February 15 of the previous fiscal year, full-year appropriations were not enacted (thus delaying caseload assignment until after that date), and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. Because States entering their second year of program participation do not receive additional caseload in their first caseload cycle, those States cannot be expected to meet the 10-percent minimum caseload increase standard that is applied to States that have participated in two or more caseload cycles. Thus, the 10-percent minimum increase standard does not apply to these States.

To provide an example, State D was entering its second caseload cycle in 2004. To review, full-fiscal-year 2003 appropriations were not enacted until February 20, 2003. State D received caseload totaling 50 slots in the 2003 caseload cycle. The State's participation for September of fiscal year 2003 was 49, and its October participation for the following fiscal year was 50. When allocating caseload for the 2004 caseload cycle, September would be used as an independent performance measure for determining base caseload and eligibility for additional caseload for State D because full-year appropriations were not enacted before February 15, and the State achieved an October participation total in fiscal year 2004 which was 102 percent of the State's September participation total in the previous fiscal year, well above the 95-percent minimum requirement.

To provide a contrasting example, State E was entering its second caseload cycle as well in 2004. State E received caseload totaling 200 slots in the previous caseload cycle. The State's participation for September of fiscal year 2003 was 190, but its fiscal year 2004 October participation dropped to 150. Because State D's October participation was just under 79 percent of its September participation, and well below the required minimum of 95 percent, the month of September would not be used in determining the State's base caseload or eligibility to receive additional caseload for the 2004 caseload cycle.

Section 247.21(a)(2) of the proposed rule would have required that a State agency utilize 95 percent of its assigned caseload, rather than the current 90 percent, to be eligible for additional caseload in the following caseload cycle. Three commenters did not support the proposed increase from 90 to 95 percent. One commenter suggested that the combined effect of both the 95 percent caseload utilization requirement and the removal of the month September from the computation to determine base caseload would create a situation where many State agencies would not qualify for additional caseload. As discussed previously, the commenter also asserted that such a requirement would discourage State agencies from making extraordinary efforts to serve clients in unserved areas. However, our analysis of what the combined impact of both proposed provisions would have had over a recent period of three fiscal years indicates that implementation of these more rigorous performance measures would have negatively impacted only a small proportion of currently participating CSFP State agencies. The impact on the few States would be consistent with allocation of limited resources in a performance-based program with the goal of maximizing services to eligible applicants.

Two other commenters asserted that there might be legitimate reasons why the State agency does not meet the 95 percent performance measure, such as the introduction of additional caseload late in the year due to a late appropriation. The commenters further asserted that 95 percent requirement limits the Department's flexibility in moving caseload where it is most needed. As discussed in detail above, for each State that has participated in two or more caseload cycles, § 247.21(a) of this final rule mandates the use of September participation data as an independent consideration in determining the State's base caseload and eligibility for additional caseload when the full-year appropriation was not enacted prior to February 15, the State received additional caseload in the previous caseload cycle that increased the State's total caseload by 10 percent or more over and above its assigned base caseload, and the State achieved an October participation total in the current fiscal year which was equal to or greater than 95 percent of the State's September participation total in the previous fiscal year. States entering their second year of program participation receive base caseload equal to the amount of caseload assigned to them in their first year of program participation. For these States, the 10-percent minimum caseload increase standard does not apply with regard to eligibility for additional caseload. These revisions should allay commenters' concerns regarding a State agency's inability to utilize 95 percent of caseload in years when caseload assignment occurs late due to the lateness of the appropriation while ensuring that caseload is assigned to those States that are most likely to utilize it.

One commenter supported the proposed provision with changes. The commenter suggested that the increase from 90 to 95 percent caseload utilization is too large to make at one time. The commenter suggested that an

increase to 92 percent followed by a careful evaluation of the outcomes is more appropriate. As stated previously, our analysis of caseload utilization over a recent period of three fiscal years indicates that State agencies can reasonably be expected to meet these more rigorous measures. Therefore, the 95 percent caseload utilization requirement is retained in § 247.21(a)(2) of this final rule as proposed.

Allocation and Disbursement of Administrative Funds to State Agencies, Section 247.22

Section 247.22 of the proposed rule would have described those provisions associated with the allocation and disbursement of administrative funds. No comments were received relative to the provisions contained in § 247.22 of the proposed rule. Those provisions are retained in this final rule with the clarification that only the method of payment, not the frequency, may be subject to other funding arrangements.

State Provision of Administrative Funds to Local Agencies, Section 247.23

Section 247.23 of the proposed rule would have described those provisions associated with the allocation of administrative funds by State agencies to local agencies. Since no comments were received relative to the provisions contained in § 247.23 of the proposed rule, they are retained in this final rule as proposed.

Recovery and Redistribution of Caseload and Administrative Funds, Section 247.24

Section 247.24(a), as proposed, would have provided that when a State agency has voluntarily given up caseload slots or FNS has taken action to recover caseload slots, the State agency must use 95 percent of its original caseload allocation to be eligible for additional caseload. Two commenters did not support the proposed requirement that the State agency be held to its original caseload allocation for purposes of establishing a caseload standard. The two commenters that did not support the proposed provision asserted that this approach prevents a State agency from getting back on track in terms of growth on a more modest basis. However, recoveries of caseload would only occur if a State agency realizes that a certain number of caseload slots cannot be utilized and returns that unused portion of that assigned caseload, or FNS takes action to recover caseload in a State where significant under-utilization of caseload is occurring. Current performance that would lead to either of these actions would tend not to be consistent with a realistic expectation of even modest growth in the immediate future. Therefore, § 247.24(a) of this final rule retains the requirement that a State from which caseload has been recovered must utilize 95 percent of its originally assigned caseload to be eligible for additional caseload. However, it has come to our attention that the language contained in the proposed rule did not make it clear that a State agency would not have been permitted to exceed its assigned caseload on an average monthly basis through September of the caseload cycle in order to meet the 95-percent performance standard. Therefore, we have amended the language in § 247.24(a) of this final rule to clarify that the State agency must not exceed its reduced caseload allocation on an average monthly basis. Some States that experience greater caseload reductions will be unable to meet the 95-percent test. This result is consistent with effective allocation of limited resources in a performance-based program.

We requested in the proposed rule that State and local agencies provide specific comments regarding procedures FNS should use in recovering caseload and administrative funds (*e.g.*, is there a specific time during the caseload cycle that should be used to determine if there is a need to recover caseload and administrative funds?). One commenter suggested that, at minimum, six months' worth of participation data should be taken into consideration before action is contemplated. The commenter further argued that action should only be contemplated in instances when a State agency is severely underutilizing caseload. In addition, the commenter argued that a State's plans for increased caseload utilization should take precedence over caseload and administrative funds reductions initiated by FNS. Another commenter recommended that FNS review caseload participation in the fourth quarter only. The commenter further argued that caseload should only be recovered if the State agency demonstrates that it will not attain 95 percent caseload utilization by the end of the fourth quarter. Another commenter asserted that States should be allowed the full calendar year, or caseload cycle, to utilize assigned caseload before any recoveries are made.

We agree that the State agency should be given every opportunity to utilize assigned caseload before recovery and redistribution actions are taken. We plan to continue working jointly with State agencies to facilitate full caseload utilization in order to avoid the need for recovery and redistribution measures. Specific procedures for the recovery of caseload slots have not been included in § 247.24(a) of this final rule. However, we are aware that administrative funds could be targeted more efficiently in some circumstances, particularly in cases of significant underutilization of caseload. We will continue to explore options for ensuring that administrative funds are allocated in the most cost effective way possible in order to maximize the number of individuals served by the program.

Section 247.24(b) of the proposed rule would have limited the amount of administrative funds that can be involuntarily recovered by FNS to no more than 25 percent of the State agency's allocation during any fiscal year. The term ''involuntarily'' in the proposed rule has been deleted and replaced with the term ''unilaterally'' in this final rule for clarification purposes. The proposed rule requested that State and local agencies provide specific comments regarding increasing or eliminating the 25-percent limitation.

Three commenters did not support increasing or eliminating the 25-percent limitation. The three commenters that did not support the change argued that increasing or eliminating the 25-percent limitation on the recovery of administrative funds could cripple the State agency from which administrative funds are recovered. In particular, two of the commenters asserted that the amount of administrative funds needed to administer the program is driven by food handling costs such as warehousing, trucking, refrigeration, boxing of commodities, and related costs. The same two commenters further asserted that a 25-percent reduction halfway through the fiscal year is equivalent to a 50-percent reduction for the remainder of the fiscal year, and that some States would not be able to sustain a funding loss of that magnitude. We agree that the cost of administering the program is directly affected by the cost of procuring services from private sources. These costs vary significantly among State agencies and, in many instances, funds to pay such costs are obligated early in the caseload cycle.

However, in instances when a State significantly underutilizes allocated caseload during the year, and does not serve a large number of needy persons who could be served by other, more efficient States, FNS must have the capability to recover caseload and the administrative funds generated by that caseload over and above the 25-percent limit. Therefore, the provision which limits the caseload that FNS can recover to an amount which does not result in

the recovery of more than 25 percent of that State's administrative funds has been amended in § 247.24(b) of this final rule to reflect a 50-percent limit. This provides FNS with the added flexibility necessary to ensure maximum service to eligible applicants. States that utilize a high percentage of caseload generally would not experience unilateral recoveries. However, States may, for various reasons, request that FNS recover any portion of their caseload. In such instances, the regulatory limitation would not apply. Thus, the proposed provision contained in § 247.24(b) that removes the recoveries limit in such circumstances is retained in this final rule.

Allowable Uses of Administrative Funds and Other Funds, Section 247.25

Section 247.25, as proposed, would have described provisions relative to the allowable uses of administrative funds, procedures for utilizing administrative funds, program income, and the use of funds recovered as a result of claims actions. Section 247.25(f) of the proposed rule would have permitted the State agency to authorize local agencies to utilize funds recovered through claims actions for allowable program costs incurred at the local level, rather than returning them to the State. Granting State agencies this authority is appropriate since, in some instances, these funds can be used more efficiently and effectively at the local level.

Two commenters supported the proposed provision but recommended that this policy be documented in the State Plan. Requiring a State agency to stipulate its policy regarding the use of funds obtained through claims action is not appropriate since such decisions should be made on a case-by-case basis. Since no other comments were received relative to the provisions contained in § 247.25 of the proposed rule, they are retained in this final rule as proposed, with the clarification that the State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of 7 CFR 250.15(c).

Return of Administrative Funds, Section 247.26

The provisions contained in § 247.26, as proposed, would have addressed the return of unused administrative funds by State agencies and the use of such funds. Section 247.26(b) of the proposed rule would have stipulated that administrative funds recovered at the end of the year would not be reallocated to State agencies in the form of administrative funds in addition to the mandated grant per slot. Two commenters concurred with the proposed provision. The provisions contained in § 247.26 of the proposed rule reflect the current legislative requirements of Section 4201(b) of the Farm Security and Rural Investment Act of 2002, Public Law 107–171, and are, therefore, retained in this final rule as proposed.

Financial Management, Section 247.27

Section 247.27 of the proposed rule would have described financial management requirements for State and local agencies. Since no comments were received relative to the provisions contained in § 247.27 of the proposed rule, they are retained in this final rule as proposed.

Storage and Inventory of Commodities, Section 247.28

Section 247.28, as proposed, would have described those provisions associated with the storage and inventory of commodities provided by the Department for use in the program. Since no comments were received relative to the provisions contained in § 247.28 of the proposed rule, they are retained in this final rule as proposed.

Reports and Recordkeeping, Section 247.29

Section 247.29, as proposed, would have described requirements associated with the maintenance of records and submission of reports. Section 247.29(a) of the proposed rule would have included a requirement that all records be available during normal business hours for use in management reviews, audits, or investigations, except medical case records of participants (unless they are the only source of certification data). Two commenters objected to the suggested use of medical case records. The commenters reasoned that the program is not providing medical services, and the use of this term could have serious implications with respect to the Health Insurance Portability and Accountability Act of 1996, Public Law 104–191. We appreciate the commenters' concerns in reference to this issue and agree that reference to such records should be removed. Therefore, § 247.29(a) of this final rule contains no reference to medical case records. However, local agencies must ensure availability of certification records, other than medical case records, that document the information necessary to ensure that an individual was properly certified. Since no comments were received relative to the other provisions contained in § 247.29 of the proposed rule, they are retained in this final rule as proposed.

Claims, Section 247.30

Section 247.30, as proposed, would have described those provisions associated with establishing and pursuing claims against State, local, and subdistributing agencies, and program participants. Since no comments were received relative to the provisions contained in § 247.30 of the proposed rule, they are retained in this final rule as proposed, with the clarification that the State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of 7 CFR 250.15(c).

Audits and Investigations, Section 247.31

Section 247.31 of the proposed rule would have described those provisions associated with audit and investigation activities. No comments were received relative to the provisions contained in this section of the proposed rule. However, since publication of the proposed rule, the dollar threshold that determines when an audit is required has been increased from $300,000 to $500,000. To ensure that State and local agencies comply with provisions contained in 7 CFR part 3052, which are subject to change, § 247.31(d) of this final rule does not include a dollar threshold and instead contains the general requirement that State and local government agencies, and nonprofit organizations have an audit conducted in accordance with 7 CFR part 3052. All other provisions contained in § 247.31 of the proposed rule are retained in this final rule without change.

Termination of Agency Participation, Section 247.32

Section 247.32, as proposed, would have described those provisions associated with the termination of State and local agreements. As discussed in detail above, 30 days' notice of intent to terminate program operations is not always adequate. Therefore, § 247.32 of this final rule establishes the 30-day written notice-of-termination requirement as a regulatory minimum. In § 247.32(a) of the proposed rule, we inaccurately referenced ''local'' agency programs. We have corrected the inaccurate reference by including the term ''State'' for ''local'' in § 247.32(a) of this final rule. Since no comments were received relative to other provisions contained in § 247.32 of the proposed rule, they are retained in this final rule as proposed.

Fair Hearings, Section 247.33

Section 247.33 of the proposed rule would have described those provisions associated with the fair hearing process. No specific comments were received relative to the provisions contained in this proposed section. However, since Federal regulations do not require State agencies to implement a State-level review or rehearing process, § 247.33 of this final rule clarifies that the State or local agency must describe any State-level review or rehearing process in instances when one is available. In addition, § 247.33 of this final rule clarifies that the State or local agency must inform the individual of the right to pursue judicial review of the decision. All other provisions contained in § 247.33 of the proposed rule are retained in this final rule as proposed.

Management Reviews, Section 247.34

Section 247.34, as proposed, would have described those provisions associated with management reviews of agencies conducting program activities. To reduce the burden on State agencies in conducting management reviews, § 247.34(a) of the proposed rule would have required that the State agency perform on-site reviews of local agencies and storage facilities at least once every two years, instead of annually. Two commenters strongly concurred with the proposed requirement that the State agency perform on-site reviews of local agencies and storage facilities at least once every two years, instead of annually. Based on the comments received, the provisions contained in § 247.34 of the proposed rule are retained in this final rule as proposed.

Local Agency Appeals of State Agency Actions, Section 247.35

Section 247.35 of the proposed rule would have described those provisions associated with appeals by local agencies of State agency actions. Section 247.35 of the proposed rule incorrectly referred to the denial of a local agency's application for participation in the program as an example of a decision that local agencies may appeal. Therefore, reference to denial of a local agency's application for participation in the program is omitted from this final rule. Since no comments were received relative to the provisions contained in § 247.35 of the proposed rule, all other provisions are retained in this final rule as proposed.

Confidentiality of Applicants or Participants, Section 247.36

Section 247.36, as proposed, would have described those provisions associated with the disclosure of applicant and participant information. Since no comments were received relative to the provisions contained in § 247.36 of the proposed rule, they are retained in this final rule as proposed.

Civil Rights Requirements, Section 247.37

Section 247.37, as proposed, would have described the Department's civil rights requirements. Since no comments were received relative to the provisions contained in § 247.37 of the proposed rule, they are retained in this final rule as proposed.

List of Subjects in 7 CFR part 247

Agricultural commodities, Food assistance programs, Infants and children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is revised to read as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

Sec.

247.1 Definitions.
247.2 The purpose and scope of CSFP.
247.3 Administering agencies.
247.4 Agreements.
247.5 State and local agency responsibilities.
247.6 State Plan.
247.7 Selection of local agencies.
247.8 Individuals applying to participate in CSFP.
247.9 Eligibility requirements.
247.10 Distribution and use of CSFP commodities.
247.11 Applicants exceed caseload levels.
247.12 Rights and responsibilities.
247.13 Provisions for non-English or limited-English speakers.
247.14 Other public assistance programs.
247.15 Notification of eligibility or ineligibility of applicant.
247.16 Certification period.
247.17 Notification of discontinuance of participant.
247.18 Nutrition education.
247.19 Dual participation.
247.20 Program violations.
247.21 Caseload assignment.
247.22 Allocation and disbursement of administrative funds to State agencies.
247.23 State provision of administrative funds to local agencies.
247.24 Recovery and redistribution of caseload and administrative funds.
247.25 Allowable uses of administrative funds and other funds.
247.26 Return of administrative funds.
247.27 Financial management.
247.28 Storage and inventory of commodities.
247.29 Reports and recordkeeping.
247.30 Claims.
247.31 Audits and investigations.
247.32 Termination of agency participation.
247.33 Fair hearings.
247.34 Management reviews.
247.35 Local agency appeals of State agency actions.
247.36 Confidentiality of applicants or participants.
247.37 Civil rights requirements.

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c note); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c note); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c note); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c note); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c note); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L. 101–624, 101 Stat. 3806 (7 U.S.C. 612c note); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c note); Pub. L. 107–171.

§ 247.1 Definitions.

Following is a list of definitions that apply to the Commodity Supplemental Food Program (CSFP).

Applicant means any person who applies to receive program benefits. Applicants include program participants applying for recertification.

Breastfeeding women means women up to one year postpartum who are breastfeeding their infants.

Caseload means the number of persons the State agency may serve on an average monthly basis over the course of the caseload cycle.

Caseload cycle means the period from January 1 through the following December 31.

Certification means the use of procedures to determine an applicant's eligibility for the program.

Certification period means the period of time that a participant may continue to receive program benefits without a review of his or her eligibility.

Children means persons who are at least one year of age but have not reached their sixth birthday.

Commodities means nutritious foods purchased by USDA to supplement the diets of CSFP participants.

CSFP means the Commodity Supplemental Food Program.

Department means the U.S. Department of Agriculture.

Disqualification means the act of ending Program participation of a participant as a punitive sanction.

Dual participation means simultaneous participation by an individual in CSFP and the WIC Program, or in CSFP at more than one distribution site.

Elderly persons means persons at least 60 years of age.

Fiscal year means the period from October 1 through the following September 30.

FNS means the Food and Nutrition Service.

Infants means persons under one year of age.

Local agency means a public or private nonprofit agency, including an Indian tribal organization, which enters into an agreement with the State agency to administer CSFP at the local level.

Nonprofit agency means a private agency or organization with tax-exempt status under the Internal Revenue Code, or that has applied for tax-exempt status with the Internal Revenue Service.

Postpartum women means women up to one year after termination of pregnancy.

Proxy means any person designated by a participant, or by the participant's adult parent or caretaker, to obtain supplemental foods on behalf of the participant.

7 CFR part 250 means the Department's regulations pertaining to the donation of foods for use in USDA food distribution programs.

7 CFR part 3016 means the Department's regulations pertaining to administrative requirements for grants and cooperative agreements with State, local, and Indian tribal governments.

7 CFR part 3019 means the Department's regulations pertaining to administrative requirements for grants and cooperative agreements with nonprofit organizations.

7 CFR part 3052 means the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations.

State means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

State agency means the agency designated by the State to administer CSFP at the State level; an Indian tribe or tribal organization recognized by the Department of the Interior that administers the program for a specified tribe or tribes; or, the appropriate area office of the Indian Health Service of the Department of Health and Human Services.

State Plan means the document that describes the manner in which the State agency intends to administer the program in the State.

Subdistributing agency means an agency or organization that has entered into an agreement with the State agency to perform functions normally performed by the State, such as entering into agreements with eligible recipient agencies under which commodities are made available, ordering commodities and/or making arrangements for the storage and delivery of such commodities on behalf of eligible recipient agencies.

WIC Program means the Special Supplemental Nutrition Program for Women, Infants, and Children.

§ 247.2 The purpose and scope of CSFP.

(a) *How does CSFP help participants?* Through CSFP, the Department provides nutritious commodities to help State and local agencies meet the nutritional needs of low-income pregnant, postpartum, and breastfeeding women, infants under one year of age, children who are at least one year of age but have not reached their sixth birthday, and elderly persons. Through local agencies, each participant receives a monthly package of commodities, based on food package guide rates developed by FNS, with input from State and local agencies. Food packages include such nutritious foods as infant formula and cereal, juices, canned fruits and vegetables, canned meat or poultry and other protein items, and grain products such as pasta, as well as other foods. Participants also receive nutrition education.

(b) *How many persons may be served in CSFP?* State agencies may serve eligible persons up to the caseload limit assigned to them by FNS. Caseload is the number of persons that may be served on an average monthly basis over the course of the caseload cycle, which extends from January 1 through the following December 31.

§ 247.3 Administering agencies.

(a) *What agencies are responsible for administering CSFP?* CSFP is administered at the Federal level by the Department's Food and Nutrition Service (FNS), which provides commodities, assigns caseload, and allocates administrative funds to State agencies. State agencies are responsible for administering the program at the State level. The State agency may select local agencies to administer the program in local areas of the State. The State agency must provide guidance to local agencies on all aspects of program operations. The State agency may also select subdistributing agencies (*e.g.*, another State agency, a local governmental agency, or a nonprofit organization) to distribute or store commodities, or to perform other program functions on behalf of the State agency. Local or subdistributing agencies may also select other agencies to perform specific program functions (*e.g.*, food distribution or storage), with the State agency's approval. Although the State agency may select other organizations to perform specific activities, the State agency is ultimately responsible for all aspects of program administration.

(b) *Are there specific functions that the State agency cannot delegate to another agency?* Yes. The State agency may not delegate the performance of the following functions to another agency:

(1) Establishing eligibility requirements, in accordance with the options provided to the State agency under § 247.9; or

(2) Establishing a management review system and conducting reviews of local agencies, in accordance with § 247.34.

(c) *What Federal requirements must State, subdistributing, and local agencies follow in administering CSFP?* State, subdistributing, and local agencies must administer the program in accordance with the provisions of this part, and with the provisions contained in part 250 of this chapter, unless they are inconsistent with the provisions of this part.

§ 247.4 Agreements.

(a) *What agreements are necessary for agencies to administer CSFP?* The following agreements are necessary for agencies to administer CSFP:

(1) *Agreements between FNS and State agencies.* Each State agency must enter into an agreement with FNS (Form FNS–74, the Federal-State Agreement) prior to receiving commodities or administrative funds;

(2) *Agreements between State agencies and local or subdistributing agencies.* The State agency must enter into written agreements with local or subdistributing agencies prior to making commodities or administrative funds available to them. The agreements must contain the information specified in paragraph (b) of this section. Agreements between State and local agencies must also contain the information specified in paragraph (c) of this section. Copies of all agreements must be kept on file by the parties to the agreements; and

(3) *Agreements between local and subdistributing agencies and other agencies.* The State agency must ensure that local and subdistributing agencies enter into written agreements with other agencies prior to making commodities or administrative funds available to these other agencies. The agreements must contain the information specified in paragraph (b) of this section. Copies of all agreements must be kept on file by the parties to the agreements.

(b) *What are the required contents of agreements?* All agreements described under paragraphs (a)(2) and (a)(3) of this section must contain the following:

(1) An assurance that each agency will administer the program in accordance

with the provisions of this part and with the provisions of part 250 of this chapter, unless they are inconsistent with the provisions of this part;

(2) An assurance that each agency will maintain accurate and complete records for a period of three years from the close of the fiscal year to which they pertain, or longer if the records are related to unresolved claims actions, audits, or investigations;

(3) A statement that each agency receiving commodities for distribution is responsible for any loss resulting from improper distribution, or improper storage, care, or handling of commodities;

(4) A statement that each agency receiving program funds is responsible for any misuse of program funds;

(5) A description of the specific functions that the State, subdistributing, or local agency is delegating to another agency; and

(6) A statement specifying:

(i) That either party may terminate the agreement by written notice to the other; and

(ii) The minimum number of days of advance notice that must be given. (The advance notification period must be at least 30 days.)

(c) *What other assurances or information must be included in agreements between State and local agencies?* In addition to the requirements under paragraph (b) of this section, agreements between State and local agencies must contain the following:

(1) An assurance that the local agency will provide, or cause to be provided, nutrition education to participants, as required in § 247.18;

(2) An assurance that the local agency will provide information to participants on other health, nutrition, and public assistance programs, and make referrals as appropriate, as required in § 247.14;

(3) An assurance that the local agency will distribute commodities in accordance with the approved food package guide rate;

(4) An assurance that the local agency will take steps to prevent and detect dual participation, as required in § 247.19;

(5) The names and addresses of all certification, distribution, and storage sites under the jurisdiction of the local agency; and

(6) An assurance that the local agency will not subject any person to discrimination under the program on the grounds of race, color, national origin, age, sex, or disability.

(d) *What is the duration of required agreements?* Agreements between FNS and State agencies are considered permanent, but may be amended at the initiation of State agencies or at the request of FNS. All amendments must be approved by FNS. The State agency establishes the duration of agreements it signs with local agencies or subdistributing agencies. The State agency may establish, or permit the local or subdistributing agency to establish, the duration of agreements between local or subdistributing agencies and other agencies. However, State and local agencies must comply with the requirements in § 250.12(c) of this chapter when entering agreements with other entities.

(Approved by the Office of Management and Budget under control numbers 0584–0067, 0584–0293)

§ 247.5 State and local agency responsibilities.

State and local agencies are responsible for administering the program in accordance with the provisions of this part, and with the provisions of part 250 of this chapter, as applicable. Although the State agency may delegate some responsibilities to another agency, the State agency is ultimately responsible for all aspects of program administration. The following is an outline of the major responsibilities of State and local agencies; it is not intended to be all-inclusive.

(a) *What are the major responsibilities shared by State and local agencies?* The major responsibilities shared by State and local agencies include:

(1) Entering into required agreements;

(2) Ordering commodities for distribution;

(3) Storing and distributing commodities;

(4) Establishing procedures for resolving complaints about commodities;

(5) Complying with civil rights requirements;

(6) Maintaining accurate and complete records; and

(7) Conducting program outreach.

(b) *What are the major State agency responsibilities?* The major responsibilities of State agencies include:

(1) Completing and submitting the State Plan;

(2) Selecting local agencies to administer the program in local areas of the State;

(3) Determining caseload needs, and submitting caseload requests to FNS;

(4) Assigning caseload, and allocating administrative funds, to local agencies;

(5) Establishing eligibility requirements, in accordance with the options provided to the State agency under § 247.9. (This function may not be delegated to another agency.);

(6) Establishing nutritional risk criteria and a residency requirement for participants, if such criteria are to be used;

(7) Establishing a financial management system that effectively accounts for funds received for program administration;

(8) Developing a plan for the detection and prevention of dual participation, in coordination with CSFP local agencies and with the State WIC agency;

(9) Developing a plan for providing nutrition education to participants;

(10) Establishing appeals and fair hearing procedures for local agencies and program participants;

(11) Developing a management review system and conducting reviews of local agencies.

(This function may not be delegated to another agency.);

(12) Determining and pursuing claims, and establishing standards for pursuit of claims against participants;

(13) Ensuring compliance with Federal audit requirements;

(14) Providing guidance to local agencies, as needed; and

(15) Ensuring that program participation does not exceed the State agency's caseload allocation on an average monthly basis.

(c) *What are the major local agency responsibilities?* The major local agency responsibilities include:

(1) Determining eligibility of applicants in accordance with eligibility criteria established by the State agency;

(2) Complying with fiscal and operational requirements established by the State agency;

(3) Ensuring that participation does not exceed the caseload assigned by the State agency;

(4) Issuing foods to participants in accordance with the established food package guide rates;

(5) Providing nutrition education and information on the availability of other nutrition and health assistance programs to participants;

(6) Informing applicants of their rights and responsibilities in the program;

(7) Meeting the special needs of the homebound elderly, to the extent possible; and

(8) Pursuing claims against participants.

§ 247.6 State Plan.

(a) *What is the State Plan?* The State Plan is a document that describes how the State agency will operate CSFP and the caseload needed to serve eligible applicants. The State agency must submit the State Plan to FNS for

approval. Once submitted and approved, the State Plan is considered permanent, with amendments submitted at the State agency's initiative, or at FNS request. All amendments are subject to FNS approval. The State Plan may be submitted in the format provided in FNS guidance, in an alternate format, or in combination with other documents required by Federal regulations. The State agency is encouraged to collaborate with the State WIC agency in developing the State Plan, for example, in developing plans for serving women, infants, and children, program outreach, and nutrition education. (Collaboration with the State WIC agency is required in preventing and detecting dual participation.) The State Plan must be signed by the State agency official responsible for program administration. A copy of the State Plan must be kept on file at the State agency for public inspection.

(b) *When must the State Plan be submitted?* The State Plan must be submitted by August 15 to take effect for the fiscal year beginning in the following October. FNS will provide notification of the approval or disapproval of the State Plan within 30 days of receipt, and will notify the State agency within 15 days of receipt if additional information is needed. Disapproval of the Plan will include a reason for the disapproval. Approval of the Plan is a prerequisite to the assignment of caseload and allocation of administrative funds, but does not ensure that caseload and funds will be provided.

(c) *What must be included in the State Plan?* The State Plan must include:

(1) The names and addresses of all local agencies and subdistributing agencies with which the State agency has entered into agreement;

(2) The income eligibility standards to be used for women, infants, and children, and the options to be used relating to income or other eligibility requirements, as provided under § 247.9;

(3) The nutritional risk criteria to be used, if the State chooses to establish such criteria;

(4) A description of plans for serving women, infants, children, and elderly participants and the caseload needed to serve them;

(5) A description of plans for conducting outreach to women, infants, children, and the elderly;

(6) A description of the system for storing and distributing commodities;

(7) A description of plans for providing nutrition education to participants;

(8) A description of the means by which the State agency will detect and prevent dual participation, including collaboration with the State WIC agency, and a copy of the agreement signed with the State WIC agency to accomplish this;

(9) A description of the standards the State agency will use in determining if the pursuit of a claim against a participant is cost-effective;

(10) A description of the means by which the State will meet the needs of the homebound elderly; and

(11) Copies of all agreements entered into by the State agency.

(d) *When must the State agency submit amendments to the State Plan?* The State agency must submit amendments to FNS to reflect any changes in program operations or administration described in the State Plan, and to request additional caseload for the following caseload cycle. FNS may also require that the State Plan be amended to reflect changes in Federal law or policy. The State agency may submit amendments to the State Plan at any time during the fiscal year, for FNS approval. The amendments will take effect immediately upon approval, unless otherwise specified by FNS. If a State agency would like to receive additional caseload for the caseload cycle beginning the following January 1, it must submit an amendment to the Plan which conveys the request for additional caseload by November 5. The State agency must also describe in this submission any plans for serving women, infants, children, and the elderly at new sites. FNS action on the State agency's request for additional caseload is part of the caseload assignment process, as described under § 247.21.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.7 Selection of local agencies.

(a) *How does a local agency apply to participate in CSFP?* Local agencies wishing to participate in CSFP must submit a written application to the State agency. The application must describe how the local agency will operate the program and, for nonprofit agencies, must include the agency's tax-exempt status. To be eligible to participate in CSFP, a nonprofit agency must have tax-exempt status under the Internal Revenue Code (IRC), or have applied for tax-exempt status with the Internal Revenue Service (IRS), and be moving towards such status. Nonprofit agencies organized or operated exclusively for religious purposes are automatically tax-exempt under the IRC. Nonprofit agencies required to obtain tax-exempt status must provide documentation from the IRS that they have obtained such status, or have applied for it.

(b) *On what basis does the State agency make a decision on the local agency's application?* The State agency must approve or disapprove the local agency's application based on, at minimum, the following criteria:

(1) The ability of the local agency to operate the program in accordance with Federal and State requirements;

(2) The need for the program in the projected service area of the local agency;

(3) The resources available (caseload and funds) for initiating a program in the local area; and

(4) For nonprofit agencies, the tax-exempt status, with appropriate documentation.

(c) *What must the State agency do if a nonprofit agency approved for CSFP is subsequently denied tax-exempt status by the IRS, or does not obtain this status within a certain period of time?* In accordance with paragraph (a) of this section, the State agency may approve a nonprofit agency that has applied to the IRS for tax-exempt status, and is moving toward compliance with the requirements for recognition of tax-exempt status. However, if the IRS subsequently denies a participating agency's application for recognition of tax-exempt status, the agency must immediately notify the State agency of the denial. The State agency must terminate the agency's agreement and participation immediately upon notification. If documentation of recognition of tax-exempt status is not received within 180 days of the effective date of the agency's approval to participate in CSFP, the State agency must terminate the agency's participation until such time as recognition of tax-exempt status is obtained. However, the State agency may grant an extension of 90 days if the agency demonstrates that its inability to obtain tax-exempt status in the 180-day period is due to circumstances beyond its control.

(d) *How much time does the State agency have to make a decision on the local agency's application?* The State agency must inform the local agency of approval or denial of the application within 60 days of its receipt. If the application is denied, the State agency must provide a written explanation for the denial, along with notification of the local agency's right to appeal the decision, in accordance with § 247.35. If the application is approved, the State and local agency must enter into an

agreement in accordance with the requirements of § 247.4.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.8 Individuals applying to participate in CSFP.

(a) *What information must individuals applying to participate in CSFP provide?* To apply for CSFP benefits, the applicant, or the adult parent or caretaker of the applicant, must provide the following information on the application:

(1) Name and address, including some form of identification for each applicant;

(2) Household income, except where the applicant is determined to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii);

(3) Household size, except where the applicant is determined to be automatically eligible under § 247.9(b)(1)(i) and (b)(1)(ii); and

(4) Other information related to eligibility, such as age or pregnancy, as applicable.

(b) *What else is required on the application form?* The application form must include a nondiscrimination statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability. After informing the applicant (or adult parent or caretaker) of his or her rights and responsibilities, in accordance with § 247.12, the local agency must ensure that the applicant, or the adult parent or caretaker of the applicant, signs the application form beneath the following pre-printed statement. The statement must be read by, or to, the applicant (or adult parent or caretaker) before signing.

''This application is being completed in connection with the receipt of Federal assistance. Program officials may verify information on this form. I am aware that deliberate misrepresentation may subject me to prosecution under applicable State and Federal statutes. I am also aware that I may not receive both CSFP and WIC benefits simultaneously, and I may not receive CSFP benefits at more than one CSFP site at the same time. Furthermore, I am aware that the information provided may be shared with other organizations to detect and prevent dual participation. I have been advised of my rights and obligations under the program. I certify that the information I have provided for my eligibility determination is correct to the best of my knowledge.

I authorize the release of information provided on this application form to other organizations administering assistance programs for use in determining my eligibility for participation in other public assistance programs and for program outreach purposes. (Please indicate decision by placing a checkmark in the appropriate box.)

YES [ ]

NO [ ]''

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.9 Eligibility requirements.

(a) *Who is eligible for CSFP?* To be eligible for CSFP, individuals must fall into one of the following population groups:

(1) Infants, *i.e.*, persons under one year of age;

(2) Children, *i.e.*, persons who are at least one year of age but have not reached their sixth birthday;

(3) Pregnant women;

(4) Breastfeeding women, up to one year after giving birth (post-partum);

(5) Post-partum women, up to one year after termination of pregnancy; or

(6) Elderly persons, *i.e.*, persons at least 60 years of age.

(b) *What are the income eligibility requirements for women, infants, and children?* (1) The State agency must establish household income limits that are at or below 185 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services, but not below 100 percent of these guidelines. However, the State agency must accept as income-eligible, regardless of actual income, any applicant who is:

(i) Certified as eligible to receive food stamps under the Food Stamp Act of 1977 (7 U.S.C. 2011 *et seq.*), Temporary Assistance for Needy Families (TANF) under Part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*), or Medical Assistance (*i.e.*, Medicaid) under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*); or

(ii) A member of a family that is certified eligible to receive assistance under TANF, or a member of a family in which a pregnant woman or an infant is certified eligible to receive assistance under Medicaid.

(2) The State agency may consider women, infants, and children participating in another Federal, State, or local food, health, or welfare program as automatically eligible for CSFP if the income eligibility limits for the program are equal to or lower than the established CSFP limits.

(3) For a pregnant woman, the State agency must count each embryo or fetus in utero as a household member in determining if the household meets the income eligibility standards.

(c) *What are the income eligibility requirements for elderly persons?* The State agency must use a household income limit at or below 130 percent of the Federal Poverty Income Guidelines. Elderly persons in households with income at or below this level must be considered eligible for CSFP benefits (assuming they meet other requirements contained in this part). However, elderly persons certified before September 17, 1986 (*i.e.*, under the three elderly pilot projects) must remain subject to the eligibility criteria in effect at the time of their certification.

(d) *When must the State agency revise the CSFP income guidelines to reflect the annual adjustments of the Federal Poverty Income Guidelines?* Each year, FNS will notify State agencies, by memorandum, of adjusted income guidelines by household size at 185 percent, 130 percent, and 100 percent of the Federal Poverty Income Guidelines. The memorandum will reflect the annual adjustments to the Federal Poverty Income Guidelines issued by the Department of Health and Human Services. The State agency must implement the adjusted guidelines for elderly applicants immediately upon receipt of the memorandum. However, for women, infants, and children applicants, the State agency must implement the adjusted guidelines at the same time that the State WIC agency implements the adjusted guidelines in WIC.

(e) *How is income defined and considered as it relates to CSFP eligibility?* (1) Income means gross income before deductions for such items as income taxes, employees' social security taxes, insurance premiums, and bonds.

(2) The State agency may exclude from consideration the following sources of income listed under the WIC regulations at § 246.7(d)(2)(iv) of this chapter:

(i) Any basic allowance for housing received by military services personnel residing off military installations; and

(ii) The value of inkind housing and other inkind benefits.

(3) The State agency must exclude from consideration all income sources excluded by legislation, which are listed in § 246.7(d)(2)(iv)(C) of this chapter. FNS will notify State agencies of any new forms of income excluded by statute through program policy memoranda.

(4) The State agency may authorize local agencies to consider the household's average income during the previous 12 months and current

household income to determine which more accurately reflects the household's status. In instances in which the State makes the decision to authorize local agencies to determine a household's income in this manner, all local agencies must comply with the State's decision and apply this method of income determination in situations in which it is warranted.

(f) *What other options does the State agency have in establishing eligibility requirements for CSFP?* (1) The State agency may require that an individual be at nutritional risk, as determined by a physician or by local agency staff.

(2) The State agency may require that an individual reside within the service area of the local agency at the time of application for CSFP benefits. However, the State agency may not require that an individual reside within the area for any fixed period of time.

§ 247.10 Distribution and use of CSFP commodities.

(a) *What are the requirements for distributing CSFP commodities to participants?* The local agency must distribute a package of commodities to participants each month, or a two-month supply of commodities to participants every other month, in accordance with the food package guide rates established by FNS.

(b) *What must the local agency do to ensure that commodities are distributed only to CSFP participants?* The local agency must require each participant, or participant's proxy, to present some form of identification before distributing commodities to that person.

(c) *What restrictions apply to State and local agencies in the distribution of CSFP commodities?* State and local agencies must not require, or request, that participants make any payments, or provide any materials or services, in connection with the receipt of CSFP commodities. State and local agencies must not use the distribution of CSFP commodities as a means of furthering the political interests of any person or party.

(d) *What are the restrictions for the use of CSFP commodities?* CSFP commodities may not be used for outreach, refreshments, or for any purposes other than distribution to, and nutrition education for, CSFP participants.

§ 247.11 Applicants exceed caseload levels.

(a) *What must the local agency do if the number of applicants exceeds the local agency's caseload level?* If all caseload has been filled, the local agency must maintain a waiting list of individuals who apply for the program. In establishing the waiting list, the local agency must include the date of application, the population group of the applicant, and information necessary to allow the local agency to contact the applicant when caseload space becomes available. Unless they have been determined ineligible, applicants must be notified of their placement on a waiting list within 10 days of their request for benefits in accordance with § 247.15.

(b) *What are the requirements for serving individuals on the waiting list once caseload slots become available?* When caseload slots open up, the local agency must provide benefits to eligible individuals on the waiting list in the following order of priority:

(1) Pregnant women, breastfeeding women, and infants;

(2) Children ages 1 through 3;

(3) Children ages 4 and 5;

(4) Postpartum women; and

(5) Elderly persons.

§ 247.12 Rights and responsibilities.

(a) *What information regarding an individual's rights in CSFP must the local agency provide to the applicant?* The local agency is responsible for informing the applicant, orally or in writing, of the following:

(1) The local agency will provide notification of a decision to deny or terminate CSFP benefits, and of an individual's right to appeal this decision by requesting a fair hearing, in accordance with § 247.33(a);

(2) The local agency will make nutrition education available to all adult participants, and to parents or caretakers of infant and child participants, and will encourage them to participate; and

(3) The local agency will provide information on other nutrition, health, or assistance programs, and make referrals as appropriate.

(b) *What information regarding an individual's responsibilities in CSFP must the local agency provide to the applicant?* In addition to the written statement required by § 247.8(b), the local agency is responsible for informing the applicant, orally or in writing, of the following:

(1) Improper use or receipt of CSFP benefits as a result of dual participation or other program violations may lead to a claim against the individual to recover the value of the benefits, and may lead to disqualification from CSFP; and

(2) Participants must report changes in household income or composition within 10 days after the change becomes known to the household.

§ 247.13 Provisions for non-English or limited-English speakers.

(a) *What must State and local agencies do to ensure that non-English or limited-English speaking persons are aware of their rights and responsibilities in the program?* If a significant proportion of the population in an area is comprised of non-English or limited-English speaking persons with a common language, the State agency must ensure that local agencies inform such persons of their rights and responsibilities in the program, as listed under § 247.12, in an appropriate language. State and local agencies must ensure that bilingual staff members or interpreters are available to serve these persons.

(b) *What must State and local agencies do to ensure that non-English or limited-English speaking persons are aware of other program information?* If a significant proportion of the population in an area is comprised of non-English or limited-English speaking persons with a common language, the State agency must ensure that local agencies provide other program information, except application forms, to such persons in their appropriate language.

§ 247.14 Other public assistance programs.

(a) *What information on other public assistance programs must the local agency provide to women, infants, and children applicants?* The local agency must provide CSFP applicants eligible for both CSFP and WIC with written information on the WIC Program, to assist them in choosing the program in which they wish to participate. Additionally, the local agency must provide women, infants, and children applicants with written information on the following nutrition, health, or public assistance programs, and make referrals to these programs as appropriate:

(1) The Medicaid Program, which is the medical assistance program established under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), and other health insurance programs for low-income households in the State. The State agency must provide local agencies with materials showing the income standards utilized in the Medicaid Program;

(2) The Temporary Assistance for Needy Families (TANF) program under part A of Title IV of the Social Security Act (42 U.S.C. 601 *et seq.*);

(3) The Child Support Enforcement Program under part D of Title IV of the Social Security Act (42 U.S.C. 651 *et seq.*); and

(4) The Food Stamp Program (7 U.S.C. 2011 *et seq.*).

(b) *What information on other public assistance programs must the local agency provide to elderly applicants?* The local agency must provide elderly applicants with written information on the following programs, and make referrals, as appropriate:

(1) Supplemental security income benefits provided under Title XVI of the Social Security Act (42 U.S.C. 1381 *et seq.*);

(2) Medical assistance provided under Title XIX of the Social Security Act (42 U.S.C. 1396 *et seq.*), including medical assistance provided to a qualified Medicare beneficiary (42 U.S.C. 1395(p) and 1396d(5)); and

(3) The Food Stamp Program (7 U.S.C. 2011 *et seq.*).

(c) *Is the value of CSFP benefits counted as income or resources for any other public assistance programs?* No. The value of benefits received in CSFP may not be considered as income or resources of participants or their families for any purpose under Federal, State, or local laws, including laws relating to taxation and public assistance programs.

§ 247.15 Notification of eligibility or ineligibility of applicant.

(a) *What is the timeframe for notifying an applicant of eligibility or ineligibility for CSFP benefits?* Local agencies must notify applicants of their eligibility or ineligibility for CSFP benefits, or their placement on a waiting list, within 10 days from the date of application.

(b) *What must be included in the notification of eligibility or ineligibility?* The notification of eligibility must include information on the time, location, and means of food distribution, and the length of the certification period. Notification of ineligibility must be in writing, and must include the reason the applicant is not eligible, a statement of the individual's right to a fair hearing to appeal the decision, and a statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

§ 247.16 Certification period.

(a) *How long is the certification period? (1) Women, infants, and children.* For women, infants, and children, the State agency must establish certification periods that may not exceed 6 months in length. However, pregnant women may be certified to participate for the duration of their pregnancy and for up to six weeks post-partum.

(2) *Elderly persons.* For elderly persons, the State agency must establish certification periods that may not exceed 6 months in length. However, the State agency may authorize local agencies to extend the certification period without a formal review of eligibility for additional 6-month periods, as long as the following conditions are met:

(i) The person's address and continued interest in receiving program benefits are verified;

(ii) The local agency has sufficient reason to believe that the person still meets the income eligibility standards (*e.g.*, the elderly person has a fixed income); and

(iii) No eligible women, infants, or children are waiting to be served.

(b) *On what day of the final month does the certification period end?* The certification period extends to the final day of the month in which eligibility expires (*e.g.*, the last day of the month in which a child reaches his or her sixth birthday).

(c) *Does the certification period end when a participant moves from the local area in which he or she was receiving benefits?* No. The State agency must ensure that local agencies serve a CSFP participant, or WIC participant (if also eligible for CSFP), who moves from another area to an area served by CSFP, and whose certification period has not expired. The participant must be given the opportunity to continue to receive CSFP benefits for the duration of the certification period. If the local agency has a waiting list, the participant must be placed on its waiting list ahead of all other waiting applicants. The local agency that determined the participant's eligibility must provide verification of the expiration date of the certification period to the participant upon request.

(d) *What must the local agency do to ensure that participants are aware of the expiration of the certification period?* The local agency must notify program participants in writing at least 15 days before the expiration date that eligibility for the program is about to expire. The local agency must include a statement in the written notification that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

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§ 247.17 Notification of discontinuance of participant.

(a) *What must a local agency do if it has evidence that a participant is no longer eligible for CSFP benefits during the certification period?* If a local agency has evidence that a participant is no longer eligible for CSFP benefits during the certification period, it must provide the participant with a written notification of discontinuance at least 15 days before the effective date of discontinuance.

(b) *What must a local agency do if it has to discontinue a participant from participation in the program prior to the end of the certification period due to the lack of resources necessary to continue providing benefits to the participant?* If a local agency does not have sufficient resources, such as a sufficient number of caseload slots, to continue providing benefits to the participant(s) for the entire certification period, it must provide the participant(s) with a written notification of discontinuance at least 15 days before the effective date of discontinuance.

(c) *What must be included in the notification of discontinuance?* The notification of discontinuance must include the effective date of discontinuance, the reason for the participant's discontinuance, a statement of the individual's right to appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a), and a statement that informs the applicant that program standards are applied without discrimination by race, color, national origin, age, sex, or disability.

§ 247.18 Nutrition education.

(a) *What are the State agency's responsibilities in ensuring that nutrition education is provided?* The State agency must establish an overall nutrition education plan and must ensure that local agencies provide nutrition education to participants in accordance with the plan. The State agency may allow local agencies to share personnel and educational resources with other programs in order to provide the best nutrition education possible to participants. The State agency must establish an evaluation procedure to ensure that the nutrition education provided is effective. The evaluation procedure must include participant input and must be directed by a nutritionist or other qualified professional. The evaluation may be conducted by the State or local agency, or by another agency under agreement with the State or local agency.

(b) *What type of nutrition education must the local agency provide?* The local agency must provide nutrition education that can be easily understood by participants and is related to their nutritional needs and household situations. The local agency must

provide nutrition education that includes the following information, which should account for specific ethnic and cultural characteristics whenever possible:

(1) The nutritional value of CSFP foods, and their relationship to the overall dietary needs of the population groups served;

(2) Nutritious ways to use CSFP foods;

(3) Special nutritional needs of participants and how these needs may be met;

(4) For pregnant and postpartum women, the benefits of breastfeeding;

(5) The importance of health care, and the role nutrition plays in maintaining good health; and

(6) The importance of the use of the foods by the participant to whom they are distributed, and not by another person.

(c) *To whom must local agencies provide nutrition education?* The local agency must make nutrition education available to all adult participants and to parents or caretakers of infants and child participants. Local agencies are encouraged to make nutrition education available to children, where appropriate.

(d) *May CSFP foods be used in cooking demonstrations?* Yes. The State or local agency, or another agency with which it has signed an agreement, may use CSFP foods to conduct cooking demonstrations as part of the nutrition education provided to program participants, but not for other purposes.

§ 247.19 Dual participation.

(a) *What must State and local agencies do to prevent and detect dual participation?* The State agency must work with the State WIC agency to develop a plan to prevent and detect dual participation.

In accordance with an agreement signed by both agencies. The State agency must also work with local agencies to prevent and detect dual participation. In accordance with § 247.8(a)(1), the local agency must check the identification of all applicants when they are certified or recertified. In accordance with § 247.8(b), the local agency must ensure that the applicant, or the adult parent or caretaker of the applicant, signs an application form which includes a statement advising the applicant that he or she may not receive both CSFP and WIC benefits simultaneously, or CSFP benefits at more than one CSFP site at the same time.

(b) *What must the local agency do if a CSFP participant is found to be committing dual participation?* A participant found to be committing dual participation must be discontinued from one of the programs (WIC or CSFP), or from participation at more than one CSFP site. Whenever an individual's participation in CSFP is discontinued, the local agency must notify the individual of the discontinuance, in accordance with § 247.17. The individual may appeal the discontinuance through the fair hearing process, in accordance with § 247.33(a). In accordance with § 247.20(b), if the dual participation resulted from the participant, or the parent or caretaker of the participant, making false or misleading statements, or intentionally withholding information, the local agency must disqualify the participant from CSFP, unless the local agency determines that disqualification would result in a serious health risk. The local agency must also initiate a claim against the participant to recover the value of CSFP benefits improperly received, in accordance with § 247.30(c).

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§ 247.20 Program violations.

(a) *What are program violations in CSFP?* Program violations are actions taken by CSFP applicants or participants, or the parents or caretakers of applicants or participants, to obtain or use CSFP benefits improperly. Program violations include the following actions:

(1) Intentionally making false or misleading statements, orally or in writing;

(2) Intentionally withholding information pertaining to eligibility in CSFP;

(3) Selling commodities obtained in the program, or exchanging them for non-food items;

(4) Physical abuse, or threat of physical abuse, of program staff; or

(5) Committing dual participation.

(b) *What are the penalties for committing program violations?* If applicants or participants, or the parents or caretakers of applicants or participants, commit program violations, the State agency may require local agencies to disqualify the applicants or participants for a period of up to one year. However, if the local agency determines that disqualification would result in a serious health risk, the disqualification may be waived. For program violations that involve fraud, the State agency must require local agencies to disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk. The State agency must require local agencies to permanently disqualify a participant who commits three program violations that involve fraud. For purposes of this program, fraud includes:

(1) Intentionally making false or misleading statements to obtain CSFP commodities;

(2) Intentionally withholding information to obtain CSFP commodities; or

(3) Selling CSFP commodities, or exchanging them for non-food items.

(c) *What must the local agency do to notify the individual of disqualification from CSFP?* The local agency must provide the individual with written notification of disqualification from CSFP at least 15 days before the effective date of disqualification. The notification must include the effective date and period of disqualification, the reason for the disqualification, and a statement that the individual may appeal the disqualification through the fair hearing process, in accordance with § 247.33(a).

§ 247.21 Caseload assignment.

(a) *How does FNS assign caseload to State agencies?* Each year, FNS assigns a caseload to each State agency to allow persons meeting the eligibility criteria listed under § 247.9 to participate in the program, up to the caseload limit. To the extent that resources are available, FNS assigns caseload to State agencies in the following order:

(1) *Base caseload.* The State agency may not receive base caseload in excess of its total caseload assigned for the previous caseload cycle. Base caseload is determined in the following manner:

(i) Each State agency entering its second year of program participation receives base caseload equal to the amount assigned to it in its first year of participation; and

(ii) A State agency that has participated in two or more caseload cycles receives base caseload equal to the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) The State agency received additional caseload equal to or greater than 10 percent of its base caseload in the previous caseload cycle; and

(*3*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(2) *Additional caseload.* Each participating State agency may request additional caseload to increase service to women, infants, and children, and the elderly. Requests by State agencies to increase service to women, infants, and children receive priority over requests to increase service to the elderly. Eligibility for and assignment of additional caseload are determined in the following manner:

(i) A State agency entering its second year of program participation qualifies to receive additional caseload if the State achieved a participation level which was equal to or greater than 95 percent of assigned caseload for the previous caseload cycle, based on the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(ii) A State agency that has participated in two or more caseload cycles qualifies to receive additional caseload if the State achieved a participation level which was equal to or greater than 95 percent of assigned caseload for the previous caseload cycle, based on the highest of:

(A) Average monthly participation for the previous fiscal year; or

(B) Average monthly participation for the last quarter of the previous fiscal year; or

(C) Participation during September of the previous fiscal year, but only if:

(*1*) The full-year appropriation for the preceding fiscal year was enacted on or after February 15; and

(*2*) The State agency received additional caseload equal to or greater than 10 percent of its base caseload in the previous caseload cycle; and

(*3*) October participation in the current fiscal year was equal to or greater than 95 percent of September participation in the previous fiscal year.

(iii) Of each eligible State agency's request for additional caseload, FNS assigns an amount that it determines the State needs and can efficiently utilize. In making this determination, FNS considers the factors listed below, in descending order of importance. If all reasonable requests for additional caseload cannot be met, FNS assigns it to those States that are most likely to utilize it. The factors are:

(A) Program participation of women, infants, and children, and the elderly in the State, in the previous fiscal year;

(B) The percentage of caseload utilized by the State in the previous fiscal year;

(C) Program participation trends in the State in previous fiscal years; and

(D) Other information provided by the State agency in support of the request.

(3) *New caseload.* Each State agency requesting to begin participation in the program, and with an approved State Plan, may receive caseload to serve women, infants, and children, and the elderly, as requested in the State Plan. State agency requests to initiate service to women, infants, and children receive priority over requests to initiate service to the elderly. Of the State agency's caseload request, FNS assigns caseload in an amount that it determines the State needs and can efficiently utilize. This determination is made based on information contained in the State Plan and on other relevant information. However, if all caseload requests cannot be met, FNS will assign caseload to those States that are most likely to utilize it.

(b) *When does FNS assign caseload to State agencies?* FNS must assign caseload to State agencies by December 31 of each year, or within 30 days after enactment of appropriations legislation covering the full fiscal year, whichever comes later. Caseload assignments for the previous caseload cycle will remain in effect, subject to the availability of sufficient funding, until caseload assignments are made for the current caseload cycle.

(c) *How do State agencies request additional caseload for the next caseload cycle?* In accordance with § 247.6(d), a State agency that would like additional caseload for the next caseload cycle (beginning the following January 1) must submit a request for additional caseload by November 5, as an amendment to the State Plan. The State agency must also describe plans for serving women, infants, and children, and the elderly, at new sites in this submission.

§ 247.22 Allocation and disbursement of administrative funds to State agencies.

(a) *What must State agencies do to be eligible to receive administrative funds?* In order to receive administrative funds, the State agency must have signed an agreement with FNS to operate the program, in accordance with § 247.4(a)(1), and must have an approved State Plan.

(b) *How does FNS allocate administrative funds to State agencies?* (1) As required by law, each fiscal year FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot was equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

(c) *How do State agencies access administrative funds?* FNS provides administrative funds to State agencies on a quarterly basis. Such funds are provided by means of a Letter of Credit, unless other funding arrangements have been made with FNS. The State agency obtains the funds by electronically accessing its Letter of Credit account.

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§ 247.23 State provision of administrative funds to local agencies.

(a) *How much of the administrative funds must State agencies provide to local agencies for their use?* The State agency must provide to local agencies for their use all administrative funds it receives, except that the State agency may retain for its own use the amount determined by the following formula:

(1) 15 percent of the first $50,000 received;

(2) 10 percent of the next $100,000 received;

(3) 5 percent of the next $250,000 received; and

(4) A maximum of $30,000, if the administrative grant exceeds $400,000.

(b) *May a State agency request to retain more than the amount determined by the above formula in the*

event of special needs? Yes, the State agency may request approval from FNS to retain a larger amount than is allowed under the formula prescribed in paragraph (a) of this section. However, in making its request, the State agency must provide justification of the need for the larger amount at the State level, and must ensure that local agencies will not suffer undue hardship as a result of a reduction in administrative funds.

(c) *How must the State agency distribute funds among local agencies?* The State agency must distribute funds among local agencies on the basis of their respective needs, and in a manner that ensures the funds will be used to achieve program objectives.

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§ 247.24 Recovery and redistribution of caseload and administrative funds.

(a) *May FNS recover and redistribute caseload and administrative funds assigned to a State agency?* Yes. FNS may recover and redistribute caseload and administrative funds assigned to a State agency during the fiscal year. FNS will redistribute these resources to other State agencies in accordance with the provisions of §§ 247.21(a) and 247.22(b). In reassigning caseload, FNS will use the most up-to-date data on participation and the extent to which caseload is being utilized, as well as other information provided by State agencies. In accordance with § 247.21(a)(2), in instances in which FNS recovers caseload slots, the State agency must use 95 percent of its original caseload allocation to be eligible for additional caseload. However, the State agency must not exceed its reduced caseload allocation on an average monthly basis.

(b) *Is there a limit on the amount of caseload slots or administrative funds that FNS may recover?* Yes. FNS will not unilaterally recover caseload that would result in the recovery of more than 50 percent of the State's administrative funds. However, in instances in which the State agency requests that FNS recover any portion of its assigned caseload, the 50-percent limitation will not apply.

§ 247.25 Allowable uses of administrative funds and other funds.

(a) *What are allowable uses of administrative funds provided to State and local agencies?* Administrative funds may be used for costs that are necessary to ensure the efficient and effective administration of the program, in accordance with parts 3016 and 3019 of this title. Part 3016 of this title contains the rules for management of Federal grants to State, local, and Indian tribal governments, and part 3019 of this title contains the grants management rules for nonprofit organizations. These departmental regulations incorporate by reference OMB Circulars A–87 (Cost Principles for State, Local, and Indian Tribal Governments) and A–122 (Cost Principles for Non-Profit Organizations), which set out the principles for determining whether specific costs are allowable. For availability of OMB Circulars referenced in this section, see 5 CFR 1310.3. Some examples of allowable costs in CSFP include:

(1) Storing, transporting, and distributing foods;

(2) Determining the eligibility of program applicants;

(3) Program outreach;

(4) Nutrition education;

(5) Audits and fair hearings;

(6) Monitoring and review of program operations; and

(7) Transportation of participants to and from the local agency, if necessary.

(b) *What are unallowable uses of administrative funds?* In addition to those costs determined to be unallowable by the principles contained in the OMB circulars referenced in paragraph (a) of this section, specific examples of unallowable uses of administrative funds in CSFP include:

(1) The cost of alteration of facilities not required specifically for the program; and

(2) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or by other means).

(c) *What costs are allowable only with prior approval of FNS?* Capital expenditures, which include the acquisition of facilities or equipment, or enhancements to such capital assets, with a cost per unit of at least $5,000, are allowable only with prior approval of FNS. Examples of equipment include automated information systems, automated data processing equipment, and other computer hardware and software.

(d) *What procedures must State and local agencies use in procuring property, equipment, or services with program funds, and disposing of such property or equipment?* The procedures that State and local agencies must follow in procuring property, equipment, or services with program funds, or disposing of such property or equipment, are contained in parts 3016 and 3019 of this title. State, local, and Indian tribal governments must comply with part 3016 of this title, while nonprofit subgrantees must comply with part 3019 of this title. State and local agencies may use procurement procedures established by State and local regulations as long as these procedures do not conflict with Federal regulations. Federal regulations do not relieve State or local agencies from responsibilities established in contracts relating to procurement of property, equipment, or services. The State agency is the responsible authority regarding the settlement of all contractual and administrative issues arising out of procurements for the program.

(e) *What is program income and how must State and local agencies use it?* Program income is income directly generated from program activities. It includes, for example, income from the sale of packing containers or pallets, and the salvage of commodities. Program income does not include interest earned from administrative funds. State and local agencies must use program income for allowable program costs, in accordance with part 3016 of this title.

(f) *How must State and local agencies use funds recovered as a result of claims actions?* The State agency must use funds recovered as a result of claims actions against subdistributing or local agencies in accordance with the provisions of § 250.15(c) of this chapter. The State agency must use funds recovered as a result of claims actions against participants for allowable program costs. The State agency may authorize local agencies to use such funds for allowable program costs incurred at the local level.

§ 247.26 Return of administrative funds.

(a) *Must State agencies return administrative funds that they do not use at the end of the fiscal year?* Yes. If, by the end of the fiscal year, a State agency has not obligated all of its allocated administrative funds, the unobligated funds must be returned to FNS.

(b) *What happens to administrative funds that are returned by State agencies at the end of the fiscal year?* If, in the following fiscal year, OMB reapportions the returned administrative funds, the funds are used to support the program. Such funds are not returned to State agencies in the form of administrative funds in addition to the legislatively mandated grant per assigned caseload slot.

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§ 247.27 Financial management.

(a) *What are the Federal requirements for State and local agencies with regard*

to financial management? State and local public agencies must maintain a financial management system that complies with the Federal regulations contained in part 3016 of this title, while nonprofit organizations must comply with the Federal regulations contained in part 3019 of this title. The State agency's financial management system must provide accurate, current, and complete disclosure of the financial status of the program, including an accounting of all program funds received and expended each fiscal year. The State agency must ensure that local agencies develop and implement a financial management system that allows them to meet Federal requirements.

(b) *What are some of the major components of the State agency's financial management system?* In addition to other requirements, the State agency's financial management system must provide for:

(1) Prompt and accurate payment of allowable costs;

(2) Timely disbursement of funds to local agencies;

(3) Timely and appropriate resolution of claims and audit findings; and

(4) Maintenance of records identifying the receipt and use of administrative funds, funds recovered as a result of claims actions, program income (as defined under § 247.25(e)), and property and other assets procured with program funds.

§ 247.28 Storage and inventory of commodities.

(a) *What are the requirements for storage of commodities?* State and local agencies must provide for storage of commodities that protects them from theft, spoilage, damage or destruction, or other loss. State and local agencies may contract with commercial facilities to store and distribute commodities. The required standards for warehousing and distribution systems, and for contracts with storage facilities, are included under § 250.14 of this chapter.

(b) *What are the requirements for the inventory of commodities?* A physical inventory of all USDA commodities must be conducted annually at each storage and distribution site where these commodities are stored. Results of the physical inventory must be reconciled with inventory records and maintained on file by the State or local agency.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.29 Reports and recordkeeping.

(a) *What recordkeeping requirements must State and local agencies meet?* State and local agencies must maintain accurate and complete records relating to the receipt, disposal, and inventory of commodities, the receipt and disbursement of administrative funds and other funds, eligibility determinations, fair hearings, and other program activities. State and local agencies must also maintain records pertaining to liability for any improper distribution of, use of, loss of, or damage to commodities, and the results obtained from the pursuit of claims arising in favor of the State or local agency. All records must be retained for a period of three years from the end of the fiscal year to which they pertain, or, if they are related to unresolved claims actions, audits, or investigations, until those activities have been resolved. All records must be available during normal business hours for use in management reviews, audits, investigations, or reports of the General Accounting Office.

(b) *What reports must State and local agencies submit to FNS?* State agencies must submit the following reports to FNS:

(1) *SF–269A, Financial Status Report.* The State agency must submit the SF–269A, Financial Status Report, to report the financial status of the program at the close of the fiscal year. This report must be submitted within 90 days after the end of the fiscal year. Obligations must be reported for the fiscal year in which they occur. Revised reports may be submitted at a later date, but FNS will not be responsible for reimbursing unpaid obligations later than one year after the end of the fiscal year in which they were incurred.

(2) *FNS–153, Monthly Report of the Commodity Supplemental Food Program and Quarterly Administrative Financial Status Report.* The State agency must submit the FNS–153 on a monthly basis. FNS may permit the data contained in the report to be submitted less frequently, or in another format. The report must be submitted within 30 days after the end of the reporting period. On the FNS–153, the State agency reports:

(i) The number of program participants in each population category (*e.g.*, infants, children, and elderly);

(ii) The receipt and distribution of commodities, and beginning and ending inventories, as well as other commodity data; and

(iii) On a quarterly basis, the cumulative amount of administrative funds expended and obligated, and the amount remaining unobligated.

(3) *FNS–191, Racial/Ethnic Group Participation.* Local agencies must submit a report of racial/ethnic participation each year, using the FNS–191.

(c) *Is there any other information that State and local agencies must provide to FNS?* FNS may require State and local agencies to provide data collected in the program to aid in the evaluation of the effect of program benefits on the low-income populations served. Any such requests for data will not include identification of particular individuals.

(Approved by the Office of Management and Budget under control numbers 0584–0025, 0584–0293)

§ 247.30 Claims.

(a) *What happens if a State or local agency misuses program funds?* If FNS determines that a State or local agency has misused program funds through negligence, fraud, theft, embezzlement, or other causes, FNS must initiate and pursue a claim against the State agency to repay the amount of the misused funds. The State agency will be given the opportunity to contest the claim. The State agency is responsible for initiating and pursuing claims against subdistributing and local agencies if they misuse program funds.

(b) *What happens if a State or local agency misuses program commodities?* If a State or local agency misuses program commodities, FNS must initiate a claim against the State agency to recover the value of the misused commodities. The procedures for pursuing claims resulting from misuse of commodities are detailed in § 250.15(c) of this chapter. Misused commodities include commodities improperly distributed or lost, spoiled, stolen, or damaged as a result of improper storage, care, or handling. The State agency is responsible for initiating and pursuing claims against subdistributing agencies, local agencies, or other agencies or organizations if they misuse program commodities. The State agency must use funds recovered as a result of claims for commodity losses in accordance with § 250.15(c) of this chapter.

(c) *What happens if a participant improperly receives or uses CSFP benefits through fraud?* The State agency must ensure that a local agency initiates a claim against a participant to recover the value of CSFP commodities improperly received or used if the local agency determines that the participant, or the parent or caretaker of the participant, fraudulently received or used the commodities. For purposes of this program, fraud includes intentionally making false or misleading statements, or intentionally withholding information, to obtain CSFP commodities, or the selling or exchange

of CSFP commodities for non-food items. The local agency must advise the participant of the opportunity to appeal the claim through the fair hearing process, in accordance with § 247.33(a). The local agency must also disqualify the participant from CSFP for a period of up to one year, unless the local agency determines that disqualification would result in a serious health risk, in accordance with the requirements of § 247.20(b).

(d) *What procedures must be used in pursuing claims against participants?* The State agency must establish standards, based on a cost-benefit review, for determining when the pursuit of a claim is cost-effective, and must ensure that local agencies use these standards in determining if a claim is to be pursued. In pursuing a claim against a participant, the local agency must:

(1) Issue a letter demanding repayment for the value of the commodities improperly received or used;

(2) If repayment is not made in a timely manner, take additional collection actions that are cost-effective, in accordance with the standards established by the State agency; and

(3) Maintain all records regarding claims actions taken against participants, in accordance with § 247.29.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.31 Audits and investigations.

(a) *What is the purpose of an audit?* The purpose of an audit is to ensure that:

(1) Financial operations are properly conducted;

(2) Financial reports are fairly presented;

(3) Proper inventory controls are maintained; and

(4) Applicable laws, regulations, and administrative requirements are followed.

(b) *When may the Department conduct an audit or investigation of the program?* The Department may conduct an audit of the program at the State or local agency level at its discretion, or may investigate an allegation that the State or local agency has not complied with Federal requirements. An investigation may include a review of any State or local agency policies or practices related to the specific area of concern.

(c) *What are the responsibilities of the State agency in responding to an audit by the Department?* In responding to an audit by the Department, the State agency must:

(1) Provide access to any records or documents compiled by the State or local agencies, or contractors; and

(2) Submit a response or statement to FNS describing the actions planned or taken in response to audit findings or recommendations. The corrective action plan must include time frames for implementation and completion of actions. FNS will determine if actions or planned actions adequately respond to the program deficiencies identified in the audit. If additional actions are needed, FNS will schedule a follow-up review and allow sufficient time for further corrective actions. The State agency may also take exception to particular audit findings or recommendations.

(d) *When is a State or local agency audit required?* State and local agency audits must be conducted in accordance with part 3052 of this title, which contains the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations. The value of CSFP commodities distributed by the agency or organization must be considered part of the Federal award.

(e) *What are the requirements for State or local agency audits?* State and local agency audits must be conducted in accordance with the requirements of part 3052 of this title, which contains the Department's regulations pertaining to audits of States, local governments, and nonprofit organizations. The State agency must ensure that local agencies meet the audit requirements. The State agency must ensure that all State or local agency audit reports are available for FNS review.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.32 Termination of agency participation.

(a) *When may a State agency's participation in CSFP be terminated?* While paragraphs (a)(1), (a)(2), and (a)(3) of this section, as applicable, describe the circumstances and basic procedures for terminating State agency programs, specific actions and procedures relating to program termination are more fully described in part 3016 of this title.

(1) *Termination by FNS.* FNS may terminate a State agency's participation in CSFP, in whole or in part, if the State agency does not comply with the requirements of this part. FNS must provide written notification to the State agency of termination, including the reasons for the action, and the effective date.

(2) *Termination by State agency.* The State agency may terminate the program, in whole or in part, upon written notification to FNS, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide, at minimum, 30 days' written notice.

(3) *Termination by mutual agreement.* The State agency's program may also be terminated, in whole or in part, if both parties agree the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

(b) *When may a local agency's participation in CSFP be terminated?* While paragraphs (b)(1), (b)(2), and (b)(3) of this section, as applicable, describe the circumstances and basic procedures in termination of local agency programs, specific actions and procedures relating to program termination are more fully described in part 3016 of this title.

(1) *Termination by State agency.* The State agency may terminate a local agency's participation in CSFP, or may be required to terminate a local agency's participation, in whole or in part, if the local agency does not comply with the requirements of this part. The State agency must notify the local agency in writing of the termination, the reasons for the action, and the effective date, and must provide the local agency with an opportunity to appeal, in accordance with § 247.35. (The local agency may appeal the termination in accordance with § 247.35.)

(2) *Termination by local agency.* The local agency may terminate the program, in whole or in part, upon written notification to the State agency, stating the reasons and effective date of the action. In accordance with § 247.4(b)(6), which relates to the termination of agreements, either party must provide, at minimum, 30 days' written notice.

(3) *Termination by mutual agreement.* The local agency's program may also be terminated, in whole or in part, if both the State and local agency agree that the action would be in the best interest of the program. The two parties must agree upon the conditions of the termination, including the effective date.

§ 247.33 Fair hearings.

(a) *What is a fair hearing?* A fair hearing is a process that allows a CSFP applicant or participant to appeal an adverse action, which may include the denial or discontinuance of program benefits, disqualification from the program, or a claim to repay the value of commodities received as a result of

fraud. State and local agencies must ensure that CSFP applicants and participants understand their right to appeal an adverse action through the fair hearing process, which includes providing written notification of the individual's right to a fair hearing along with notification of the adverse action. Such notification is not required at the expiration of a certification period.

(b) *What are the basic requirements the State agency must follow in establishing procedures to be used in fair hearings?* The State agency must establish simple, clear, uniform rules of procedure to be used in fair hearings, including, at a minimum, the procedures outlined in this section. The State agency may use alternate procedures if approved by FNS. The rules of procedure must be available for public inspection and copying.

(c) *How may an individual request a fair hearing?* An individual, or an individual's parent or caretaker, may request a fair hearing by making a clear expression, verbal or written, to a State or local agency official, that an appeal of the adverse action is desired.

(d) *How much time does an individual have to request a fair hearing?* The State or local agency must allow an individual at least 60 days from the date the agency mails or gives the individual the notification of adverse action to request a fair hearing.

(e) *When may a State or local agency deny a request for a fair hearing?* The State or local agency may deny a request for a fair hearing when:

(1) The request is not received within the time limit established in paragraph (d) of this section;

(2) The request is withdrawn in writing by the individual requesting the hearing or by an authorized representative of the individual; or

(3) The individual fails to appear, without good cause, for the scheduled hearing.

(f) *Does the request for a fair hearing have any effect on the receipt of CSFP benefits?* Participants who appeal the discontinuance of program benefits within the 15-day advance notification period required under §§ 247.17 and 247.20 must be permitted to continue to receive benefits until a decision on the appeal is made by the hearing official, or until the end of the participant's certification period, whichever occurs first. However, if the hearing decision finds that a participant received program benefits fraudulently, the local agency must include the value of benefits received during the time that the hearing was pending, as well as for any previous period, in its initiation and pursuit of a claim against the participant.

(g) *What notification must the State or local agency provide an individual in scheduling the hearing?* The State or local agency must provide an individual with at least 10 days' advance written notice of the time and place of the hearing, and must include the rules of procedure for the hearing.

(h) *What are the individual's rights in the actual conduct of the hearing?* The individual must have the opportunity to:

(1) Examine documents supporting the State or local agency's decision before and during the hearing;

(2) Be assisted or represented by an attorney or other persons;

(3) Bring witnesses;

(4) Present arguments;

(5) Question or refute testimony or evidence, including an opportunity to confront and cross-examine others at the hearing; and,

(6) Submit evidence to help establish facts and circumstances.

(i) *Who is responsible for conducting the fair hearing, and what are the specific responsibilities of that person?* The fair hearing must be conducted by an impartial official who does not have any personal stake or involvement in the decision and who was not directly involved in the initial adverse action that resulted in the hearing. The hearing official is responsible for:

(1) Administering oaths or affirmations, as required by the State;

(2) Ensuring that all relevant issues are considered;

(3) Ensuring that all evidence necessary for a decision to be made is presented at the hearing, and included in the record of the hearing;

(4) Ensuring that the hearing is conducted in an orderly manner, in accordance with due process; and

(5) Making a hearing decision.

(j) *How is a hearing decision made?* The hearing official must make a decision that complies with Federal laws and regulations, and is based on the facts in the hearing record. In making the decision, the hearing official must summarize the facts of the case, specify the reasons for the decision, and identify the evidence supporting the decision and the laws or regulations that the decision upholds. The decision made by the hearing official is binding on the State or local agency.

(k) *What is the time limit for making a hearing decision and notifying the individual of the decision?* A hearing decision must be made, and the individual notified of the decision, in writing, within 45 days of the request for the hearing. The notification must include the reasons for the decision.

(l) *How does the hearing decision affect the individual's receipt of CSFP benefits?* If a hearing decision is in favor of an applicant who was denied CSFP benefits, the receipt of benefits must begin within 45 days from the date that the hearing was requested, if the applicant is still eligible for the program. If the hearing decision is against a participant, the State or local agency must discontinue benefits as soon as possible, or at a date determined by the hearing official.

(m) *What must be included in the hearing record?* In addition to the hearing decision, the hearing record must include a transcript or recording of testimony, or an official report of all that transpired at the hearing, along with all exhibits, papers, and requests made. The record must be maintained in accordance with § 247.29(a). The record of the hearing must be available for public inspection and copying, in accordance with the confidentiality requirements under § 247.36(b).

(n) *What further steps may an individual take if a hearing decision is not in his or her favor?* If a hearing decision upholds the State or local agency's action, and a State-level review or rehearing process is available, the State or local agency must describe to the individual any State-level review or rehearing process. The State or local agency must also inform the individual of the right of the individual to pursue judicial review of the decision.

§ 247.34 Management reviews.

(a) *What must the State agency do to ensure that local agencies meet program requirements and objectives?* The State agency must establish a management review system to ensure that local agencies, subdistributing agencies, and other agencies conducting program activities meet program requirements and objectives. As part of the system, the State agency must perform an on-site review of all local agencies, and of all storage facilities utilized by local agencies, at least once every two years. As part of the on-site review, the State agency must evaluate all aspects of program administration, including certification procedures, nutrition education, civil rights compliance, food storage practices, inventory controls, and financial management systems. In addition to conducting on-site reviews, the State agency must evaluate program administration on an ongoing basis by reviewing financial reports, audit reports, food orders, inventory reports, and other relevant information.

(b) *What must the State agency do if it finds that a local agency is deficient in a particular area of program*

administration? The State agency must record all deficiencies identified during the review and institute follow-up procedures to ensure that local agencies and subdistributing agencies correct all deficiencies within a reasonable period of time. To ensure improved program performance in the future, the State agency may require that local agencies adopt specific review procedures for use in reviewing their own operations and those of subsidiaries or contractors. The State agency must provide copies of review reports to FNS upon request.

(Approved by the Office of Management and Budget under control number 0584–0293)

§ 247.35 Local agency appeals of State agency actions.

(a) *What recourse must the State agency provide local agencies to appeal a decision that adversely affects their participation in CSFP?* The State agency must establish a hearing procedure to allow local agencies to appeal a decision that adversely affects their participation in CSFP—*e.g.*, the termination of a local agency's participation in the program. The adverse action must be postponed until a decision on the appeal is made.

(b) *What must the State agency include in the hearing procedure to ensure that the local agency has a fair chance to present its case?* The hearing procedure must provide the local agency:

(1) Adequate advance notice of the time and place of the hearing;

(2) An opportunity to review the record before the hearing, and to present evidence at the hearing;

(3) An opportunity to confront and cross-examine witnesses; and

(4) An opportunity to be represented by counsel, if desired.

(c) *Who conducts the hearing and how is a decision on the appeal made?* The hearing must be conducted by an impartial person who must make a decision on the appeal that is based solely on the evidence presented at the hearing, and on program legislation and regulations. A decision must be made within 60 days from the date of the request for a hearing, and must be provided in writing to the local agency.

§ 247.36 Confidentiality of applicants or participants.

(a) *Can the State or local agency disclose information obtained from applicants or participants to other agencies or individuals?* State and local agencies must restrict the use or disclosure of information obtained from CSFP applicants or participants to persons directly connected with the administration or enforcement of the program, including persons investigating or prosecuting program violations. The State or local agency may exchange participant information with other health or welfare programs for the purpose of preventing dual participation. In addition, with the consent of the participant, as indicated on the application form, the State or local agency may share information obtained with other health or welfare programs for use in determining eligibility for those programs, or for program outreach. However, the State agency must sign an agreement with the administering agencies for these programs to ensure that the information will be used only for the specified purposes, and that agencies receiving such information will not further share it.

(b) *Can the State or local agency disclose the identity of persons making a complaint or allegation against another individual participating in or administering the program?* The State or local agency must protect the confidentiality, and other rights, of any person making allegations or complaints against another individual participating in, or administering CSFP, except as necessary to conduct an investigation, hearing, or judicial proceeding.

§ 247.37 Civil rights requirements.

(a) *What are the civil rights requirements that apply to CSFP?* State and local agencies must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794 *et seq.*), the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). State and local agencies must also comply with the Department's regulations on nondiscrimination (parts 15, 15a, and 15b of this title), and with the provisions of FNS Instruction 113–2, including the collection of racial/ethnic participation data and public notification of nondiscrimination policy. State and local agencies must ensure that no person shall, on the grounds of race, color, national origin, age, sex, or disability, be subjected to discrimination under the program.

(b) *How does an applicant or participant file a complaint of discrimination?* CSFP applicants or participants who believe they have been discriminated against should file a discrimination complaint with the USDA Director, Office of Civil Rights, Room 326W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or telephone (202) 720–5964.

Dated: July 29, 2005.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

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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.

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Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

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S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

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H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

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