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

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3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, October 25, 2005
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1650

In-Service Hardship Withdrawals From the Thrift Savings Plan

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Temporary rule.

SUMMARY: This document contains temporary regulations that lift certain restrictions on financial hardship in-service withdrawals from Federal employees' and uniformed service members' Thrift Savings Plan (TSP) accounts. These temporary regulations are intended to assist TSP participants who were affected by Hurricane Katrina.

DATES: Effective Date: These regulations are effective October 1, 2005, through December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Office of Benefits Services, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005, 202–942–1460.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA have been codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

The TSP is managed by five part-time Presidentially-appointed Board members and an Executive Director. FERSA gives the Executive Director authority to prescribe regulations permitting participants to make limited withdrawals from their TSP accounts before they are separated from Government employment. 5 U.S.C. 8433(h)(4). This temporary regulation is based upon that authority and the provisions of 5 U.S.C. 553(d)(1) and (3).

Currently, the TSP's regulations prohibit participants from requesting a financial hardship in-service withdrawal from their accounts if they have received another financial hardship withdrawal within the last six months; the temporary regulation deletes that restriction for a financial need that results from Hurricane Katrina. In addition, a participant who obtains a financial hardship in-service withdrawal may not contribute to the TSP for a period of six months after the withdrawal is processed. The temporary regulation provides that the TSP will not extend this contribution suspension period if the participant's contributions have already been suspended due to a previous hardship distribution.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1650

Employee benefit plans, Government employees, Pensions, Retirement.

Gary A. Amelio,
Executive Director Federal Retirement Thrift Investment Board.

■ For the reasons set forth in the preamble, the Board proposes to amend 5 CFR chapter VI as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THE THRIFT SAVINGS PLAN

■ 1. The authority citation for part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434, 8435, 8474(b)(5), and 8474(c)(1).

■ 2. Amend § 1650.33 by adding a new paragraph (c) to read as follows:

§ 1650.33 Contributing to the TSP after an in-service withdrawal.

(a) * * *

(b) * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, a participant who obtains a financial hardship in-service withdrawal based upon a financial need caused by Hurricane Katrina and who is not, at the time of the second hardship withdrawal, making contributions because of a previous financial hardship withdrawal will not have his/her contribution suspension period further extended. The participant may submit a new TSP contribution election to resume contributions any time after expiration of the original six-month contribution suspension period.

■ 3. Amend § 1650.42 by adding a new paragraph (c) to read as follows:

§ 1650.42 How to obtain a financial hardship withdrawal.

(c) * * *

(d) * * *

(c) Notwithstanding the provisions of paragraph (b) of this section, the TSP will accept at any time a financial hardship withdrawal request that is based upon a financial need caused by Hurricane Katrina. The participant must certify on the application that the financial need is related to a hardship caused by Hurricane Katrina.

[FR Doc. 05–20483 Filed 10–12–05; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV05–915–2 FIR]

Avocados Grown in South Florida; Changes in Container and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the container and reporting requirements prescribed under the marketing order for avocados grown in South Florida. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This rule continues in effect the action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations inside the production area. This rule also continues in effect the action requiring that handlers provide, at the time of inspection, information regarding the number of avocados packed per container (count per container). These changes are expected to help reduce packing costs and facilitate the distribution of useful marketing information.

DATES: *Effective date:* November 14, 2005.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375; Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491; Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This rule continues in effect an action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations inside the production area. This rule also continues in effect the requirement that handlers provide, at the time of inspection, information regarding the avocado count per container, which provides the Committee and the industry with information regarding the sizes of avocados packed. These changes are expected to decrease packing costs by reducing the annual loss of field bins and provide handlers with additional marketing information. The Committee unanimously recommended these changes at meetings held on September 8, 2004, and November 10, 2004.

Section 915.51(4) of the order provides authority for establishing container requirements for the handling of avocados. Section 915.51(6) of the order provides that any or all requirements effective pursuant to § 915.51(4) shall be different for the handling of avocados within the production area and outside the production area. Section 915.305 of the order's rules and regulations specifies the avocado container requirements.

Section 915.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 915.150 specifies the requisite reporting requirements.

This rule amends § 915.305 by adding a prohibition to the handling of fresh market avocados in 20 bushel plastic field bins to all destinations within the regulated production area. This rule also amends § 915.150 by adding a requirement that handlers provide additional pack information at the time of inspection.

There were no specific container net weight or dimension requirements for avocados handled to destinations within the production area before this rule. However, shipments of avocados within the production area must meet maturity requirements and be inspected.

Prior to this action, 20 bushel plastic field bins (bins) were commonly being used for the purpose of moving avocados into the current of commerce within the production area (handling). Following the successful inspection of avocados packed in bins, the inspector would place a cardboard cover over the top of the bin and seal it with official Federal-State Inspection Service tape. The bins could then be transported and sold at the various markets throughout the production area. It should be noted that current container regulations do not authorize the use of field bins for shipments of avocados from within the production area to any point outside of the production area.

At the September 8, 2004, meeting, Committee members raised the issue that, each year, a large number of bins are apparently misappropriated during the avocado season. Committee consensus is that the ongoing loss of the bins has been costly to the industry, with the average cost of a bin about $150 each. By Committee estimates, over 700 bins were lost during the previous season at a cost of over $100,000 to the bins' owners.

In the harvesting of avocados, field bins have the primary function of transporting avocados from grove to packing facility. These bins are usually owned by individual packinghouses, or handlers, and are either delivered to, or picked up at, the packing facility by the harvester. Handlers have found that, much too often, field bins are not returned to the proper packinghouse, but are instead apparently misappropriated and used for other purposes. Because of their durability,

many of the bins are acquired and reused by small cash handlers to pack and transport fruit in the production area. Often these bins are then abandoned at various market locations throughout the production area.

Once the bins are transported to different market locations throughout the production area, they become very difficult to recover. The avocado groves and packinghouses are situated around the Homestead, Florida area. However, the production area stretches into Central Florida. Consequently, bins often end up in locations over 100 miles away in cities such as Tampa and Orlando. Once the avocados have been marketed, the bins are purportedly used for many different purposes and may be dispersed even further from the originating packinghouse. Handlers are thus provided very little chance of recovering them for their own use.

The Committee believes that once bins are no longer authorized for use as containers for inspection, transportation, and sale of fresh avocados to markets within the production area, the movement of these containers will be limited, helping to reduce the number of lost bins. Cash handlers—generally handlers without packing facilities that tend to buy bulk avocados directly from the growers—now have to use different containers to pack and transport avocados within the production area. Committee members suggested that one such option could be a commonly available 20 bushel field bin constructed of cardboard rather than plastic, but at a much lower cost of about $10 each.

The Committee believes this change will help to restrict the use of the expensive plastic field bins to their originally intended purpose as a method of conveyance of avocados from grove to packinghouse. Prohibiting the use of these bins for the purpose of handling fresh market avocados helps prevent them from being transported to locations far from the originating packinghouse. This, in turn, results in the majority of the bins remaining in the local area where they are much more easily recovered. Reducing the number of lost bins represents a significant potential cost savings for the industry. Therefore, the Committee voted unanimously to put this regulation in place.

This rule also revises the reporting requirements under the order. Handlers are reporting to the inspector at the time of inspection the number of 1/4 bushel, 1/2 bushel, and 4/5 bushel containers packed. This rule not only requires that handlers continue to provide the number and sizes of containers packed, but in addition, requires handlers to provide information regarding the number of avocados packed per type of container, or ''count per container.'' Knowing the actual number of avocados packed per container, in addition to the number and size of containers packed, the Committee and the industry are armed with information regarding the various sizes of avocados being packed, as well as the quantity of different sizes being marketed. For example, a handler might report to the inspector on duty that the current lot being inspected has 500 ¼ bushel containers, 6 count each. This type of information would provide the Committee with information regarding the quantity of large avocados being packed.

Prior to this change, no data was collected that provided information on the various sizes of avocados being packed. During the Committee's discussion of this issue, handlers agreed that although they were getting information regarding the number of bushels packed, it would be valuable to have information regarding the volume of small, medium, and large avocados packed for market. The Committee believes the availability of such information helps both grower and handler when making harvesting and packing decisions.

Committee members agreed having information to help determine if any sizes are overrepresented or underrepresented in the marketplace would be valuable when planning and making marketing decisions. There is a close correlation between size and price. An oversupply of one size of fruit can negatively impact the price for that size and all sizes. By reporting count per container, the industry is better able to gauge available markets by knowing the volume of what sizes are available.

An avocado will never reach full maturity unless it is severed from the tree. Consequently, harvest can be delayed without affecting the flavor or the quality of the fruit. This fact, in combination with information on sizes, allows the industry to make harvesting and marketing decisions based on available markets.

Without good information regarding the sizes available in the market, the market pipelines for certain sizes can become full, driving prices down. Having access to this information will help the industry better balance supply with demand. By knowing which sizes are in short supply, the industry can determine which sizes need to be harvested. Such information may help reduce periods of oversupply and the effect oversupply has on price, providing the industry with another tool to more efficiently market avocados and maximize industry returns.

Previously, at the time of inspection, handlers were commonly reporting container size and quantity to the inspector, who then included this information on the inspection certificates. Inspection certificates were then provided to the Committee, which compiled the information into reports that were in turn provided to the avocado industry. Committee members believe this procedure has been working effectively, and that having handlers report the count per container in the same fashion will be equally effective. In most cases, this is information the handler already has available, and thus needs only to supply it to the inspector at the time of inspection. As with the previous report, the Committee is compiling the data received and reporting it to the industry on a composite basis to aid growers and handlers in planning their individual operations and in making marketing decisions during the season.

This change provides the industry with an indication of the volume of small, medium, and large sized avocados being shipped to the fresh market. With this change, handlers believe they have more information on which to base their harvesting and marketing decisions. Consequently, the Committee voted unanimously to make this change.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. As this rule changes the container and reporting requirements under the domestic handling regulations, no corresponding changes to the import regulations are required.

Final Regulatory Flexibility Analysis

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

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

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of avocados in the production area and approximately 35 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $6,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Committee data, the average price for Florida avocados during the 2003–04 season was around $22.22 per 55-pound bushel container, and total shipments were near 660,000 55-pound bushel equivalents. Approximately 11 percent of all handlers handled 76 percent of Florida avocado shipments. Using the average price and shipment information provided by the Committee, nearly all avocado handlers could be considered small businesses under the SBA definition. In addition, based on avocado production, grower prices, and the total number of Florida avocado growers, the average annual grower revenue is approximately $98,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule changes the container and reporting requirements currently prescribed under the order. This rule continues in effect the action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations within the production area. This rule also continues in effect the action requiring handlers to provide information regarding the avocado count per container, which in turn provides the Committee and the avocado industry with an indication of the sizes of avocados being packed. These changes are expected to decrease packing costs by reducing losses of field bins and to provide handlers with additional information on which to base their harvesting and marketing decisions. The Committee unanimously recommended these changes at meetings held on September 8, 2004, and November 10, 2004. This rule modifies the container and reporting requirements specified in §§ 915.305 and 915.150 respectively. The authorities for these actions are provided for in §§ 915.51 and 915.60.

It is not anticipated that this rule will generate any increased costs for handlers or producers. The Committee recommended the change in the container requirements in an effort to reduce the costs stemming from the misappropriation of bins. According to estimates, more than 700 bins were lost last season, at a cost to the industry of around $100,000. The primary purpose of these field bins is to provide bulk conveyance of harvested avocados from the groves to the packinghouses. However, a segment of the industry has been using them to pack and transport avocados to markets within the production area. Handlers have found that bins have been misappropriated, used for the handling of avocados for sale within the production area, and not subsequently returned to the rightful owner. With a prohibition on the use of the plastic bins in the handling of avocados to points within the production area, the Committee hopes to break this cycle and move those who prefer this size container to a lower cost alternative. While an alternative cardboard container that holds an equivalent volume costs only about $10, an individual plastic bin costs around $150. This change should result in a cost savings.

By requiring handlers to supply information on the count per container at the time of inspection, the industry has access to additional shipment information. There is little or no cost associated with this action, as most handlers have this information readily available and are supplying it along with information already provided. However, the industry can use this data when making harvesting and marketing decisions. As previously noted, there previously was no reliable information widely available regarding the sizes of avocados in the channels of commerce. Without good information regarding the sizes available in the market, handlers had no way to tell whether a certain size was overly available or in short supply. Having access to this information will help the industry more efficiently balance supply with demand, thus reducing periods of oversupply and price variations, while providing the industry with another tool to better market its fruit, serve customers, and maximize returns.

This rule will have a positive impact on affected entities. The changes were recommended to reduce costs and improve available industry information. The reduction in costs associated with lost bins is expected to benefit all handlers regardless of size. The availability of more timely and accurate industry information also benefits both large and small handling operations. Consequently, the opportunities and benefits of this rule are expected to be equally available to all.

An alternative to the actions recommended by the Committee was considered prior to making the final recommendations. The alternative considered was requesting the count per container from handlers on a voluntary basis. However, by requiring the information under authority of the order, all handlers are required to participate, which means more accurate reporting and information. Therefore, this alternative was rejected.

This rule will require small and large avocado handlers to provide some additional information at the time of inspection. However, handlers have access to this information and are already providing other information at the time of inspection. This action requires no additional forms. The information is recorded by the inspector on the inspection certificate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has received OMB approval for the information collection requirements for this marketing order program. These requirements are approved under the Fruit Crops collection package, OMB No. 0581–0189 OMB. The reporting modifications made by this rule are small and will have no impact on the overall total burden hours approved by OMB.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the avocado industry and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, the September 8, 2004, and November 10, 2004, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 2005. Copies of the rule were mailed by the Committee's staff to all Committee members and avocado handlers. In addition, the rule

was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 23, 2005. One response was received. However, it was not relevant to this rulemaking action. Therefore, no changes will be made as a result of this response.

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

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (70 FR 36467, June 24, 2005) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 915 which was published at 70 FR 36467 on June 24, 2005, is adopted as a final rule without change.

Dated: October 6, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20472 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV05–927–2]

Marketing Order Regulating the Handling of Pears Grown in Oregon and Washington; Control Committee Rules and Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendment.

SUMMARY: The Agricultural Marketing Service (AMS) is adding provisions to the Code of Federal Regulations that include rules and regulations used in administering the marketing order regulating the handling of pears grown in Oregon and Washington. Inadvertently, Subpart—Control Committee Rules and Regulations was removed in May 2005 when the marketing order was amended.

EFFECTIVE DATE: May 21, 2005.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, D.C. 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: A final rule published in the **Federal Register** on Friday, May 20, 2005 (70 FR 29388), was intended to only amend Subpart—Order Regulating Handling of Part 927 and to leave Subpart—Control Committee Rules and Regulations unchanged. However, amendatory language in the final rule resulted in Subpart—Control Committee Rules and Regulations being removed from 7 CFR part 927.

The codified provisions of 7 CFR part 927 do not include the Control Committee Rules and Regulations. This correction document adds Subpart—Control Committee Rules and Regulations back into 7 CFR part 927.

List of Subjects in 7 CFR Part 927

Marketing agreements, Winter pears, Reporting and recording keeping requirements.

■ Accordingly, 7 CFR Part 927 is corrected by adding the following provisions:

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR Part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Part 927 is corrected by adding Subpart—Control Committee Rules and Regulations consisting of §§ 927.100 through 927.316 to read as follows:

Subpart—Control Committee Rules and Regulations

Definitions

Subpart—Control Committee Rules and Regulations

Definitions

§ 927.100 Terms.

Each term used in this subpart shall have the same meaning as when used in the marketing agreement and order.

§ 927.101 Marketing agreement.

Marketing agreement means Marketing Agreement No. 89, as amended, regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

§ 927.102 Order.

Order means Order No. 927, as amended (§§ 927.1 to 927.81), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

§ 927.103 Organically produced pears.

Organically produced pears means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

Communications

§ 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection

certificates, and communications in connection with the marketing agreement and order shall be forwarded to: Winter Pear Control Committee, 4382 SE International Way, Suite A, Milwaukie OR 97222–4635.

Exemption Certificates

§ 927.110 Determination of district percentages.

(a) The Control Committee, at its meeting held on or before August 1 of each year for the purpose of making recommendations to the Secretary under the provisions of § 927.50, shall estimate the district percentages which the grades and sizes of each variety of pears permitted to be shipped from each district under the recommended regulation bears to the total quantity of each variety of pears which could be shipped from that district in the absence of regulation.

(b) Any notice issued or given pursuant to this estimate shall specifically state that each of the said percentages is merely an estimate subject to change, and is not to be relied upon until final action is taken as hereinafter provided. Each exemption committee, as hereinafter constituted in each district, shall meet and elect a district chairman and a secretary, either at or within ten days following said meeting of the Control Committee. Said district chairman shall immediately notify the secretary of the Control Committee of the names of the chairman and the secretary. The chairman of each exemption committee shall call a meeting of such committee within his district not later than a date to be determined each year by the Control Committee at the meeting specified in paragraph (a) of this section.

(c) At said district meeting, the district percentage estimates made by the Control Committee shall be reviewed by the exemption committee, and, if found to be not in accordance with conditions then existing within the district, said committee shall recommend proper adjustments to the Control Committee. Each exemption committee shall make only one recommendation for adjustment of district percentages in any one season, and said recommendation shall be made not later than the date specified by the Control Committee, except that should a major change occur in the crop or crops in any district after such date, the exemption committee may recommend a further change in such percentages. On the basis of the information submitted to it by the exemption committees and such other information and evidence as is available to it, the Control Committee shall establish all district percentages to be used in computing exemptions to growers. In the event no adjustment is recommended by the exemption committees by the date above specified, the Control Committee shall immediately, on the basis of information and evidence available to it, establish the district percentages to be used in computing exemptions to growers.

(d) The Control Committee shall give prompt notice to growers and handlers of the final percentages to be used in computing exemptions to growers.

(e) Any action taken by an exemption committee shall be approved by four affirmative votes, and each such committee shall keep accurate minutes and records of the proceedings of each of its meetings. A copy of such minutes and records shall be forwarded to the secretary of the Control Committee promptly after each meeting.

§ 927.110a Application for exemption certification.

Each application for an exemption certificate authorizing the shipment (pursuant to § 927.54) during a particular marketing season of any variety of pears shall be filed with the Secretary of the Control Committee. At the same time, and in order to insure prompt handling of such application, the applicant shall mail or deliver a copy of the application to the chairman of the exemption committee in the district in which the pears are grown. The application should be filed at the time the pears are harvested, and must be filed prior to the time the applicant's crop is graded, sized, and packed. Each application duly mailed and received by the Secretary of the Control Committee shall be deemed to have been filed with the Secretary as of the date of such mailing. As a part, and in support, of the application for an exemption certificate, the applicant shall submit one or more inspection certificates (or copies thereof) issued by a duly authorized representative of the Federal-State Inspection Service indicating the percentage of such applicant's production of all pears of such variety which will meet the grade, size, and quality regulations in effect and the percentage which will not meet these regulations; and the volume of pears so inspected shall be representative of such applicant's total production of such variety. The said exemption committee shall have the right to make or cause to be made such additional investigation as may be necessary to determine whether the portion of the applicant's production covered by the inspection certificates adequately represents the applicant's total production of such variety. The cost of such inspection shall be borne by the applicant. The application to be submitted shall be ''Form E–1 Growers Application for Exemption Certificate'' and shall contain the following information:

(a) The name and address of the applicant;

(b) The location of the orchard (by district and distance from the nearest town) from which the fruit is to be shipped pursuant to the exemption certificate;

(c) The number and age of the trees producing the particular variety for which exemption is requested;

(d) The estimated quantity of such variety which could be shipped by the applicant in the absence of the grade, size, or quality regulations in effect at the time the application is filed;

(e) The percentage of such variety, as set forth in the attached Federal-State inspection certificate or the weighted average of such percentages if there is more than one inspection certificate, which meets the requirements of the aforesaid effective grade, size, or quality regulations;

(f) The quantity of such variety which meets the requirements of the aforesaid effective grade, size, or quality regulations (such quantity shall be determined by applying the applicable percentage prescribed in paragraph (e) of this section to be the estimated quantity pursuant to paragraph (d) of this section);

(g) The total crop of such variety and the quantity shipped during the preceding marketing season;

(h) The names of the shippers who shipped all or any portion of the applicant's aforesaid crop during the preceding marketing season;

(i) The reasons why the quantity of the particular variety of pears, for which exemption is requested, does not meet the aforesaid effective grade, size, or quality regulations; and

(j) The name of the shipper or shippers who will ship the exempted pears if the exemption certificate is issued.

§ 927.111 Exemption committee.

The members and alternate members of the Control Committee residing in the district in which the applicant grower's orchard is located shall act as an exemption committee for that district and shall make or cause to be made such investigation as may be necessary to determine whether and to what extent such applicant will be prevented, because of the aforesaid grade, size, or quality regulations in effect, from shipping as large a percentage of the

particular variety of his pears as the percentage of all pears of that particular variety permitted to be shipped from his district as determined by the Control Committee. In the event any member or alternate member of the Control Committee shall himself apply for an exemption certificate he shall be disqualified to serve as a member of the exemption committee to act upon the application.

§ 927.112 Issuance of exemption certificate.

In the event such exemption committee finds and determines from proof, satisfactory to the committee, that the applicant is entitled to an exemption certificate, such exemption certificate shall be issued so as to permit the applicant to ship or have shipped the requisite quantity of his pears. Each exemption certificate shall be signed by the secretary or assistant secretary of the Control Committee and one copy thereof shall be delivered to the grower, one copy shall be delivered to each shipper designated by the grower to receive a copy, and one copy shall be retained in the files of the Control Committee. In the event the secretary of the Control Committee has reason to believe that any such finding or determination by an exemption committee is improper or not in accordance with the facts, he may disapprove the same, and shall make or cause to be made such further investigation as he may determine to be necessary or advisable, and may request or obtain such information as he may deem necessary to enable him to determine whether or not and to what extent an applicant is entitled to an exemption certificate.

§ 927.113 Appeal to Control Committee.

Any grower, whose application is denied in whole or in part by the appropriate exemption committee or by the secretary of the Control Committee, may file a written appeal with the Control Committee within fifteen (15) days after the date of the notice to such grower of the decision involved. Upon receipt of such appeal, the secretary of the Control Committee shall submit the same, together with all applicable information and data, including the report of the exemption committee on that grower's application to the members of the Control Committee, who thereafter shall review the same and shall determine whether and to what extent the applicant is entitled to an exemption certificate. Thereupon the secretary of the Control Committee shall issue to that grower such exemption certificate as the Control Committee shall determine to be proper.

§ 927.114 Appeal to Secretary.

Any grower who is dissatisfied with the Control Committee's determination with respect to any appeal by that grower from a decision by an exemption committee or by the Secretary of the Control Committee with respect to that grower's application for an exemption certificate, may appeal from such determination by the Control Committee to the Secretary of Agriculture. Any such appeal shall be made by filing with the secretary of the Control Committee a written notice of appeal within fifteen (15) days after notice to that grower of the aforesaid determination by the Control Committee. Promptly upon receipt of notice of an appeal signed by the applicant, the secretary of the Control Committee shall forward to the Secretary of Agriculture, or to his designated representative, a true and correct copy of all information pertaining to that grower's application for an exemption certificate and the action taken thereon by the Control Committee, together with such written information and proof as was submitted to or obtained by the Control Committee with regard to said application, and a true copy of the appellant grower's notice of appeal.

Exemptions and Safeguards

§ 927.120 Pears for charitable or byproduct purposes.

Pears which do not meet the requirements of the then effective grade, size, or quality regulations shall not be shipped or handled for consumption by any charitable institution or for distribution by any relief agency or for conversion into any by-product, unless there first shall have been delivered to the manager of the Control Committee a certificate executed by the intended receiver and user of said pears showing, to the manager's satisfaction, that said pears actually will be used for one or more of the aforesaid purposes.

§ 927.121 Pears for gift purposes.

There are exempted from the provisions of the marketing agreement and order any and all pears which, in individual gift packages, are shipped directly to, or which are shipped for distribution without resale to, an individual person as the consumer thereof, and any and all pears which, in individual gift packages are shipped directly to, or are shipped for distribution without resale to, a purchaser who will use these pears solely for gift purposes and not for sale.

§ 927.122 Shipments to designated storages.

(a) Pears may be shipped without prior inspection and certification to any public warehouse in Yakima, Zillah, Wenatchee, or Grandview in the State of Washington; in Portland, Klamath Falls, or Medford in the State of Oregon; or in Tulelake or Yuba City in the State of California, for storage therein in transit: Provided, That any pears so shipped shall be inspected, and a certificate issued with respect thereto, as provided in § 927.60 of the marketing agreement and order, prior to such pears being removed from such warehouse. At the time any pears are so shipped into such public storage warehouse and again when such pears are shipped out of such warehouse, the handler shall, on his ''Handler's Statement of Pear Shipments,'' report each such shipment as prescribed in § 927.125(b).

(b) Any pears shipped to one of the aforesaid storage warehouses pursuant to this section which, upon inspection, do not meet the requirements of the then effective grade, size, or quality regulations may be repacked at such warehouse so as to meet such requirements, sold and delivered within the state where such warehouse is located for processing or conversion into by-products, or returned to the state where the pears were produced for repacking or for sale within such state: Provided, That there first shall have been submitted to the manager of the Control Committee proof, satisfactory to the manager, that the pears will not be handled contrary to the provisions of the marketing agreement and order; such proof shall include, in the case of sale and delivery for byproducts purposes, a written certificate, executed by both the handler and the intended receiver, stating that the pears will be processed or converted into by-products within the state where such warehouse is located.

§ 927.123 Interest and late payment charges.

Payments received more than 45 days after the date on which they are due shall be considered delinquent and subject to a late payment charge of $25.00 or 2 percent of the total due, whichever is greater. Payments received more than 60 days after the date on which they are due shall be subject to a 1½ percent interest charge per month, until final payment is made and interest shall be applied to the total unpaid balance, including the late payment charge and any accumulated interest. Any amount paid shall be credited when the payment is received in the Control Committee office.

Reports

§ 927.125 Reports.

(a) Each shipper handling pears covered by an exemption certificate shall keep an accurate record, in the manner provided on such certificate, of all shipments of such pears. Such shipper, after having shipped as many pears as authorized by the particular exemption certificate, shall promptly mail to the Secretary of the Control Committee, such handler's copy of the exemption certificate containing an accurate record of such shipments.

(b) Each handler shall furnish to the Control Committee, as of every other Friday, a report containing the following information on Form 1 ''Handlers' Statement of Pear Shipments'':

(1) The number of standard western pear boxes (two half boxes shall be counted as one box) of each variety of pears shipped by that handler during the preceding two weeks;

(2) The date of each shipment;

(3) The ultimate destination, by city and state or city and country; and

(4) The name and address of such handler. In addition, the handler shall indicate, for each lot of pears shipped in accordance with the provisions of § 927.122, the storage lot number, and the name and address of the storage warehouse.

(c) Each handler shall furnish to the Control Committee, as of every other Friday, a ''Handler's Packout Report'' containing the following information:

(1) The total of the packout of each variety;

(2) The quantity of each variety loose in storage;

(3) The volume of each variety sold; and

(4) The name and address of such handler.

(d) Each handler who has shipped less than 2,500 standard western pear boxes during any two-week reporting period of the shipping season may, in lieu of reporting biweekly, report as follows:

(1) At completion of harvest, on the next biweekly reporting date, furnish to the Control Committee a ''Handler's Packout Report';

(2) After unreported shipments total 2,500 standard western pear boxes, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date;

(3) After completion of all shipments from regular storage (*i.e.* non-Controlled Atmosphere storage) at the end of the shipping season, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date;

(4) At mid-season for Controlled Atmosphere storage, at a date established by the Control Committee, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report''; and

(5) At the completion of all seasonal pear shipments, furnish to the Control Committee a ''Handler's Statement of Pear Shipments'' and a ''Handler's Packout Report'' on the next biweekly reporting date. Each of these reports shall be marked ''final report'' and include an explanation of the actual shipments versus the original estimate, if different.

(e) Each handler who has pears inspected and certificated in lots larger than carload lots and who wishes to rely on such lot inspections in lieu of inspection certificates for individual carlot shipments shall deliver to the manager within 10 days after shipment of any such pears a written report showing the quantity, variety, grade, and size of the pears so shipped and the date of shipment thereof, and said report shall identify such pears with the lot-inspection certificate covering the same, and shall further show what portion of that lot remains unshipped, and where located; such report shall be in addition to, and not in lieu of, the handler's reports of shipments required under paragraphs (b) and (c) of this section.

(f) Each handler shall specify on each bill of lading covering each shipment the variety, and number of boxes thereof, of all pears included in that shipment.

§ 927.142 Reserve fund.

(a) It is necessary and appropriate to establish and maintain an operating reserve fund in an amount not to exceed approximately one fiscal period's expenses to be used in accordance with the provisions of § 927.42 of the amended marketing agreement and this part, and

(b) Assessments collected for the period ended June 30, 1962, were in excess of the expenses for such period and the committee is hereby authorized to place $2,500 of such excess in said reserve.

Assessment Rate

§ 927.236 Assessment rate.

On and after July 1, 2004, an assessment rate of $0.49 per 44-pound standard box or container equivalent of conventionally and organically produced pears and, in addition, a supplemental assessment rate of $0.01 per 44-pound standard box or container equivalent of Beurre d'Anjou variety pears, excluding organically produced Beurre d'Anjou pears, is established for the Winter Pear Control Committee.

§ 927.316 Handling regulation.

During the period August 15 through November 1, no person shall handle any Beurre D'Anjou variety of pears for shipments to North America (Continental United States, Mexico, or Canada), unless such pears meet the following requirements:

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and any such pears have an average pressure test of 14 pounds or less. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

Dated: October 7, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20531 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1700

RIN 2550–AA33

Organization and Functions

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Final rule.

SUMMARY: The Office of Federal Housing Enterprise Oversight (OFHEO) is revising the regulation that describes its organization and functions. The revisions reflect changes in OFHEO's organizational structure and the functional responsibilities of some of its offices.

DATES: The final regulation is effective October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Alice Donner, Senior Counsel,

telephone (202) 343–1319 (not a toll-free number); Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Discussion of Final Regulation

This final regulation informs the public about structural and functional changes within OFHEO that were recently implemented by the Acting Director. Changes in OFHEO's structure consist of the establishment of a new Office of Executive Director, and the establishment of the Offices of Human Resources Management and of Budget and Financial Management. The Office of Human Resources Management and the Office of Budget and Financial Management will assume the functions of the former Office of Finance and Administration, among other responsibilities. The Office of Executive Director is headed by the Executive Director and Chief of Staff, and consists of the Office of Budget and Financial Management, Office of Human Resources Management, the Office of Technology and Information Management, and the Office of Strategic Planning and Management. The Office of Information Technology is renamed Office of Technology and Information Management to reflect more accurately the nature and scope of that Office's responsibilities.

In promulgating this regulation, OFHEO finds that notice and public comment are not necessary. Section 553(b)(3)(A) of title 5, United States Code, provides that when regulations involve matters of agency organization, procedure or practice, the agency may publish regulations in final form. In addition, OFHEO finds, in accordance with 5 U.S.C. 553(d), that a delayed effective date is unnecessary. Accordingly, this regulation is effective upon publication.

Regulatory Impact

Executive Order 12866, Regulatory Planning and Review

The final regulation is not classified as an economically significant rule under Executive Order 12866 because it would not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final regulation has not been submitted to the Office of Management and Budget for review.

Executive Order 13132, Federalism

Executive Order 13132 requires that Executive departments and agencies identify regulatory actions that have significant federalism implications. A regulation has federalism implications if it has substantial direct effects on the states, on the relationship or distribution of power between the Federal Government and the states, or on the distribution of power and responsibilities among various levels of government. The final regulation has no federalism implications that warrant the preparation of a federalism assessment in accordance with Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities, 5 U.S.C. 605(b). OFHEO has considered the impact of the final regulation under the Regulatory Flexibility Act. The Acting General Counsel of OFHEO certifies that the final regulation will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

This final regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 1700

Organization and functions (Government Agencies).

■ Accordingly, for the reasons stated in the Preamble, OFHEO amends 12 CFR part 1700 to read as follows:

PART 1700—ORGANIZATION AND FUNCTIONS

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 4513 and 4526.

■ 2. Amend § 1700.2 as follows:

■ a. Remove paragraphs (c)(3), (c)(7), and (c)(8).

■ b. Redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively.

■ c. Redesignate newly designated paragraphs (d)(1) and (d)(2) as paragraphs (d)(2) and (d)(3).

■ d. Redesignate newly designated paragraphs (d)(9) and (d)(10) as paragraphs (d)(7) and (d)(8).

■ e. Add a new paragraph (c) and a new paragraph (d)(1) to read as follows:

§ 1700.2 Organization of the Office of Federal Housing Enterprise Oversight.

* * * * *

(c) *Executive Director and Chief of Staff.* The Executive Director and Chief of Staff of OFHEO heads the Office of Executive Director. The Executive Director and Chief of Staff reports to the Director and the Deputy Director. The Executive Director and Chief of Staff is the chief administrative officer of OFHEO, serves as a legal advisor on administrative matters, and coordinates communication and cooperation on administrative issues with the Office of General Counsel.

(d) *Offices and functions.* (1) Office of Executive Director. The Office of Executive Director consists of the Office of Budget and Financial Management, the Office of Human Resources Management, the Office of Technology and Information Management, and the Office of Strategic Planning and Management. The Office of Executive Director is responsible for OFHEO-wide management and oversight of all administrative matters.

* * * * *

Dated: October 4, 2005.

Stephen Blumenthal,

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. 05–20471 Filed 10–12–05; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM331; Special Conditions No. 25–302–SC]

Special Conditions: Learjet Model 35 Series; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 35 series airplanes modified by Avcon Industries Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of new Kollsman 24771 Air data computers and Thommen AD30 displays. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These 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: The effective date of these special conditions is October 4, 2005. Comments must be received on or before November 14, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM331 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked Docket No. NM331.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, we invite 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 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 preamble 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 these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 August 5, 2005, Avcon Industries, Inc., P.O. Box 748, Newton, Kansas, 67114, applied for a supplemental type certificate (STC) to modify Learjet Model 35 series airplanes currently approved under Type Certificate No. A10CE. The Learjet Model 35 airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weight of up to 18,000 lbs. These airplanes operate with 2-person crew and can seat up to 8 passengers. The proposed modification incorporates the installation of Kollsman 24771 Air Data Computers and Thommen AD30 displays. The avionics/electronics and electrical systems installed in this airplane are flight critical and have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Avcon Industries, Inc., must show that the Learjet Model 35 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, 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 certification basis for the Learjet Model 35 series airplanes includes 14 CFR part 25 effective February 1, 1965, as amended by Amendments 25–1, 25–2, 25–4, 25–7, 25–18, and § 25.571(d) of Amendment 25–10, Special Conditions set forth in FAA letter to Learjet dated March 1, 1967, and Special Conditions No. 25–50–CE–6 dated April 18, 1973, and Amendment 1 dated September 18, 1973. The certification basis for Models 35A also includes Special Conditions No. 25–72–CE–8 dated November 3, 1976, and Amendment 1 dated March 14, 1978. The certification basis for Model 35A (C–21A), in addition to the basis listed above, includes Special Conditions 25–ANM–28 dated May 3, 1989. In addition, the certification basis includes certain later amended sections of the applicable part 25 regulations that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Learjet Model 35 series airplanes 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 Learjet Model 35 series airplanes 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 14 CFR 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 Avcon Industries Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE to incorporate the

same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Learjet Model 35 series airplanes, as modified by Avcon Industries, Inc., will incorporate Kollsman 24771 Air data computers and Thommen AD30 displays. The Thommen displays and air data sensor perform critical functions. These systems may be vulnerable to high intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 35 series airplanes as modified by Avcon Industries, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 35 series airplanes modified by Avcon Industries, Inc. Should Avcon Industries, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A10CE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Learjet Model 35 series airplanes modified by Avcon Industries, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Learjet Model 35 series airplanes modified by Avcon Industries, Inc.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 4, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20459 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM332; Special Conditions No. 25–303–SC]

Special Conditions: Boeing Model 767–200, –300, and –300F Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 767–200, –300, and –300F series airplanes modified by ABX Air, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an Innovative Solutions and Support Flat Panel Display System that performs critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These 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: The effective date of these special conditions is October 4, 2005. Comments must be received on or before November 14, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM332, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM332.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, 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 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 preamble 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 these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 April 22, 2005, ABX Air, Inc., 145 Hunter Drive, Wilmington, OH 45177, applied for a supplemental type certificate (STC) to modify Boeing Model 767–200, –300 and –300F series airplanes. These models are currently approved under Type Certificate No. A1NM. The Boeing Model 767–200, –300 and –300F series airplanes are large transport category airplanes powered by either two Pratt & Whitney or two General Electric engines. The Boeing Model 767–200 and –300 series airplanes carry a maximum of 351 passengers. The modification incorporates the installation of the Innovative Solutions and Support (IS&S) Flat Panel Display System (FPDS). The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, ABX Air, Inc. must show that the Boeing Model 767–200, –300 and –300F series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM, 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 certification basis for Boeing Model 767–200, –300, and –300F series airplanes includes applicable sections of 14 CFR part 25, effective July 30, 1982, as amended by Amendments 25–1 through 25–45, except for portions of Amendment 25.38. In addition, the certification basis includes certain special conditions, exemptions, equivalent levels of safety, or later amended sections of the applicable part 25 that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for Boeing Model 767–200, –300 and –300F series airplanes 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 767–200, –300 and –300F series airplanes 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 14 CFR 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 ABX Air, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No. A1NM to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Boeing Model 767–200, –300 and –300F series airplanes modified by ABX Air, Inc. will incorporate a FPDS manufactured by

IS&S that will perform critical functions. This system may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 767–200, –300 and –300F series airplanes modified by ABX Air, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz–700 MHz ...	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 767–200, –300 and –300F series airplanes modified by ABX Air, Inc. Should ABX Air, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No. A1NM to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Boeing Model 767–200, –300 and –300F series airplanes modified by ABX Air, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 767–200, –300 and –300F series airplanes modified by ABX Air, Inc.

1. *Protection from Unwanted Effects of HIRF.* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 4, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20458 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM333; Special Conditions No. 25–304–SC]

Special Conditions: Learjet Model 35, 35A, 36, and 36A Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Revue Thommen AG AD30 Air Data Display Units and dual J2, Inc. Air Data Computers that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These 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: The effective date of these special conditions is October 3, 2005. Comments must be received on or before November 14, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM333, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM333.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, 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 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 preamble 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 these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, 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 June 6, 2005, Genesis 3 Engineering, Inc., 800 Research Drive, Suite 115, Woodland Park, Colorado 80863, applied for a supplemental type certificate (STC) to modify Learjet Model 35, 35A, 36, and 36A airplanes. These models are currently approved under Type Certificate No. A10CE. The Learjet Model 35, 35A, 36, and 36A airplanes are small transport category airplanes powered by two turbojet engines, with maximum takeoff weights of up to 18,000 pounds. These airplanes operate with a 2-pilot crew and can seat up to 8 passengers. The proposed modification incorporates the installation of dual Revue Thommen AG AD30 Air Data Display Units (ADDUs) and dual J2, Inc. Air Data Computers (ADCs). The information this equipment presents is flight critical. The avionics/electronics and electrical systems to be installed on these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Genesis 3 Engineering, Inc. must show that the Learjet Model 35, 35A, 36, and 36A airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A10CE, 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 certification basis for Learjet Model 35, 35A, 36, and 36A airplanes includes 14 CFR part 25, as amended by Amendment 25–2, Amendment 25–4, Amendment 25–7, Amendment 25–18, and paragraph 25.571(d) of Amendment 25–10.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Learjet Model 35, 35A, 36, and 36A airplanes 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 Learjet Model 35, 35A, 36, and 36A airplanes 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 14 CFR 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 Genesis 3 Engineering, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No. A10CE to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc. will incorporate dual Revue Thommen AG AD30 ADDUs and dual J2, Inc. ADCs that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields (HIRF)

external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100
400 MHz– 700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc. Should Genesis 3 Engineering, Inc. apply at a later date for a STC to modify any other model included on Type Certificate No. A10CE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

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 Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Learjet Model 35, 35A, 36, and 36A airplanes modified by Genesis 3 Engineering, Inc.

1. *Protection from Unwanted Effects of HIRF.* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20460 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22634; Directorate Identifier 2005–SW–12–AD; Amendment 39–14335; AD 2005–20–38]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Model 212, 412, and 412EP Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron (Bell) model helicopters modified with Aeronautical Accessories, Inc. (AAI), Supplemental Type Certificate (STC) SH2820SO or that have the affected AAI Parts Manufacturer Approval (PMA) parts installed. This action requires inspecting a certain part-numbered reservoir assembly adapter (adapter) for the counter bore depth (dimension D). If the dimension D of the adapter exceeds .860 inch, before further flight, this AD requires replacing the reservoir assembly and adapter with airworthy parts. This amendment is prompted by a report of a rupture of an adapter during nitrogen charging because of inadequate wall thickness for the operating pressures. The actions specified in this AD are intended to prevent the rupture of an adapter, uncontrolled jetting of pressurized gas from the nitrogen bottle, and subsequent injury to occupants or damage to the helicopter.

DATES: Effective October 28, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 2005.

Comments for inclusion in the Rules Docket must be received on or before December 12, 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 Aeronautical Accessories, Inc., P. O. Box 3689, Bristol, Tennessee 37625–3689.

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 the specified Bell model helicopters modified with an AAI STC SH2820SO or with AAI PMA reservoir assembly or adapter installed. This action requires a one-time inspection of the adapter counter bore depth. If the counter bore depth dimension exceeds .860 inch, this AD requires replacing the reservoir assembly and adapter with airworthy parts before further flight. This amendment is prompted by a report of a rupture of an adapter on a Bell Model 412 helicopter during nitrogen charging. The assembly adapter ruptured, and the pressurized nitrogen gas jetted out of the nitrogen bottle in the helicopter and caused significant damage. The rupture occurred because the adapter had inadequate fracture strength because the counter bore was too large, which produced insufficient wall thickness for the operating pressures. This condition, if not corrected, could result in rupture of an adapter, uncontrolled jetting of pressurized gas from the nitrogen bottle, and subsequent injury to occupants or damage to the helicopter.

We have reviewed AAI Alert Service Bulletin No. AA–05005, Revision A, dated June 27, 2005 (ASB), for Bell Model 212/412/412EP helicopters with the reservoir assembly, part number (P/N) 212–372–050, and the adapter, P/N 212–371–002, installed. The ASB describes procedures for discharging the floatation system, inspecting the counter bore depth of the adapter (dimension D), recharging the floatation system, and specifies replacing the assembly and adapter if the dimension D exceeds .860. The ASB states that the adapter located between the neck of the reservoir assembly and the inflation valve may have been manufactured incorrectly resulting in a weakened condition that could lead to the rupture of the adapter fitting while under pressure.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs modified with AAI STC SH2820SO or that has the affected PMA P/N installed. Therefore, this AD is being issued to prevent the rupture of an adapter, uncontrolled jetting of pressurized gas from the nitrogen bottle, and subsequent injury to occupants or damage to the helicopter. This AD requires the following:

- Within 24 hours time-in-service (TIS) or before the next emergency floatation supply bottle nitrogen charging, whichever occurs first, for the reservoir assembly, P/N 212–372–050, and the adapter, P/N 212–371–002, do the following:
- Discharge the nitrogen from the reservoir assembly.
- Remove the valve assembly and air line from the adapter, and inspect the dimension D.
- If the dimension D does not exceed .860 inch, recharge the floatation system.
- If the dimension D exceeds .860 inch, before further flight, replace the reservoir assembly and the adapter with airworthy parts.

Accomplish the actions in accordance with the specified portions of the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can damage the helicopter and injure its occupants as well as render the floatation system inoperative. Therefore, inspecting the counter bore depth of the adapter is required within 24 hours TIS or before the next emergency floatation supply bottle nitrogen charging, whichever occurs first. Because this is a very short compliance time, 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 100 helicopters. Discharging the system, inspecting the dimension D of the adapter, replacing the reservoir assembly and adapter, and recharging the system will take about 2 work hours at an average labor rate of $65 per work hour. Required parts will cost about $5095 to replace the reservoir assembly and adapter per helicopter. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $522,500, assuming the reservoir assembly and adapter must be replaced on the entire fleet.

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–2005–22634; Directorate Identifier 2005–SW–12–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:

2005–20–38 Bell Helicopter Textron: Amendment 39–14335. Docket No. FAA–2005–22634; Directorate Identifier 2005–SW–12–AD.

Applicability

Model 212, 412, and 412EP helicopters modified with Aeronautical Accessories, Inc. (AAI), Supplemental Type Certificate (STC) SH2820SO; or with AAI Parts Manufacturer Approval (PMA) reservoir assembly, part number (P/N) 212–372–050; or with adapter, P/N 212–371–002, installed, certificated in any category.

Compliance

Required as indicated, unless accomplished previously.

To prevent rupture of an adapter, uncontrolled jetting of pressurized gas from the nitrogen bottle, and subsequent injury to occupants or damage to the helicopter, accomplish the following:

(a) Within the next 24 hours time-in-service (TIS) or before the next emergency floatation supply bottle nitrogen charging, whichever occurs first, do the following:

(1) Vent the nitrogen from the reservoir assembly by following the Accomplishment Instructions, Part II—Floatation System Discharging, of AAI Alert Service Bulletin ASB No. AA–05005, Revision A, dated June 27, 2005 (ASB).

(2) Remove the valve assembly and air line from the adapter, and inspect the counter bore depth (dimension D) as shown in Figure 1 of the ASB.

(i) If dimension D, as depicted in Figure 1 of the ASB, does not exceed .860 inch, recharge the floatation system by following the Accomplishment Instructions, Part III—Floatation System Charging, and referring to Figures 2 and 3 of the ASB.

(ii) If dimension D, as depicted in Figure 1 of the ASB, exceeds .860 inch, replace the reservoir assembly and the adapter with airworthy parts before further flight.

(b) 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, FAA, for information about previously approved alternative methods of compliance.

(c) Discharging and recharging the floatation system and inspecting the counter bore depth dimension of the adapter shall be done in accordance with the specified portions of Aeronautical Accessories, Inc. Alert Service Bulletin No. AA–05005, Revision A, dated June 27, 2005. 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 Aeronautical Accessories, Inc., P. O. Box 3689, Bristol, Tennessee 37625–3689. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(d) This amendment becomes effective on October 28, 2005.

Issued in Fort Worth, Texas, on September 30, 2005.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 05–20324 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21346; Directorate Identifier 2005–NM–031–AD; Amendment 39–14336; AD 2005–20–39]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires examining the airplane's maintenance records to determine if the main landing gear (MLG) has been overhauled and if Titanine JC5A (also known as Desoto 823E508) corrosion-inhibiting compound (''CIC'') was used during the overhaul. For airplanes for which the maintenance records indicate that further action is necessary, or for airplanes on which CIC JC5A may have been used during manufacture, this AD requires a one-time detailed inspection for discrepancies of certain components of the MLG, and corrective action if necessary. This AD results from twelve reports of severe corrosion on one or more of three components of the MLG. We are issuing this AD to prevent collapse of the MLG, or damage to hydraulic tubing or the aileron control cables, which could result in possible departure of the airplane from the runway and loss of control of the airplane.

DATES: This AD becomes effective November 17, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 17, 2005.

ADDRESSES: You may examine the 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., Nassif Building, room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the airworthiness directive (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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32534). That NPRM proposed to require operators to examine the airplane's maintenance records to determine if the main landing gear (MLG) has been overhauled and if Titanine JC5A (also known as Desoto 823E508) corrosion-inhibiting compound (''CIC'') was used during the overhaul. For airplanes for which the maintenance records indicate that further action is necessary, or for airplanes on which CIC JC5A may have been used during manufacture, that NPRM proposed to require a one-time detailed inspection for discrepancies of certain components of the MLG, and corrective action if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Support for the NPRM

One commenter expresses support for the NPRM.

Request To Specify ''Last Overhaul'' in Paragraph (g)(2)

The commenter requests that we revise paragraph (g)(2) to specify that during the records examination, no further action is required by paragraph (g)(2) or paragraph (h) of the NPRM if CIC JC5A was not used on the trunnion pins or other parts of the MLG during the last overhaul. The NPRM merely stated ''during the overhaul.'' The commenter states that any damage which may have resulted from the use of CIC JC5A at overhauls prior to the last overhaul would have been detected and corrected at the last overhaul, thus any record review of overhauls prior to the last overhaul is unnecessary. The commenter further states that only the last overhaul is of interest in any records examination, and a change to specify the last overhaul would minimize labor expenditure for records research. Furthermore, the commenter states that the change would give paragraph (g)(2) and paragraph (h)(2) a similar structure.

We agree with the commenter for the stated reasons. During each MLG overhaul, all the grease is removed and discrepancies are corrected. Thus, only the most recent overhaul is relevant to the actions in paragraph (g)(2). We have revised paragraph (g)(2) of the final rule to include the words ''most recent overhaul.''

Request To Clarify ''Aircraft Maintenance Records''

The commenter requests that the term ''aircraft maintenance records'' be clarified in the final rule. The commenter states that the actual records do not contain detailed information about which corrosion-inhibiting compound was used to overhaul the MLG. According to the commenter, operators can only review the MLG component maintenance manual (CMM) and any associated documents to determine if Titanine JC5A CIC was ever used during overhaul. The commenter believes that a reference to the CMM should be specifically stated in the final rule.

We do not agree with the commenter. The NPRM used the phrases ''airplane maintenance records,'' and ''airplane records,'' which is consistent with the wording in Section 121.380 (''Maintenance Recording Requirements'') of the Federal Aviation Regulations (14 CFR 121.380). That regulation defines the maintenance recording requirements for certificate holders. The terms, as used in the NPRM, are not meant to imply that determination of the compound used must be determined from the airplane-level document; there may be other supporting documents that constitute part of ''airplane maintenance records'' or ''airplane records.'' Examples of such supporting documents include maintenance program documentation and maintenance task cards. We have not changed the final rule in this regard.

Request To Provide Instructions for Removing CIC JC5A and Approval Dates for CIC JC5A

The commenter requests more precise directions for cleaning/removing CIC

JC5A from the three components and other bearings, bushings, and lugs that must be cleaned. The commenter would like to know which cleaning products should be used and if there are any cleaning products that should not be used. The commenter also requests information about the dates during which CIC JC5A was an approved substitute for Boeing Material Specification (BMS) 3–37 grease.

The comments do not pertain to the substance of the proposed rule and are best directed to the manufacturer. Any alternative procedures to the actions in this final rule may be used only if approved as an alternative method of compliance according to paragraph (l) of this AD.

Explanation of Additional Change Made to This AD

We have simplified paragraph (i)(2) of the final rule by referring to the ''Alternative Methods of Compliance (AMOCs)'' paragraph for repair methods.

Clarifications Made to This AD

To meet the requirements of the Office of the Federal Register for materials incorporated by reference, we have clarified paragraph (f) of the final rule to refer to the applicable service bulletin as ''Boeing Service Bulletin 737–32A1367, Revision 1, dated December 23, 2004,'' rather than ''Boeing Alert Service Bulletin * * * .'' Revision 1 of this service bulletin is not an alert service bulletin.

We have revised the wording in paragraph (h)(1)(i) of the final rule to clarify the compliance time to refer to the ''date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness,'' rather than ''the date of issuance of the original airworthiness certificate or the date of issuance of the original standard export certificate of airworthiness, whichever occurs later.'' We find that the revised wording is more precise.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 3,132 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Records examination	1	$65	None	$65	1,748	$113,620

For airplanes that require a detailed inspection, we estimate that the inspection would take about 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, we estimate that the detailed inspection would cost about $195 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 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 adding the following new airworthiness directive (AD):

2005–20–39 Boeing: Amendment 39–14336. Docket No. FAA–2005–21346; Directorate Identifier 2005–NM–031–AD.

Effective Date

(a) This AD becomes effective November 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from twelve reports of severe corrosion on one or more of three components of the main landing gear (MLG). We are issuing this AD to prevent collapse of the MLG, or damage to hydraulic tubing or the aileron control cables, which could result in possible departure of the airplane from the runway and loss of control 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.

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 737–32A1367, Revision 1, dated December 23, 2004.

Records Examination and Compliance Times

(g) *For all airplanes:* Before the inspection required by paragraph (h) of this AD, examine the airplane records to determine if the MLG has been overhauled, and, for any overhauled MLG, if JC5A corrosion inhibiting compound (CIC) was used on the trunnion pin or other parts of the MLG.

(1) For airplanes identified in the service bulletin as Group 2 and Group 4: If records indicate conclusively that the MLG has not been overhauled, no further action is required by this paragraph or paragraph (h) of this AD.

(2) For airplanes identified in the service bulletin as Group 1, Group 2, Group 3, and Group 4: If records indicate conclusively that the MLG has been overhauled and that CIC JC5A was not used on the trunnion pins or other parts of the MLG during the most recent overhaul, no further action is required by this paragraph or paragraph (h) of this AD.

Inspection and Corrective Action

(h) For all airplanes, except as provided by paragraph (g)(1) and (g)(2) of this AD: At the applicable compliance time in paragraph (h)(1) or (h)(2) of this AD, do a detailed inspection for discrepancies of the applicable MLG components specified in the service bulletin. Do all applicable corrective actions before further flight after the inspection. Do all the actions in accordance with the service bulletin, except as required by paragraph (i) of this AD.

(1) For airplanes identified in the service bulletin as Group 1 and Group 3 for which records indicate conclusively that the MLG has not been overhauled: Inspect at the later of the times in paragraph (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Within 48 months after the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(ii) Within 6 months after the effective date of this AD.

(2) For airplanes identified in the service bulletin as Group 1, Group 2, Group 3, and Group 4, for which records indicate conclusively that the MLG has been overhauled, and for which records indicate conclusively that CIC JC5A was used during the most recent overhaul; and for airplanes for which records do not show conclusively which CIC compound was used during the most recent overhaul: Inspect at the later of the times in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Within 48 months after the landing gear was installed.

(ii) Within 6 months after the effective date of this AD.

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.''

Contact Seattle Aircraft Certification Office (ACO) or Delegation Option Authorization (DOA) Organization for Certain Corrective Actions

(i) If any discrepancy is found during any inspection required by this AD, and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, do the action using a method approved in accordance with paragraph (l) this AD.

Use of JC5A Prohibited

(j) As of the effective date of this AD, no person may use CIC JC5A on an MLG component on any airplane.

Actions Done According to Previous Revision of Service Bulletin

(k) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–32A1367, dated August 19, 2004, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, 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 Authorized Representative for the Boeing Commercial Airplanes DOA Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(m) You must use Boeing Service Bulletin 737–32A1367, Revision 1, dated December 23, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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 September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20262 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20726; Directorate Identifier 2004–NM–265–AD; Amendment 39–14337; AD 2005–20–40]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200CB, and –200PF series airplanes. This AD requires an inspection of each trailing edge flap transmission assembly to determine the part number and serial number, and related investigative and corrective actions and part marking if necessary. This AD results from a report indicating that cracked flap transmission output gears have been discovered during routine overhaul of the trailing edge flap transmission assemblies. We are issuing this AD to prevent an undetected flap skew, which could result in a flap loss, damage to adjacent airplane systems, and consequent reduced controllability of the airplane.

DATES: Effective November 17, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 17, 2005.

ADDRESSES: You may examine the 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., Nassif Building, room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757–200, –200CB, and –200PF series airplanes. That NPRM was published in the **Federal Register** on March 30, 2005 (70 FR 16175). That NPRM proposed to require an inspection of each trailing edge flap transmission assembly to determine the part number and serial number, and related investigative and corrective actions and part marking if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Support for NPRM

One commenter, the manufacturer, concurs with the content of the NPRM.

Request To Allow Maintenance Records Check

Two commenters request that we revise the NPRM to allow a maintenance records check to determine if any affected transmission assembly is installed upon an airplane. One commenter states that it tracks all its flap transmission assemblies by part number (P/N) and serial number (S/N) in order to record all time and cycle information for each of these units. The commenter asserts that since Boeing Special Attention Service Bulletin (SASB) 757–27–0150, dated December 9, 2004, specifies all suspect flap transmission assemblies by P/N and S/N, it should be allowed to use these data to demonstrate compliance with the NPRM. Another commenter states that it recently updated the P/N and S/N installation records for all transmission assembly positions affected by the NPRM and that these records show that none of the affected assemblies are installed on its airplanes. The second commenter states that the wording of the NPRM prevents it from using these data to demonstrate compliance with the NPRM and requires it to physically view all P/Ns on its airplanes. Since Boeing SASB 757–27–0150 specifies 75 hours per airplane to gain access, inspect, and close access for the eight transmission assemblies, the second commenter asserts that this proposed requirement is excessively onerous.

We agree with this request. If an operator can clearly demonstrate that the maintenance records for an airplane establish that no suspect transmission assembly is installed on that airplane, the records check is acceptable for compliance with the P/N and S/N inspection requirement of the NPRM. Therefore, we have revised paragraph (f) in this AD to permit a maintenance records check instead of the required inspection.

Request To Allow Replacement of Transmission Assembly

One commenter requests that we revise the NPRM to allow replacing a transmission assembly having a defective output gear with a compliant transmission. The commenter states that it does not have the means to repair and test the transmission itself and anticipates sending any suspect transmission to a repair facility for inspection, test, and marking.

We agree with this request. Since the intent of the AD is to remove defective transmission assembly output gears from service, this can be accomplished either by replacing the defective output gear with a compliant output gear or replacing the entire transmission assembly with a compliant transmission assembly. Therefore, we have revised paragraph (f) of this AD to permit ''replacing the entire transmission assembly with a new or serviceable flap transmission assembly.''

Request To Increase Total Number of Affected Transmission Assemblies

One commenter requests that we change the number of affected transmission assemblies shown in the NPRM. The commenter states that there are four different transmission configurations, each having S/Ns 1 through 325 inclusive, which yields a total of 1,300 affected transmission assemblies rather than 325.

We agree with this request for the reason stated by the commenter. Therefore, we have revised the number of suspect transmission assemblies from 325 to 1,300 in this AD.

Request To Revise Applicability

One commenter requests that we revise the applicability of the NPRM to include only those airplanes with transmission assemblies installed that have the affected P/Ns and S/Ns. The commenter suggests that the applicability could be revised to read, instead of the current wording, ''This AD applies to Boeing Model 757–200, –200CB, and –200PF series airplanes, with part number 251N4050–37, –38, –39, or –40 having S/Ns 1 through 325 inclusive, or part number 251N4022–28, –29, –30 and –31 having S/Ns 1 through 325 inclusive.''

We do not agree with this request. We have no means of ensuring that every trailing edge flap transmission assembly with part numbers 251N4050–37, –38, –39, and –40; and 251N4022–28, –29, –30 and –31; each having S/Ns 1 through 325 inclusive; can be located for inspection without canvassing all Model 757–200, –200CB, and –200PF series airplanes. We have not changed this AD in this regard. However, as previously discussed, we have revised this AD to permit a maintenance records check to locate suspect transmission assemblies instead of the required inspection, which should greatly reduce the burden to operators.

Requests To Revise Estimated Work Hours

Two commenters request that we revise the Costs of Compliance section of the NPRM to increase the estimated number of work hours needed to accomplish the required actions. One commenter states that the 1 work hour specified to accomplish the inspection of eight trailing edge flap transmission assemblies is considerably less than the 75 work hours to accomplish the task specified by Boeing SASB 757–27–0150. The commenter states that the NPRM does not accurately reflect the costs for

the amount of work required. A second commenter states that the NPRM does not assess the impact of the corrective action. The second commenter states that unscheduled maintenance in heavy maintenance facilities would be required to perform any needed repairs for some airplanes. The second commenter states that, in cases where repair is needed, the time required to gain and close up access and for return-to-service actions is considerably greater than the time specified by the NPRM and would result in unscheduled time out-of-service. Both commenters assert the cost to accomplish the requirements shown in the NPRM should more closely reflect the labor costs specified by Boeing SASB 757–27–0150 and assert that the discrepancy in the cost estimates places undue hardship on operators.

In reply to the first commenter: We acknowledge that the amount of work estimated by the Boeing service bulletin to open and close the access ways is considerable. However, the cost information specified describes only the direct costs of the specific actions required by this AD. Based on the best data available, the manufacturer provided the number of work hours necessary to do the required inspection; one (1) work hour in this case. This number represents the time necessary to perform only the actions actually required by this AD. We recognize that, in doing the actions required by an AD, operators may incur additional costs in addition to the direct costs. The cost analysis in AD rulemaking actions, however, typically does not include additional costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Those additional costs may be significant, but may also vary greatly among operators, which makes them almost impossible to calculate.

In reply to the second commenter: The economic analysis of an AD is limited to the cost of actions that are actually required and does not consider the costs of conditional actions, such as repairing a crack detected during a required inspection (''repair, if necessary''). Such conditional repairs would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. In this case, we included the manufacturer's estimate of 20 work hours to remove a transmission assembly; remove, inspect, and reassemble the transmission output gear; and reinstall the transmission assembly, but we have no way of knowing how many transmission assemblies will require these actions or what additional actions will be needed to retrofit one transmission assembly. Therefore, we can't provide any further assessment of the total cost impact of the corrective action.

We have not changed this AD with regard to these comments. However, as previously discussed, we have revised paragraph (f) of this AD to specify that a maintenance records check is acceptable instead of the required inspection. A maintenance records check could greatly reduce the burden to operators.

Request To Re-Evaluate Flap Skew Event

One commenter requests that we re-evaluate the probability of a flap skew event and the classification of this condition as an ''unsafe condition.'' The commenter states that it has surveyed its own data, which indicate that it has 252 affected transmission assemblies, and that all of these units had new torque limiters installed because of the requirements of AD 2000–04–18, amendment 39–11601 (65 FR 10693). The commenter states that during this retrofit process, 221 of the 252 transmission assemblies were overhauled and had their output gears checked for defects per the component maintenance manual (CMM). The commenter asserts that, since all operators of the affected airplanes are required to accomplish AD 2000–04–18, the commenter's experience might be taken as typical of the industry's experience, which could mean the quantity of defective output gears has been substantially reduced. The commenter asserts this could lead us to decide that no unsafe condition exists and, therefore, withdraw the NPRM.

We do not agree with this request for the following reasons:

- The commenter assumes that most affected airplanes are no longer subject to the unsafe condition due to industry compliance with AD 2000–04–18, which specifies Boeing Service Bulletin 757–27A0127 as a source of service information. However, AD 2000–04–18 is applicable only to airplanes having line numbers from 1 through 796 inclusive, whereas this AD is applicable to airplanes having line numbers from 1 through 979 inclusive. This leaves 183 airplanes not covered by AD 2000–04–18.
- AD 2000–04–18 requires replacing the transmission assemblies with new assemblies incorporating new, improved torque limiters or replacing the torque limiters in the transmission assemblies with new, improved torque limiters, as provided in CMM Chapter 27–51–13. The commenter asserts that it is likely that all operators who accomplished this retrofit checked the transmission output gears for defects at the same time. We cannot assume that all operators checked the output gears during this retrofit, since checking the output gears was not specified by the CMM as a required part of the retrofit process.
- AD 2000–04–18 requires that retrofitted transmission assemblies having P/N 251N4050–37, –38, –39, or –40 be reidentified as P/N 251N4022–28, –29, –30 or –31, respectively. As already discussed, the commenter asserts that such retrofitted and re-identified transmission assemblies no longer are subject to the unsafe condition. However, Boeing Service Bulletin 757–27–0150 identifies the modified assemblies having those new P/Ns 251N4022–28, –29, –30 and –31, and having S/Ns 1 through 325 inclusive, as possibly having suspect output gears.
- The commenter suggests that its experience might be taken as typical for the industry and again assumes that most affected transmissions are no longer affected by the unsafe condition. As discussed earlier, we determined that, instead of 325 suspect transmission assemblies, there are actually 1,300 suspect transmission assemblies. This larger number indicates the unsafe condition represented by the faulty transmission assemblies could be more extensive than represented in the NPRM.

Our reasoning has led us to determine that the possibility of a flap skew event remains a significant unsafe condition for an unacceptable number of airplanes. We have not changed this AD in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 979 airplanes of the affected design in the worldwide fleet. This AD will affect about 644 airplanes of U.S. registry.

It will take approximately 1 work hour per airplane to accomplish the required inspection at an average labor rate of $65 per work hour. Based on this figure, the cost impact of the AD on U.S. operators is estimated to be $41,860, or $65 per airplane.

Removal of a transmission assembly; removal, inspection, and reassembly of the transmission output gear; and reinstallation of the transmission assembly; if required; will take about 20 work hours per transmission assembly, at an average labor rate of $65 per work hour. Required parts will cost about $325 per transmission output gear. Based on these figures, we estimate the cost of replacement is $1,625 per transmission output assembly (there are 8 transmission output assemblies per airplane and 1,300 suspect assemblies).

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 this AD:

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 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 adding the following new airworthiness directive (AD):

2005–20–40 Boeing: Amendment 39–14337. Docket No. FAA–2005–20726; Directorate Identifier 2004–NM–265–AD.

Effective Date

(a) This AD becomes effective November 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200CB, and –200PF series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004.

Unsafe Condition

(d) This AD was prompted by a report indicating that cracked flap transmission output gears have been discovered during routine overhaul of the trailing edge flap transmission assemblies. We are issuing this AD to prevent an undetected flap skew, which could result in a flap loss, damage to adjacent airplane systems, 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 To Determine Part Number and Serial Number

(f) Within 60 months after the effective date of this AD: Do an inspection of each trailing edge flap transmission assembly to determine the part number (P/N) and serial number (S/N) and any applicable related investigative and corrective actions and part marking, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004. If, during any related investigative action, any transmission output gear is found with a defect or crack, before further flight, replace that transmission output gear or replace the entire flap transmission assembly with a new or serviceable flap transmission assembly. Operators should note that, instead of the P/N and S/N inspection required by this AD, a review of airplane maintenance records for any trailing edge flap transmission assembly is considered acceptable if the P/N and S/N of that assembly can be conclusively determined from that review.

Parts Installation

(g) As of the effective date of this AD, no person may install a trailing edge flap transmission assembly, P/N 251N4050–37, –38, –39, or –40 or P/N 251N4022–28, –29, –30, or –31; having any S/N 001 through 325 inclusive; on any airplane; unless the transmission assembly has been inspected, and any applicable related investigative and corrective actions and part marking has been accomplished, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle 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.

(2) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(i) You must use Boeing Special Attention Service Bulletin 757–27–0150, dated December 9, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20265 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20137; Directorate Identifier 2004–NM–96–AD; Amendment 39–14338; AD 2005–20–41]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –300 Series Airplanes, Powered by Pratt & Whitney PW2000 Series Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757–200, –200PF, and –300 series airplanes, powered by Pratt & Whitney PW2000 series engines. This AD requires repetitive inspections for loose or damaged components of the support brackets and associated fasteners for the hydraulic lines located in the nacelle struts, and any related investigative and corrective actions. This AD results from reports of damage and subsequent failure of the support brackets and associated fasteners for the hydraulic lines located internal to the upper fairing cavity of the nacelle struts. We are issuing this AD to prevent such failure, which, in conjunction with sparking of electrical wires, failure of seals that would allow flammable fluids to migrate to compartments with ignition sources, or overheating of the pneumatic ducts beyond auto-ignition temperatures, could result in an uncontained fire.

DATES: This AD becomes effective November 17, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 17, 2005.

ADDRESSES: You may examine the 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., Nassif Building, Room PL–401, Washington, DC.

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

FOR FURTHER INFORMATION CONTACT: Tom Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket 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 street address stated in the **ADDRESSES** section. This docket number is FAA–2005–20137; the directorate identifier for this docket is 2004–NM–96–AD.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 757 series airplanes. That NPRM was published in the **Federal Register** on January 28, 2005 (70 FR 4052). That NPRM proposed to require repetitive inspections for loose or damaged components of the support brackets and associated fasteners for the hydraulic lines located in the nacelle struts, and any related investigative and corrective actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments on the NPRM that have been received.

Support for Proposed AD

Two commenters concur with the proposed AD as written.

Requests To Extend Compliance Time

Two commenters ask that the compliance time for the initial and repetitive inspections specified in the proposed AD be extended.

One commenter asks that the compliance time for the initial and repetitive inspections be extended to 6,000 flight hours or 24 months, whichever is first. The proposed AD specifies initial and repetitive inspections at intervals not to exceed 6,000 flight hours or 18 months. The commenter adds that, based on access, labor hour requirements, and the nature of the detailed inspections, this type of work aligns with the airline's heavy maintenance program, which is calendar-based and FAA-approved at 24-month intervals. The commenter states that, because the proposed inspections are fatigue-related, an equivalent level of safety is maintained by extending the proposed calendar compliance time.

A second commenter asks that the compliance time for the repetitive inspections be changed to 7,500 flight hours or 24 months. The commenter states that the proposed AD requires the initial inspection to be accomplished within 18 months or 6,000 flight hours, regardless of total flight cycles/hours on the airplane. The commenter adds that the safety concern addressed by the proposed AD appears to be age-related. Additionally, consideration should be given to whether or not, and when, the work described in Boeing Service Bulletin 757–29–0043, dated June 21, 1990 (the concurrent service bulletin referenced in the proposed AD) was accomplished. The commenter also states that the initial and repetitive inspection interval in the proposed AD coincides with the published Material Review Board's most conservative periodic check (PCK) interval; several operators, including the commenter, have escalated that PCK interval to 24 months. The commenter concludes that attempting to accomplish the proposed actions within the proposed compliance time would be expensive; extending the compliance time would allow operators who have escalated the PCK interval to accomplish the inspections during maintenance checks.

We agree to extend the compliance time for the initial and repetitive inspections to 6,000 flight hours or 24 months, whichever is first. The fatigue-related failures are a function of airplane flight hours and flight cycles, not a direct function of calendar time. Extending the compliance time will continue to provide an equivalent level of safety, as noted by the commenter. However, we do not agree to extend the compliance time to 7,500 flight hours or 24 months; the 6,000-flight-hour compliance time was based on service history of part failures and an engineering fatigue analysis by the original equipment manufacturer (OEM). We have changed paragraph (f) of this AD to reflect the revised compliance time.

Request To Change Costs of Compliance Section

Two commenters ask for changes to the Costs of Compliance section.

One commenter states that the estimate in the cost section in the proposed AD specifies that it would

take 35 work hours to accomplish the inspection required by paragraph (f) of the proposed AD, but the commenter estimates that it would take 47 work hours to accomplish that inspection. The commenter adds that the proposed AD also requires accomplishing the concurrent actions specified in paragraph (g) of the proposed AD and referenced in Boeing Service Bulletin 757–29–0043, dated June 21, 1990; however, the cost for those actions is not included in the Costs of Compliance section. The commenter concludes that the cost for the inspections was underestimated and the cost for the concurrent actions was omitted.

A second commenter asks that we change the Costs of Compliance section in the proposed AD to specify that the number of work hours necessary to accomplish the proposed inspection and the concurrent actions would be determined by operators on a case-by-case basis.

We do not agree to change the work hours in this AD or specify that operators will determine the number of work hours necessary for accomplishing the actions. The number of work hours represent the time necessary to perform only the actions actually required by the AD. The actions in an AD normally reflect only the costs of the specific required action (inspection) based on the best data available from the manufacturer; however, this AD also includes the time required to gain access and close up. The cost analysis in AD rulemaking actions typically does not include incidental costs such as the time necessary for planning, or time necessitated by other administrative actions. Those incidental costs, which may vary significantly among operators, are almost impossible to calculate. We have made no change to the AD in this regard.

We do agree to add the cost for the concurrent actions since those actions were inadvertently omitted from the NPRM. We have added a new paragraph to the Costs of Compliance section which estimates the work hours and cost per airplane for accomplishing the concurrent actions.

Request To Change Statement of Unsafe Condition

One commenter, the OEM, asks that we change the statement of unsafe condition specified in the proposed AD. The statement of unsafe condition is as follows: ''We are proposing this AD to prevent flammable fluids from leaking into the interior compartment of the nacelle struts where ignition sources exist, which could result in the ignition of flammable fluids and an uncontained fire.'' The commenter states that the damage to the Pratt & Whitney strut has not caused any damage to barriers between the upper strut compartment and any other compartment; the hydraulic tube is clamped to frames, not to a vapor barrier. The commenter adds that the upper strut compartment is designated as a flammable leakage zone, and therefore, to the greatest extent possible, all ignition sources have been eliminated. The commenter notes that the unsafe condition addressed by the referenced service information does not result in any zone barriers being damaged. The commenter concludes that any leakage of flammable fluids will not come in contact with ignition sources; additionally, the upper strut compartment has drainage provisions to prevent the accumulation of flammable fluids.

We agree to change the description of the unsafe condition. The commenter is accurate in the statement that any leakage of flammable fluids will not come in contact with ignition sources because the upper strut compartment has drainage provisions to prevent the accumulation of flammable fluids. Due to the design of the system installations in the strut compartments, an additional failure would have to occur to result in the ignition of flammable fluids. Additional failures include shorting and sparking of electrical wires in either the strut upper fairing cavity or torque box, failure of seals that would allow flammable fluids to migrate to compartments with ignition sources, or overheating of the pneumatic ducts beyond auto-ignition temperatures. The description of the unsafe condition has been changed throughout the AD.

Request To Clarify Acceptable Part Numbers

One commenter states that the proposed AD requires accomplishing the actions specified in two different service bulletins, which are referenced in paragraphs (f) and (g) of the proposed AD. The commenter is concerned because the part numbers specified in those two bulletins are different. The commenter recommends that the proposed AD be revised to specify that the part numbers listed in either service bulletin are acceptable configurations and fully comply with the actions specified in the proposed AD.

We acknowledge and provide clarification for the commenter's concern. The OEM verified with us that the different part numbers specified in the referenced service bulletins are due to one series of parts having pilot holes and the other series not having pilot holes. Therefore, the part numbers identified in either service bulletin are acceptable configurations and fully comply with the AD requirements for the modifications. We have added a note to the AD for clarification. In addition, once a revision to the service bulletins has been issued by the manufacturer, and reviewed and accepted by us, we will approve the use of either series of part numbers as an acceptable alternative method of compliance (AMOC) according to paragraph (j) of this AD.

Request To Clarify the Repair Approval Specified in Paragraph (i)

One commenter asks that paragraph (i) of the proposed AD, titled ''Repair Information,'' be clarified concerning the requirement to obtain repair approval per the Manager, Seattle Aircraft Certification Office (ACO). The commenter questions if this approval is required for all Boeing-assisted repairs to the engine strut frames, or if the approval is only required for Boeing-assisted repairs found during the inspections required by the proposed AD.

We interpret the commenter's question to be whether damage found inside the strut that is not found during the inspection required by the AD requires Seattle ACO approval of the repair method. Our response is that only repairs of hardware damage found during the inspection required by the AD for which the service bulletin specifies a Boeing-assisted repair per the referenced service information need be submitted to the Seattle ACO for approval. If specific cases develop and the repair method is not apparent to the operator, contact the Seattle ACO for guidance. We have not changed the AD in this regard.

Request To Resolve Parts Issues

One commenter states that the following parts issues represent an undue burden on operators by needlessly restricting operator action, and asks that these issues be resolved. Those issues and our responses are as follows:

1. The commenter asks that the proposed AD be changed to allow dimensional drawings or provisions for operators to fabricate acceptable substitute brackets. The commenter states that, since parts are not available from the OEM, operators must fabricate the brackets and re-use the fasteners and rubber blocks, as necessary.

We do not agree that operators can be allowed to fabricate their own parts. Operators would be required to fabricate parts by using an approved design, and we cannot authorize this without

reviewing the operators' design data. The manufacturer has indicated that the parts required are readily available; therefore, obtaining them should not be a problem. However, should parts not be available in a timely manner, operators may provide the design data to us and request approval of an AMOC per paragraph (j) of this AD.

2. The commenter asks that we revise Section II of Boeing Service Bulletin 757–29–0064 (referenced in the proposed AD as the appropriate source of service information for accomplishing the inspections for Model 757–200 and –200PF series airplanes) to add a provision for providing brackets and hardware for all stations. The commenter states that Section II of the service bulletin contains material information that is inadequate. The commenter has found that only parts necessary for station 149.5 are included in that section; however, the service bulletin specifies inspecting and replacing parts at stations 102.1, 128.0, 149.5, 161.35, and 180.0 on the left and right sides of the airplane. In addition, the commenter found damaged/worn parts at other stations.

3. The commenter asks that we require brackets and hardware to be stocked and provided by Boeing until terminating action is developed. The commenter states that parts for all stations are not readily available from the OEM or other suppliers.

We do not agree to advise Boeing to revise Section II of the referenced service bulletin, or to require that Boeing provide parts until terminating action is developed. The technical content of the referenced service bulletin is correct and contains adequate information and procedures to accomplish the repetitive inspections. Therefore, we have determined that it is not necessary for the manufacturer to revise the service bulletin before issuance of this AD. In addition, we have no regulatory basis to require the type certificate holder to provide the parts necessary to comply with the corrective action specified in the AD. The manufacturer has indicated that the parts required are readily available; therefore, obtaining them should not be a problem. However, under the provisions of paragraph (j) of this AD, affected operators may request approval of an AMOC.

Request To Approve Future Service Information

One commenter, the OEM, asks that the appropriate sections in the proposed AD be changed to reference Revision 1 of Boeing Service Bulletins 757–29–0064 and 757–29–0065. (Boeing Service Bulletins 757–29–0064 and 757–29–0065, both dated February 29, 2004, are referenced in the NPRM as the appropriate sources of service information for accomplishing the repetitive inspections.) The commenter states that those service bulletins are currently being revised and are expected to be released soon.

We cannot accept as-yet unpublished service documents for compliance with the requirements of an AD. Referring to an unavailable service bulletin in an AD violates Office of the Federal Register regulations for approving materials that are incorporated by reference. We have not changed the AD regarding this issue because the service bulletins have not been revised and we cannot delay the final rule to wait for revisions to be issued. However, under the provisions of paragraph (j) of this AD, affected operators may request approval to use a later revision of the referenced service bulletin as an AMOC.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have changed this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comments that we received, and determined that air safety and the public interest require adopting the AD with the changes described previously. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

This AD affects about 432 airplanes worldwide and 377 airplanes of U.S. registry.

The inspection/test takes about 35 work hours per airplane (including access and close-up), at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection/test for U.S. operators is $857,675, or $2,275 per airplane, per inspection/test cycle.

The concurrent actions would take about 38 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost is minimal. Based on these figures, the estimated cost of the concurrent actions is $2,470 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); 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 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 adding the following new airworthiness directive (AD):

2005–20–41 Boeing: Amendment 39–14338. Docket No. FAA–2005–20137; Directorate Identifier 2004–NM–96–AD.

Effective Date

(a) This AD becomes effective November 17, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –300 series airplanes; certificated in any category; powered by Pratt & Whitney PW2000 series engines.

Unsafe Condition

(d) This AD was prompted by reports of damage and subsequent failure of the support brackets and associated fasteners for the hydraulic lines located internal to the upper fairing cavity of the nacelle struts. We are issuing this AD to prevent such failure, which, in conjunction with sparking of electrical wires, failure of seals that would allow flammable fluids to migrate to compartments with ignition sources, or overheating of the pneumatic ducts beyond auto-ignition temperatures, could result in an uncontained fire.

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.

Repetitive Inspections

(f) Within 6,000 flight hours or 24 months after the effective date of this AD, whichever is first: Do a detailed inspection for loose or damaged components of the support brackets and associated fasteners for the hydraulic lines located in the nacelle struts by accomplishing all of the actions specified in Part 1, Part 2, and Part 3 of the Accomplishment Instructions of Boeing Service Bulletin 757–29–0064 (for Model 757–200 and –200PF series airplanes) or Boeing Service Bulletin 757–29–0065 (for Model 757–300 series airplanes), both dated February 29, 2004; as applicable. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours or 24 months, whichever is first.

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.''

Concurrent Service Bulletin

(g) Prior to or concurrently with the accomplishment of paragraph (f) of this AD: Accomplish all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 757–29–0043, dated June 21, 1990.

Note 2: The part numbers identified in Boeing Service Bulletins 757–29–0064 or 757–29–0065, both dated February 29, 2004; or Boeing Service Bulletin 757–29–0043, dated June 21, 1990; are acceptable configurations and fully comply with the AD requirements for the actions required by paragraphs (f) and (g) of this AD.

Related Investigative and Corrective Actions

(h) Except as required by paragraph (i) of this AD: If any loose or damaged part is found during any inspection required by paragraph (f) of this AD, before further flight, do all of the related investigative and corrective actions specified in Part 1 and Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 757–29–0064, or Boeing Service Bulletin 757–29–0065, both dated February 29, 2004; as applicable.

Repair Information

(i) If any damage is found during any inspection required by this AD, and the service bulletin specifies contacting Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the approval letter must specifically refer to this AD.

Note 3: There is no terminating action currently available for the repetitive inspections required by paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin 757–29–0064, dated February 29, 2004, or Boeing Service Bulletin 757–29–0065, dated February 29, 2004; and Boeing Service Bulletin 757–29–0043, dated June 21, 1990; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. 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 September 30, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–20264 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–50–AD; Amendment 39–14306; AD 2005–20–12]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 Propeller Assemblies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. That AD currently requires initial and repetitive ultrasonic inspections of propeller hubs, part number (P/N) 660709201. This AD requires the same initial and repetitive ultrasonic inspections, but reduces the initial and repetitive compliance times for Type R334/4–82–F/13 propeller assemblies when used on Construcciones Aeronauticas, S.A. (CASA) 212 airplanes. This AD results from a report of a hub separation on a CASA 212 airplane. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

DATES: Effective October 28, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 28, 2005. The Director of the Federal Register previously approved the incorporation by reference of certain publications as listed in the regulations as of July 27, 2004 (69 FR 34560, June 22, 2004).

We must receive any comments on this AD by December 12, 2005.

ADDRESSES:

Use one of the following addresses to comment on this AD:

• By mail: Federal Aviation Administration (FAA), New England

Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

- By fax: (781) 238–7055.
- By e-mail: *9–ane–adcomment@faa.gov.*

You can get the service information referenced in this AD from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7116; fax (781) 238–7155.

SUPPLEMENTARY INFORMATION: June 10, 2004, the FAA issued AD 2004–13–01, Amendment 39–13681 (69 FR 34560, June 22, 2004). That AD requires initial and repetitive ultrasonic inspections of propeller hubs, P/N 660709201, installed on airplanes, and for hubs and propellers in storage, initial ultrasonic inspection of propeller hubs before placing in service. That AD was the result of the manufacturer's reevaluation of potential hub failure on Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies. That condition, if not corrected, could result in propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

Actions Since AD 2004–13–01 Was Issued

Since we issued AD 2004–13–01, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (U.K.), recently notified the FAA that an unsafe condition might exist on Dowty Aerospace Propellers Type R334/4–82–F/13 propeller assemblies installed on CASA 212 airplanes. The CAA advises that they have received a report of a hub separation of a Type R334/4–82–F/13 propeller assembly installed on a CASA 212 airplane. This AD requires the same initial and repetitive inspections as specified in AD 2004–13–01, but reduces the compliance intervals for the initial and repetitive inspections on Type R334/4–82–F/13 propeller assemblies installed on CASA 212 airplanes. We intend the actions specified in this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Dowty Aerospace Propellers Alert Mandatory Service Bulletin (MSB) No. 61–1119, Revision 4, dated September 14, 2005, that specifies initial and repetitive ultrasonic inspections of the rear wall of the rear half of the propeller hub for cracks on Type R334/4–82–F/13 propeller assemblies. The CAA classified this service bulletin as mandatory and issued CAA UK AD No. G–2005–0027, dated September 8, 2005, to assure the airworthiness of these Dowty Aerospace Propellers in the U.K.

Differences Between This AD and the Manufacturer's Service Information

Although Appendix A of Alert MSB No. 61–1119, Revision 4, dated September 14, 2005, requires reporting the inspection data to Dowty Aerospace Propellers, this AD requires that you report the data to the Boston Aircraft Certification Office of the FAA. Also, the Accomplishment Instructions 3.A.(1) of Alert MSB No. 61–1119, Revision 4, dated September 14, 2005, allows you to use Appendix A or Appendix D of that MSB, this AD requires that you use Appendix A of that MSB.

Bilateral Airworthiness Agreement

This propeller model is manufactured in the U.K. and is 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 CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, 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 Dowty Aerospace Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies of the same type design. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control of the airplane. This AD requires:

- Within 10 flight hours (FH) time-in-service (TIS) or 20 days after the effective date of this AD, whichever occurs earlier, performing an initial ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R334/4–82–F/13 propeller assemblies, and;
- Within 50 FH TIS or 60 days after the effective date of this AD, whichever occurs earlier, performing an initial ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, and R333/4–82–F/12 propeller assemblies, and;
- Within 300 FH time-since-last-inspection (TSLI) performing a repetitive ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R334/4–82–F/13 propeller assemblies, and;
- Within 1,000 FH TSLI performing a repetitive ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, and R333/4–82–F/12 propeller assemblies, and;
- If not already done, performing an ultrasonic inspection of the rear halves of propeller hubs P/N 660709201, that are installed in Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies that are in storage before installing the propeller assembly onto an airplane.

You must use the service information described previously to perform the actions required by this AD.

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. We did not precede it 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. 2001–NE–50–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-

stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

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.** Include ''AD Docket No. 2001–NE–50–AD'' in your request.

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 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 removing Amendment 39–13681 (69 FR 34560, June 22, 2004), and by adding a new airworthiness directive, Amendment 39–14306, to read as follows:

2005–20–12 Dowty Aerospace Propellers: Amendment 39–14306. Docket No. 2001–NE–50–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 28, 2005.

Affected ADs

(b) This AD supersedes AD 2004–13–01, Amendment 39–13681.

Applicability

(c) This AD applies to Dowty Aerospace Propellers Type R321/4–82–F/8, R324/4–82–F/9, R333/4–82–F/12, and R334/4–82–F/13 propeller assemblies with propeller hubs part number (P/N) 660709201. These propeller assemblies are installed on, but not limited to, Construcciones Aeronauticas, S.A. (CASA) 212, British Aerospace Regional Aircraft Jetstream Models 3101 and 3201, Fairchild Aircraft, Inc., Merlin IIIC, and Merlin IVC/Metro III airplanes.

Unsafe Condition

(d) This AD results from a report of a hub separation on a CASA 212 airplane. We are issuing this AD to prevent propeller hub failure due to cracks in the hub, which could result in loss of control 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.

Initial Ultrasonic Inspections

(f) Perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks within the compliance time specified in the following Table 1. Use Appendix A of the applicable Dowty Mandatory Service Bulletin (MSB) listed in Table 1 of this AD.

TABLE 1.—APPLICABLE MSB FOR PROPELLER TYPE

Propeller assembly type	Initial inspection within the earlier of . . .	Repeat inspection within . . .	Applicable MSB
(1) R334/4–82–F/13	10 flight hours (FH) time-in-service (TIS) or 20 days after the effective date of this AD.	300 FH time-since-last-inspection (TSLI).	Alert MSB No. 61–1119, Revision 4, dated September 14, 2005.
(2) R321/4–82–F/8	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI	MSB No. 61–1125, Revision 1, dated October 9, 2002.
(3) R324/4–82–F/9	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI	MSB No. 61–1126, Revision 1, dated October 9, 2002.
(4) R333/4–82–F/12	50 FH TIS or 60 days after the effective date of this AD.	1,000 FH TSLI	MSB No. 61–1124, Revision 1, dated October 8, 2002.

(g) For hubs and propellers in storage, perform an initial ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks, before placing in service. Use Appendix A of the applicable Dowty MSB listed in Table 1 of this AD.

(h) Propeller hubs, P/N 660709201, already inspected using a Dowty MSB listed in Table 1 or earlier issue of those MSBs, comply with paragraph (f) of this AD.

Repetitive Ultrasonic Inspections

(i) Thereafter, perform a repetitive ultrasonic inspection of the rear wall of the rear half of the propeller hub for cracks within the compliance time specified in Table 1 of this AD. Use Appendix A of the applicable Dowty Mandatory Service Bulletin (MSB) listed in Table 1 of this AD.

Inspection Reporting Requirements

(j) Within 10 days after each inspection, record the inspection data on a copy of Appendix B of the applicable MSB listed in Table 1 of this AD. Report the findings to the Manager, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299. The Office of Management and Budget (OMB) approved the reporting requirements and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(k) The Manager, Boston 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.

Special Flight Permits

(l) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(m) You must use the service information specified in Table 2 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of Dowty Alert Mandatory Service Bulletin (MSB) No. 61–1119, Revision 4, Dated September 14, 2005, listed in Table 2 of this AD, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The Director of the Federal Register previously approved the incorporation by reference of MSB No. 61–1124, Revision 1, Dated October 8, 2002, and MSB No. 61–1125, Revision 1, Dated October 9, 2002, and MSB 61–1126, Revision 1, Dated October 9, 2002 (69 FR 34560, June 22, 2004). Contact Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001 for a copy of this service information. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
Alert MSB No. 61–1119	All	4	September 14, 2005.
Appendix A	1	1	November 27, 2001.
	2	Original	November 1, 2001.
	3–6	1	November 27, 2001.
Appendix B	1	Original	November 1, 2001.
Appendix C	All	Original	November 27, 2001.
Appendix D	All	Original	December 6, 2001.
Total pages	30		
MSB No. 61–1124	1	1	October 8, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages	30		
MSB No. 61–1125	1	1	October 9, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages	30		
MSB No. 61–1126	1	1	October 9, 2002.
	2–3	Original	May 7, 2002.
Appendix A	All	Original	May 7, 2002.
Appendix B	All	Original	May 7, 2002.
Appendix C	All	Original	May 7, 2002.
Appendix D	All	Original	May 7, 2002.
Total pages	30		

Related Information

(n) United Kingdom (U.K.) Civil Aviation Authority (CAA) airworthiness directives No. G–2006–0027, dated September 8, 2005; CAA UK AD No. 009–05–2002, dated April 15, 2003; CAA UK AD No. 010–05–2002, dated April 15, 2003; and CAA UK AD No. 011–05–2002, dated April 15, 2003, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on September 26, 2005.

Francis A. Favara,

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

[FR Doc. 05–20170 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21873; Airspace Docket No. 05–ACE–27]

Modification of Class D and Class E Airspace; Salina Municipal Airport, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects errors in the legal description of Class D airspace in a direct final rule, request for comments that was published in the **Federal Register** on Friday July 29, 2005 (70 FR 43742).

DATES: This direct final rule is effective on 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 2005–21873 published on Friday July 29, 2005 (70 FR 43742), modified Class D and Class E Airspace at Salina Municipal Airport, KS. The legal descriptions of these airspace areas used outdated and incorrect information. This action corrects those errors.

■ Accordingly, pursuant to the authority delegated to me, the errors in the legal descriptions of airspace at Salina Municipal Airport, KS as published in the **Federal Register** Friday July 29, 2005 (70 FR 43742), (FR Doc. 2005–21873), are corrected as follows:

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9N, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)

That airspace extending upward from the surface to and including 3,800 feet MSL within a 5.4-mile radius of Salina Municipal Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)

Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ACE KS E4 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)
Salina VORTAC
(Lat. 38°55′31″ N., long. 97°37′17″ W.)

That airspace extending upward surface within 1.5 miles each side of the Salina VORTAC 190° radial extending from the 5.4-mile radius of Salina Municipal Airport to 2 miles south of the VORTAC.

* * * * *

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

* * * * *

ACE KS E5 Salina, KS

Salina Municipal Airport, KS
(Lat. 38°47′27″ N., long. 97°39′08″ W.)

That airspace extending upward from 700 feet above the surface within an 8.4-mile radius of Salina Municipal Airport.

Issued in Kansas City, MO, on September 20, 2005.

Elizabeth S. Wallis,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 05–20462 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–21523; Airspace Docket No. 05–AWP–07]

Establishment of Class E3 Airspace, Riverside March Field, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E3 airspace area at Riverside March Field, CA.

EFFECTIVE DATE: 0901 UTC December 22, 2005.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Western Terminal Service Area, Airspace Specialist, AWP–520, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

On August 2, 2005, the FAA proposed to establish Class E3 airspace at Riverside March Field, CA. Class E3 airspace areas are designated as arrival extensions to a Class C surface area. Class E arrival extensions are primarily designated to provide additional controlled airspace ancillary to a surface area to protect instrument operations for the primary airport, without imposing additional communications burdens on airspace users. This action is necessary at Riverside March Field to provide controlled airspace for Category E aircraft conducting circling maneuvers in conjunction with published Standard Instrument Approach Procedures. Generally, Category E aircraft are very large and/or high performance. These aircraft require additional airspace when conducting circling maneuvers. This action will establish the Class E3 airspace at Riverside March Field.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E3 airspace is published in Paragraph 6003 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E Surface Area airspace designation listed in this document would be published subsequently in this Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E3 airspace at Riverside March Field, CA.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 16, 2005, is amended as follows:

* * * * *

Paragraph 6003 Class E airspace designated as an extension to Class C surface areas.

* * * * *

AWP CA E3 Riverside March Field, CA [NEW]

Riverside March Field, CA

(Lat. 33°52′50″ N, long. 117°15′34″ W)

That airspace extending upward from the surface between the 5 mile radius and 7 mile radius of Riverside March Field and between a line 2 miles east of the 150° bearing from the airport clockwise to the 216° bearing from the airport.

* * * * *

Dated: Issued in Los Angeles, California, on September 1, 2005.

Leonard A. Mobley,

Acting Area Director, Terminal Operations, Western Service Area.

[FR Doc. 05–20466 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket FAA 2005–21078; Airspace Docket 05–ANM–07]

Establishment of Class E Airspace; Eagle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will establish Class E airspace at Eagle, CO. Additional Class E airspace is necessary to accommodate aircraft using a new Instrument Landing System or Localizer Distance Measuring Equipment (ILS or LOC DME) Standard Instrument Approach Procedure (SIAP) at Eagle County Regional Airport. This change is necessary for the safety of Instrument Flight Rules (IFR) aircraft executing the new SIAP at Eagle County Regional Airport, Eagle, CO.

EFFECTIVE DATES: 0901 UTC, October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haeseker, Federal Aviation Administration, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA, 98055–4056; telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 25, 2005, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (14 CFR part 71) by establishing Class E airspace at Eagle, CO (70 FR 32275). The proposed action would provide additional controlled airspace to accommodate the new ILS or LOC DME SIAP at Eagle County Regional Airport, Eagle, CO. Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of the FAA Order 7400.9N dated September 1, 2005, and effective September 5, 2005, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Eagle, CO, by providing additional controlled airspace for aircraft executing the new ILS or LOC DME SIAP at the Eagle County Regional Airport. This additional controlled airspace extending upward from 700 feet or more above the surface is necessary for the containment and safety of IFR aircraft executing this SIAP procedure and transitioning to/from the en route environment.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005 and

effective September 15, 2005, is amended as follows:

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

* * * * *

ANM WA E Eagle CO. [New]
Eagle County Regional Airport, CO
(Lat. 39°38′33″ N., long. 106°55′04″ W.)

That airspace extending upward from the surface of the earth within 4.4 mile radius of Eagle County Regional Airport, and within 4.0 miles each side of the 079° radial extending from the 4.4 mile radius to 14 miles northeast of the Eagle County Regional Airport. Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on September 20, 2005.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–20463 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 2003–16329; Airspace Docket 02–ANM–01]

Revision of Class E Airspace; Cheyenne, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will revised Class E airspace at Cheyenne, WY. New Instrument Flight Rules (IFR) routes sequences from the en route environment to/from Cheyenne Regional Airport/Jerry Olson Field makes this proposal necessary. Additional controlled airspace extending upward from 1,200 feet above the surface is necessary for the safety of aircraft. This action also correct as an error in the geographic coordinates of the Cheyenne Very High Frequency Omnidirectional Range Colocated Tactical Air Navigation and the airport designation.

DATES: Effective October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Ed Haesekeer, Federal Aviation Administration, Air Traffic Organization, Western En Route and Oceanic Area Office, Airspace Branch, 1601 Lind Avenue SW., Renton, WA, 98055–4056; Telephone (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On April 18, 2005, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify Class E airspace at Cheyenne, WY (70 FR 20093). New routes sequences from the en route environment to/from Cheyenne Regional Airport/Jerry Olson Field makes this proposed necessary.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposed to the FAA. No comments were received. Class E airspace designation are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in that order.

The Rule

This amendment to 14 CFR part 71 revises Class E airspace at Cheyenne, WY. New IFR routes sequences through this airspace from the en route environment to/from Cheyenne Regional Airport/Jerry Olson Field makes this rules necessary. Additional controlled airspace extending upward from 1,200 feet above the surface is necessary for the safety of IFR aircraft. This rule also corrects an error in the geographic coordinates of the Cheyenne VORTAC and the airport's designation as stated in the Notice of Proposed Rule Making.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 19 U.S.C. 106(g), 40103, 40113, 40120, E.O. 108954, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of the Federal Aviation Administration Order 7400.9N, Airspace Designations and Reporting Points, dated September 1, 2005, and effective September 15, 2005, is amended as follows:

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

* * * * *

ANM WY E5 Cheyenne WY [Revised]

Cheyenne Regional/Jerry Olson Field,
Cheyenne, WY
(Lat. 41°09′21″ N., long. 104°48′43″ W.)
Cheyenne VORTAC
(Lat. 41°12′39″ N., long. 104°46′22″ W.)

That airspace extending upward from 700 feet above the surface within a 12.2 mile radius of Cheyenne Regional/Jerry Olson Field and within 5.3 miles southeast an d7 miles northwest of the Cheyenne VORTAC 029° radial extending from the 12.2 mile radius to 12.2 miles northeast of the VORTAC, and within a 16.6 miles radius of Cheyenne VORTAC from 268° radial clockwise to the 343° radial; that airspace extending upward from 1,200 feet above the surface beginning at the intersection of airway V–100 and long. 104°00′00″ W.; thence south along long. 104°99′00″ W. to V–207; thence southeast along V–207 to V–101; thence west along V–101 to V–85; thence north along V–85 to V–100; thence east along V–100 to point of origin; excluding the portions within the Laramie, General Brees Field, WY, Class E airspace area.

* * * * *

Issued in Seattle, Washington on September 13, 2005.

R.D. Engelke,

Acting Area Director, Western En Route and Oceanic Operations.

[FR Doc. 05–20465 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

22 CFR Part 96

[Public Notice: PN–5200]

RIN 1400–AC00

International Trafficking in Persons: Interagency Sharing of Information and Coordination of Activities

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule implements Section 105 of the Trafficking Victims Protection Act of 2000, as amended by the Trafficking Victims Protection Reauthorization Act of 2003. In particular, this rule establishes guidelines to carry out the sharing of information on all matters relating to grants, grant policies, or other significant actions regarding the international trafficking in persons, to the extent permitted by law. The intended effect of this rule is to enhance interagency communication on policies and programs that address international trafficking in persons.

DATES: This rule is effective September 22, 2005.

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

- E-mail: *TIPprograms@state.gov* You must include the RIN in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Department of State, Office to Monitor and Combat Trafficking in Persons (SA–22), 1800 G St. NW., Suite 2201, Washington, DC 20520.
- Fax: 202–312–9637
- Hand Delivery or Courier: Department of State, Office to Monitor and Combat Trafficking in Persons (SA–22), 1800 G St. NW., Suite 2201, Washington, DC 20520.

Persons with access to the internet may also view this notice by going to the regulations.gov web site at: *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Department of State, Office to Monitor and Combat Trafficking in Persons (SA–22), 1800 G St. NW., Suite 2201, Washington, DC 20520; *TIPprograms@state.gov.*

SUPPLEMENTARY INFORMATION: The Trafficking Victims Protection Reauthorization Act of 2003 created a requirement that the President promulgate regulations to implement Section 105 of the Trafficking Victims Protection Act of 2000, as amended (''the Act'').

Section 105 of the Act calls for the President to establish an Interagency Task Force to Monitor and Combat Trafficking and a Senior Policy Operating Group consisting of senior officials designated as representatives of the appointed members of the Task Force. By Executive Order 13257, dated February 13, 2002, the President established the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (''the Task Force''), which is chaired by the Secretary of State and includes the Administrator of the United States Agency for International Development, the Attorney General, the Secretary of Labor, the Secretary of Health and Human Services, the Director of Central Intelligence, and the Director of the Office of Management and Budget. Executive Order 13257 lays out the responsibilities of the Task Force including, among other things, coordinating the implementation of the Act. The Secretary of Homeland Security was added to the Task Force by Executive Order 13286 of February 28, 2003. The Task Force created the Senior Policy Operating Group on December 8, 2003, to coordinate agency activities regarding policies, including grants and grant policies, involving the international trafficking in persons and the implementation of the Act. The Trafficking Victims Protection Reauthorization Act of 2003 amended the Trafficking Victims Protection Act, including by setting out the duties of the Senior Policy Operating Group and requiring the President to promulgate regulations to implement Section 105 (22 U.S.C. 7103(f)(5)).

Executive Order 13333 of March 18, 2004 amends Executive Order 13257 and delegates the task of issuing such regulations to the Secretary of State, and instructs the Senior Policy Operating Group to advise the Secretary of State as to what regulations may be necessary to implement Section 105, including such regulations as may be necessary to carry out the sharing of information on all matters relating to grants, grant policies, or other significant actions regarding the international trafficking in persons (Executive Order 13333, section 4(b)).

Regulatory Findings

Administrative Procedure Act

This rule is exempt from notice-and-comment rulemaking in accordance with 5 U.S.C. 553(a)(2), since it concerns ''a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.''

Regulatory Flexibility Act and Executive Order 13272

This rule falls outside the definition of ''rule'' set forth in the Regulatory Flexibility Act (5 U.S.C. 601(2)) and incorporated in Executive Order 13272, Proper Consideration of Small Entities in Agency Rulemaking. Nevertheless, the Department of State has reviewed this rule in accordance with the criteria set forth in the Act (5 U.S.C. 605(b)) and Section 3(b) of the Executive Order, and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Moreover, the rule falls outside the definition of ''rule'' set forth in the Unfunded Mandates Reform Act of 1996 (2 U.S.C. 658(10), incorporating the definition set forth in the Regulatory Flexibility Act. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2), for purposes of congressional review of agency rulemaking under the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''rule'' within the meaning of section 3(d) of Executive Order 12866, Regulatory Planning and Review, nor is it a ''significant regulatory action'' under Executive Order 12866, section 3(f). While this rulemaking is exempt from Executive Order 12866, the Department has nevertheless reviewed the rule to ensure its consistency with the regulatory

philosophy and principles set forth in that Executive Order.

Executive Orders 12372 and 13132: Federalism

This rule will 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. Nor would the rule have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department of State has reviewed this rule in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

Administrative practice and procedure.

■ Accordingly, for the reasons set forth in the preamble, 22 CFR Part 96 is added to read as follows:

PART 96—INTERNATIONAL TRAFFICKING IN PERSONS: INTERAGENCY COORDINATION OF ACTIVITIES AND SHARING OF INFORMATION

Sec.

Authority: 22 U.S.C. 7103(f)(5); Executive Order 13257 (as amended by Executive Order 13333).

§ 96.1 Coordination of Implementation of the Trafficking Victims Protection Act of 2000, as amended.

The Director of the Office to Monitor and Combat Trafficking in Persons of the Department of State, who is the Chairperson of the Senior Policy Operating Group of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons, shall call meetings of the Senior Policy Operating Group on a regular basis to coordinate activities of Federal departments and agencies regarding policies (including grants and grant policies) involving the international trafficking in persons and the implementation of the Trafficking Victims Protection Act of 2000, as amended.

§ 96.2 Sharing of Information Regarding International Trafficking in Persons.

Each Federal Department or agency represented on the Senior Policy Operating Group shall, to the extent permitted by law, share information on all matters relating to grants, grant policies, or other significant actions regarding the international trafficking in persons. In its coordinating role, the Senior Policy Operating Group shall establish appropriate mechanisms to effect such information sharing.

Dated: September 22, 2005.

Robert B. Zoellick,

Deputy Secretary of State, Department of State.

[FR Doc. 05–20549 Filed 10–12–05; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09–05–081]

RIN 1625–AA09

Drawbridge Operation Regulations; Fox River, Green Bay, WI and DePere, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the operating regulations for highway drawbridges to establish permanent winter operating hours, and to establish operating regulations for two Canadian National Railway drawbridges, all located over the Fox River in Green Bay and DePere, WI. The revised regulation establishes permanent winter operating schedules for all drawbridges during winter months while still providing for the reasonable needs of navigation.

DATES: This rule is effective November 14, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–05–081] and are available for inspection or copying at Commander (obr), Ninth Coast Guard District, 1240 E. Ninth Street, Room 2025, Cleveland, Ohio 44199–2060, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902–6087.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 10, 2005, we published a notice of proposed rulemaking (NPRM) entitled, ''Drawbridge Operation Regulations; Fox River, Green Bay, WI and DePere, WI,'' in the **Federal Register** (70 FR 46441). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of Wisconsin Department of Transportation (WI–DOT), is modifying the existing operating schedule of the Main Street, Walnut Street, Mason Street (Tilleman Memorial), and George Street highway drawbridges between miles 1.58 and 7.27, and the two Canadian National Railway drawbridges at miles 1.03 and 3.31, respectively, over Fox River. The modified regulation primarily establishes permanent winter operating schedules for each drawbridge in lieu of the annual winter authorization granted by Commander, Ninth Coast Guard District, under the authority of 33 CFR 117.45.

All highway drawbridges are currently required to operate year-round and open on signal, except between the hours of 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m., Monday through Saturday, except for Federal holidays. This schedule does not apply to public vessels, tugs, and commercial vessels with a cargo capacity of 300 short tons or over, which are passed at all times. As noted, these drawbridges were granted yearly authorization to alter their operating schedules between December 15 and April 1 since approximately 1992.

The railroad drawbridges operated by Canadian National Railway at miles 1.03 and 3.31 over Fox River are swing bridges and currently have no permanent operating regulations, which requires the drawbridges to open on signal for vessels year-round, 24 hours per day. The Ninth Coast Guard District has also granted a yearly winter operating schedule for the railroad drawbridges from December 15 to April 1 each year since approximately 1992.

WI–DOT requested that the Coast Guard implement a permanent winter operating schedule for the Walnut Street and Mason Street (Tilleman Memorial) drawbridges between December 1 and April 1 each year. The Coast Guard expanded the review of all drawbridge regulations on Fox River to include the

remaining highway drawbridges and the railroad drawbridges.

The Coast Guard requested drawbridge opening logs be provided for these two bridges for the month of December since the yearly authorization granted by the Coast Guard started on December 15 instead of the requested December 1 start date. The two highway bridges were considered representative of all drawbridges in Green Bay. The logs revealed that the request to begin winter operating hours on December 1 instead of December 15 was reasonable. Local Coast Guard units and representatives of American shipping companies were also consulted regarding the proposed schedule and provided no objections. The Canadian National Railway drawbridges would operate under the same schedules as the highway drawbridges, as requested by the railroad company in the past. During the yearly winter authorization granted for the highway and railroad drawbridges since 1992, the Coast Guard received no complaints regarding this schedule.

Discussion of Comments and Changes

No comments or letters were received in response to the NPRM. No changes to the proposed regulation were made.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The Coast Guard expects minimal public impact from this rule. The operating hours for recreational vessels does not effectively change since the substantive changes occur during winter months when recreational vessel activity has ceased. Commercial vessels have been required to provide 12-hours advance notice prior to passing drawbridges since approximately 1992 with no reported problems.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This is because the new schedule for all highway and railroad drawbridges will not significantly affect large commercial vessels during the winter navigation season. Impacts to a substantial number of small entities will not occur since these entities mostly operate during non-winter months.

Assistance for Small Entities

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency?s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an

explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. This rule involves modifying or establishing drawbridge operation regulations to reflect standard practices for drawbridge operating schedules during winter months on the Great Lakes, and will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.1087 is amended by revising paragraphs (a) and (b) to read as follows:

§ 117.1087 Fox River.

(a) The draws of the Canadian National Bridge, mile 1.03, Main Street Bridge, mile 1.58, Walnut Street Bridge, mile 1.81, Mason Street (Tilleman Memorial) Bridge, mile 2.27, and Canadian National Bridge, mile 3.31, all at Green Bay, shall open as follows:

(1) From April 1 through November 30, the draws shall open on signal for recreational vessels; except the draws need not open from 7 a.m. to 8 a.m., 12 noon to 1 p.m., and 4 p.m. to 5 p.m., Monday through Saturday except Federal holidays. Public vessels, tugs, and commercial vessels with a cargo capacity of 300 short tons or greater shall be passed at all times.

(2) From December 1 through March 31, the draws shall open on signal if notice is given at least 12 hours in advance of a vessels time of intended passage.

(3) The opening signal for the Main Street Bridge is two short blasts followed by one prolonged blast, for the Walnut Street Bridge one prolonged blast followed by two short blasts, and for the Mason Street Bridge one prolonged blast, followed by one short blast, followed by one prolonged blast.

(b) The draw of the George Street Bridge, mile 7.27 at DePere, shall open on signal from April 1 to November 30; except that, from 6 p.m. to 8 a.m., the draw shall open on signal if notice is given at least 2 hours in advance of a vessels time of intended passage. From December 1 to March 31, the draw shall open on signal if notice is given at least 12 hours in advance of a vessels time of intended passage.

* * * * *

Dated: September 30, 2005.

R.J. Papp, Jr.,

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

[FR Doc. 05–20468 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R01–OAR–2005–CT–0003; A–1–FRL–7979–8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Redesignation of City of New Haven PM_{10} Nonattainment Area to Attainment and Approval of the Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision approves the Limited Maintenance Plan (LMP) for the New Haven PM_{10} nonattainment area (New Haven NAA) in the State of Connecticut and grants a request by the State to redesignate the New Haven NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is approving this redesignation and LMP because Connecticut has met the applicable requirements of the Clean Air Act (CAA).

DATES: This direct final rule will be effective December 12, 2005, unless EPA receives adverse comments by November 14, 2005. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov.*

4. Fax: (617) 918–1661.

5. Mail: ''RME ID Number R01–OAR–2005–CT–0003'', David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier. Deliver your comments to: David Conroy, Air Programs Branch Chief, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003. 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://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 through Regional Material in EDocket (RME), regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The EPA RME Web site and the federal regulations.gov Web site are ''anonymous access'' systems, 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 Regional Material in EDocket (RME) index at *http://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 at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

II. Rulemaking Information

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

A. Background and Purpose

On the date of enactment of the CAA Amendments of 1990, PM10 areas meeting the qualifications of Section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law. [*See* generally, 42 U.S.C. 7407(d)(4)(B).] These areas included all former Group I areas and any other areas violating the PM10 standards prior to January 1, 1989. On October 31, 1990 (55 FR 45799), EPA redefined a Group I area for Connecticut as the City of New Haven; the remainder of the State was designated as Group III (areas with a strong likelihood of attaining the PM_{10} NAAQS). Subsequently, after enactment of the CAA on November 15, 1990, New Haven was designated moderate nonattainment for PM_{10} in 56 FR 11101 (March 15, 1991).

The air quality in attainment or unclassifiable areas (Groups II and III) are regulated under the prevention of significant deterioration (PSD) program, under which an area's air quality is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (*i.e.,* increments). On February 27, 2003, EPA approved revisions to Connecticut's SIP that implement CAA requirements regarding the PSD program. *See* 68 FR 9009.

The PSD program, however, does not apply to nonattainment areas. During the period that New Haven has been classified as nonattainment for PM_{10}, new major sources or major modifications proposing to locate in New Haven have been required to comply with the nonattainment provisions of Subsection 22a–174–3(l) (Permits Requirements for Non-attainment Areas) of the Regulations of Connecticut State Agencies.

On June 23, 2005, the State of Connecticut formally submitted a redesignation request entitled ''Redesignation to Attainment and Limited Maintenance Plan for the City of New Haven PM_{10} Nonattainment Area'' as a SIP revision. Upon the effective date of today's action, the PM_{10} designation status for the City of New Haven under 40 CFR part 81 will be revised to attainment, and Connecticut's PSD program will become applicable in the New Haven maintenance area. Sections below describe how Connecticut has adequately addressed all of the requirements of the CAA for redesignation of New Haven to attainment, and has qualified for use of a LMP for the first 10-year period (2006 to 2015).

B. Summary of Redesignation Request and Maintenance Plan

(1) How Can a Nonattainment Area Be Redesignated to Attainment?

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA provides the criteria for redesignation. These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, Procedures for Processing Requests to Redesignate Areas to Attainment. The criteria for redesignation are:

(a) The Administrator determines that the area has attained the applicable NAAQS;

(b) The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;

(c) The State containing the area has met all requirements applicable to the area under Section 110 and part D of the CAA;

(d) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; and

(e) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

(2) What Is the LMP Option for PM_{10} Nonattainment Areas Seeking Redesignation to Attainment, and How Can an Area Qualify for This Option?

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'', hereafter called ''the Wegman memo''). The policy described in this guidance includes a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas that meet the air quality criteria outlined in the policy. It follows that future-year emission inventories for these areas and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP option, the area should have attained the PM_{10} NAAQS and the average PM_{10} design values for the area, based upon the most recent five years of air quality data at all monitors in the area, should be at or below the LMP requirement of 98 μg/m^3 for the 24-hour PM_{10} NAAQS and 40 μg/m^3 for the annual PM_{10} NAAQS. If an area cannot meet this test, it still qualifies for the LMP option if the average design values (ADVs) of a site are less than their respective site-specific critical design value (CDV). A CDV is the highest possible ADV at which there is a less than 10 percent risk of future violation of the PM_{10} NAAQS. At least five years of data from a monitoring site are required to calculate the site's CDV. Given sufficient site data, a CDV can be found by using a mathematical relationship between the NAAQS, ADV, standard deviation of past design values (a measure of their variability over time), and a selected risk factor (in this case, a 10 percent risk of violation of the PM_{10} NAAQS). For further details about the CDV calculation method, see Attachment A of the Wegman memo. Section 2.2 of the Connecticut SIP submittal shows calculations used to derive the CDV for the Stiles Street monitoring site in New Haven, which is the site currently used to assess whether the city is in attainment with the PM_{10} NAAQS.

The CDV test was used to determine whether the New Haven NAA qualifies for the LMP option because the 2003 24-hour ADVs for the PM_{10} Federal Equivalent Method (FEM) monitor at the Stiles Street site in New Haven exceeded 98 μg/m^3 for the 24-hour PM_{10} NAAQS. A CDV of 124 μg/m^3 for the 24-hour standard was calculated for the Stiles Street site using over five years of data from the FEM monitor and over 10 years of data from a Federal Reference Method (FRM) monitor. All 24-hour ADVs for the Stiles Street site, including the ADV for 2003, have remained below this CDV, indicating a very low probability (less than 1 in 10 chance) of exceeding the 24-hour PM_{10} NAAQS in the future. Therefore, this site passes the CDV test and qualifies for the LMP option.

In addition to meeting design value criteria, an area qualifying for the LMP option should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should pass a motor vehicle regional emissions analysis test designed to show that expected growth in vehicle miles traveled will not cause the area to exceed the margin of safety for the relevant PM_{10} standard for a given area (in this case, the CDV for the 24-hour PM_{10} NAAQS at the Stiles Street site). In addition to meeting these requirements, the LMP must include an attainment-year emission inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions (See pages A–6 and A–7 of the Wegman memo). Sections below describe how the Connecticut LMP meets each of these requirements.

(3) How Is Conformity Treated Under the LMP Option?

The transportation conformity rule (40 CFR parts 51 and 93) and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a federal action conforms to the applicable SIP is to demonstrate that expected emissions from planned actions are consistent with the emissions budget for the area. While EPA's LMP policy does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Emissions budgets in LMP areas are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that an area satisfying the LMP criteria will experience so much growth during that period of time that a violation of the PM_{10} NAAQS would result.

For transportation conformity purposes, EPA concludes that, as long as the area qualifies for the LMP option, emissions in New Haven need not be capped for the maintenance period and, therefore, a regional emissions analysis is not required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in § 93.158 (a)(5)(i)(A) of the rule for the same reasons that the budgets are essentially considered to be unlimited.

C. Review of the Connecticut Submittal Addressing the Requirements for Redesignation and Limited Maintenance Plans

(1) Has the State Demonstrated That the New Haven NAA Has Attained the Applicable NAAQS?

States must demonstrate that an area has attained the PM_{10} NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data should be stored in the EPA Air Quality System (AQS) database.

The 24-hour PM_{10} NAAQS is 150 μg/m^3. An area has attained the 24-hour standard when the average number of expected exceedances per year is less than or equal to one when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with federal requirements (40 CFR part 58, including appendices). Table 1 in the Connecticut SIP submittal lists 24-hour design values for 1999 through 2003. The 24-hour design value is below 150 μg/m^3 for each of these years at all PM_{10} monitoring sites in Connecticut (range: 31–107 μg/m^3). There have been no exceedances of the 24-hour PM_{10} NAAQS in the New Haven NAA during the past five years. Thus, currently, the expected number of days exceeding the 24-hour standard is zero, and the New Haven NAA has attained the 24-hour PM_{10} NAAQS.

The annual PM_{10} NAAQS is 50 μg/m^3. To determine attainment at a monitoring site, the standard is compared to the expected annual average, which is calculated by averaging the arithmetic average from the previous three years. Table 2 in the Connecticut SIP submittal lists annual average design values for 1999 through 2003. These values are below 50 μg/m^3 for each of these years at all PM_{10} monitoring sites in

Connecticut (range: 11–37 μg/m^3). Thus, the three year annual average is below 50 μg/m^3, and the New Haven NAA has attained the annual PM_{10} NAAQS.

(2) Does the New Haven NAA Have a Fully Approved SIP Under Section 110(k) of the Clean Air Act?

To qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the CAA, and must satisfy all requirements that apply to the area. EPA approved Connecticut's PM_{10} Attainment Plan for New Haven on September 11, 1995 (60 FR 47076). Connecticut's PM_{10} attainment plan demonstrated that the implementation of reasonably available control technology and reasonably available control measures (RACT/RACM), as embodied in seven consent orders, is sufficient to attain and maintain the PM_{10} NAAQS. Thus, the area has a fully approved nonattainment area SIP under section 110(k) of the CAA.

(3) Has the State Met All Applicable Requirements Under Section 110 and Part D of the Clean Air Act?

Section 107(d)(3)(E)(v) of the CAA requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Part D of the CAA. EPA interprets this to mean the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Connecticut meets these requirements.

(a) Clean Air Act Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for state implementation plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. For purposes of redesignation, EPA's review of the Connecticut SIP shows that the State has satisfied all requirements under section 110(a)(2) of the CAA.

(b) Part D Requirements

Part D contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the general provisions of Subpart 1 and the specific PM_{10} provisions in Subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the New Haven area.

(c) Subpart 1, Section 172(c)

Subpart 1, section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble. See 57 FR 13538 (April 16, 1992). The requirements for reasonable further progress and other measures needed for attainment were satisfied with the approved PM10 Attainment Plan for New Haven. See 60 FR 47076 (September 11, 1995).

(d) Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the New Haven PM_{10} NAA. The PM_{10} Attainment Plan for New Haven that was approved by EPA in 1995 (60 FR 47076) included an emissions inventory for base year 1990. As described in the Attainment Plan, CT DEP determined that the PM_{10} nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites, primarily due to re-entrainment of mud and dirt from the unpaved areas by local traffic. To estimate PM_{10} emissions from all source sectors, CT DEP used the 1999 National Emissions Inventory (NEI). This inventory represents the level of emissions in the New Haven area during the five-year time period (1999–2003) used to demonstrate that the area qualifies for the LMP option. This inventory shows that fugitive dust sources were the primary contributor to PM_{10} in New Haven County, with lesser contributions from on-road, non-road, area (other than fugitive dust), and point sources. EPA is satisfied that the inventory contained in the Attainment Plan and in the NEI is sufficiently accurate and comprehensive to meet the requirement for an emission inventory.

(e) Section 172(c)(5)—New Source Review (NSR)

The CAA Amendments of 1990 contained revisions to the new source review (NSR) program requirements for the construction and operation of new and modified major stationary sources located in nonattainment areas. The CAA requires states to amend their SIPs to reflect these revisions, but does not require submittal of this element along with the other SIP elements. The CAA established June 30, 1992 as the submittal date for the revised NSR programs (Section 189 of the CAA). In the New Haven Area, the requirements of the Part D NSR program will be replaced by the Prevention of Significant Deterioration (PSD) program and the maintenance area NSR program upon the effective date of redesignation. Revisions to the Part D NSR rules for nonattainment areas and to PSD rules for attainment areas in Connecticut were approved by EPA on February 27, 2003 (68 FR 9009) and can be found in Subsection 22a–174 of the Regulations of Connecticut State Agencies.

(f) Section 172(c)(7) Compliance With CAA Section 110(a)(2): Air Quality Monitoring Requirements.

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify attainment status of the area. Connecticut currently (as of December 2004) maintains seven PM_{10} monitoring sites. Monitors at these sites are operating in accordance with 40 CFR part 58. The State has committed to continue operating a PM_{10} monitoring network, and has agreed (in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 3, p. 4) to maintain a continuous PM_{10} FEM or FRM monitor at the Criscuolo Park site, which will replace the Stiles Street site about October 2005 due to highway construction. If Crisuolo Park site becomes unsuitable, a monitor will be maintained at an alternate site agreeable to EPA and CT DEP. This monitor must be maintained over the maintenance period to verify compliance with the PM_{10} NAAQS in the New Haven area.

To continue to qualify for the LMP option, Connecticut must ensure that the ADV of the Criscuolo Park PM_{10} monitor remains below the monitor's CDV. Connecticut has agreed (in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 4, p. 4) to calculate the ADV for this monitor on an annual basis and to report this value to EPA. When five years of data are available, Connecticut will calculate the CDV for the monitoring site and compare this to the five-year ADV; CDV and ADV values will be reported to EPA annually over the maintenance period.

(g) Section 172(c)(9) Contingency Measures

The CAA requires that contingency measures take effect if the area fails to meet reasonable further progress (RFP) requirements or fails to attain the NAAQS by the applicable attainment date. EPA approved Connecticut's PM_{10} Attainment Plan and Contingency Measures for New Haven on September 11, 1995 (60 FR 47076). Contingency provisions are also required for maintenance plans under Section 175(a)(d). Connecticut provided contingency measures in their LMP. These measures are described below.

(h) Part D Subpart 4

Part D Subpart 4, Section 189(a), (c) and (e) requirements apply to any moderate nonattainment area before the area can be redesignated to attainment. The requirements which were applicable prior to the submission of the request to redesignate the area must be fully approved into the SIP before redesignating the area to attainment. These requirements include: (i) Provisions to assure that RACM was implemented by December 10, 1993; (ii) Either a demonstration that the plan provided for attainment as expeditiously as practicable but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable;

(iii) Quantitative milestones which were achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

(iv) Provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area. These provisions were fully approved into the SIP upon EPA approval of the PM_{10} Attainment Plan for New Haven on September 11, 1995 (60 FR 47076).

(4) Has the State Demonstrated That the Air Quality Improvement Is Due to Permanent and Enforceable Reductions?

The state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions. In making this showing, the state must demonstrate that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic. EPA believes that areas that qualify for the LMP will meet the NAAQS even under worst case meteorological conditions.

The maintenance demonstration is considered satisfied for New Haven because the area meets the air-quality criteria in the Wegman memo (pages A–4 and A–5 of the memo) and, thus, has a very low probability (1 in 10) of exceeding the NAAQS in the future. These criteria are met when ADVs for monitoring sites are less than CDVs for those sites with little variability in data over the years, the area expects only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust), and the area passes a motor vehicle regional emissions analysis test. A more detailed description of the LMP qualifying criteria and how the New Haven area meets these criteria is provided in Section (6).

(5) Does the Area Have a Fully Approved Maintenance Plan Pursuant to Section 175A of the Clean Air Act?

In this action, EPA is proposing to fully approve the maintenance plan as allowed by the LMP guidance described in Section 6 below.

(6) Has the State Demonstrated That the New Haven NAA Qualifies for the LMP Option?

The Wegman memo explains the requirements for an area to qualify for the LMP option. First, the area should be attaining the NAAQS. Section 2.0 of the Connecticut SIP submittal summarizes quality-assured ambient monitoring data showing that the New Haven area met both the 24-hour and annual PM_{10} NAAQS for the period 1999–2003 and continues to do so. As stated above in Section C(1), EPA has determined that the New Haven area is in attainment with the PM_{10} NAAQS.

Second, the design value at each PM_{10} monitor for the past five years must be either (1) at or below the margin of safety levels of 98 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS and 40 $\mu g/m^3$ for the annual PM_{10} NAAQS, or (2) be less than the site-specific CDV, indicating that the site has a very low probability (1 in 10) of exceeding the NAAQS in the future. EPA's review of AQS data for 1999–2003 shows that New Haven qualifies for the LMP option using the second option. The CDV test is appropriate because, in 2003, one PM_{10} monitor (of two) at the New Haven Stiles Street site had a 24-hour design value above 98 $\mu g/m^3$ (107 $\mu g/m^3$). Section B (2) above describes how this site passes the CDV test and qualifies for the LMP option.

Third, the area must meet the motor vehicle regional emissions analysis test. This test determines whether increased emissions from on-road mobile sources could, in the next 10 years, increase concentrations in the area and threaten the assumption of maintenance under the LMP option. Section 3.0 of the Connecticut SIP submittal demonstrates that when adjusted for future on-road mobile emissions, New Haven passes a motor vehicle emissions analysis test with a design value of 102 $\mu g/m^3$, which is less than the (Stiles Street) CDV of 124 $\mu g/m^3$ for the 24-hour NAAQS. Thus Connecticut has shown that New Haven qualifies for the LMP option as described in the Wegman memo.

(7) Does the State Have an Approved Attainment Plan That Includes an Emissions Inventory Which Can Be Used To Demonstrate Attainment of the NAAQS?

The PM_{10} Attainment Plan for New Haven that was approved in 1995 (60 FR 47076) includes an emissions inventory which was used to demonstrate attainment of the NAAQS. As described in the Attainment Plan, CT DEP determined that the PM_{10} nonattainment problem in New Haven was a local problem in the area around the Stiles Street and Yankee Gas monitoring sites, primarily due to re-entrainment of mud and dirt from the unpaved areas by local traffic. These areas have since been paved.

To estimate PM_{10} emissions from all source sectors, CT DEP used the 1999 National Emissions Inventory (NEI). This inventory represents the level of emissions in the New Haven area during the five-year time period (1999–2003) used to demonstrate that the area qualifies for the LMP option. This inventory shows that fugitive dust sources were the primary contributor to PM_{10} in New Haven County, with lesser contributions from on-road, non-road, area (other than fugitive dust), and point sources. EPA is satisfied that the inventory contained in the Attainment Plan and in the NEI is sufficiently accurate and comprehensive to meet the requirement for an emission inventory that can be used to demonstrate attainment of the NAAQS

(8) Does the LMP Include an Assurance of Continued Operation of an Appropriate EPA-Approved Air Quality Monitoring Network in Accordance With 40 CFR Part 58?

In Section 5.0 of the Connecticut SIP submittal, the CT DEP states that it will continue to maintain a PM_{10} network to

verify continued compliance with the PM_{10} NAAQS in the New Haven maintenance area. Connecticut has specifically committed to maintaining a FEM monitor for PM_{10} at Criscuolo Park (Hearing Report in Connecticut SIP submittal, DEP Response to Comment 3, p. 4). This site will replace the Stiles Street site about October 2005 due to highway construction.

(9) Does the Plan Meet the Clean Air Act Requirements for Contingency Provisions?

Section 175A of the CAA states that a maintenance plan must include contingency measures, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the Wegman memo, these contingency measures do not have to be fully adopted at the time of redesignation. The New Haven PM_{10} LMP contains a Contingency Plan (Section 6.0 of the Connecticut SIP submittal). This plan incorporates contingency measures in the approved Attainment Plan (60 FR 47076) plus procedures that CT DEP will follow if a measured violation of the PM_{10} NAAQS occurs after redesignation.

The contingency plan would be activated in the event of a potential violation of the PM_{10} NAAQS, which under the LMP option is 40 $\mu g/m^3$ for the annual PM_{10} NAAQS and 98 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS. These limits will be effective until five years of PM_{10} FEM monitoring data are available for the Criscuolo Park site, which is scheduled to replace the Stiles Street site about October 2005. When five years of data are available, CDVs can be calculated for the PM_{10} annual and 24-hour NAAQS for Criscuolo Park. If ADVs exceed these new CDV, the New Haven PM_{10} maintenance area would no longer qualify for the LMP option, and a full maintenance would be required.

If a measured violation of the PM_{10} NAAQS occurs, CT DEP will ''immediately'' (defined as within several working days in Hearing Report in Connecticut SIP submittal, DEP Response to Comment 5, p. 5) determine the validity of data by verifying all monitor operating parameters and quality assurance procedures. Once the violation is confirmed, the CT DEP will examine all activities in the vicinity of the site, such as traffic patterns and meteorological conditions, and determine the likely cause of the violation. CT DEP will then consult with the appropriate local, regional or state agency to design and implement a control remedy.

If the control remedy is ineffectual (*i.e.*, another verified exceedance of the PM_{10} NAAQS occurs), CT DEP will undertake a full emission inventory of the area and do modeling studies to identify additional control measures, and to estimate future PM_{10} reductions and expected air quality at the violating monitor.

EPA concludes that these measures and commitments meet the requirement for contingency provisions of CAA Section 175A(d).

(10) Has the State Met Conformity Requirements?

(a) Transportation Conformity

Under the LMP policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state will still need to document and ensure that: (a) Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113; (b) transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108; (c) the MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105; (d) conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104; (e) the latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111; (6) projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and (7) project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

(b) General Conformity

As noted above, under the LMP policy, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. As long as the New Haven area qualifies for the LMP option, federal actions subject to the general conformity rule are considered to satisfy the ''budget test'' specified in § 93.158(a)(5)(i)(A) of the rule.

III. Final Action

EPA is approving the LMP for the New Haven PM_{10} nonattainment area (New Haven NAA) in the State of Connecticut, and is granting a request by the State to redesignate the New Haven NAA to attainment for the NAAQS for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective December 12, 2005 without further notice unless the Agency receives relevant adverse comments by November 14, 2005.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Any parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 12, 2005 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. 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), because it 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 December 12, 2005. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. 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

40 CFR Part 52

Environmental protection, Air pollution control, PM_{10}, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 26, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

■ Parts 52 and 81 of chapter I, title 40 of the Code of Federal Regulations are 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.*

■ 2. A new § 52.378 is added to subpart H to read as follows:

§ 52.378 Control strategy: PM_{10}

(a) Approval—On June 23, 2005, the Connecticut Department of Environmental Protection submitted a request to redesignate the City of New Haven PM_{10} nonattainment area to attainment for PM_{10}. The redesignation request and the initial ten-year maintenance plan (2006–2015) meet the redesignation requirements in sections 107(d)(3)(E) and 175A of the Act as amended in 1990, respectively.

(b) Approval—On June 23, 2005, the Connecticut Department of Environmental Protection (CT DEP) submitted a request to establish a Limited Maintenance Plan (LMP) for the City of New Haven PM_{10} attainment area for the area's initial ten-year maintenance plan (2006–2015). The State of Connecticut has committed to: maintain a PM_{10} monitoring network in the New Haven PM_{10} maintenance area; implement contingency measures in the event of an exceedance of the PM_{10} National Ambient Air Quality Standards (NAAQS) in the maintenance area; coordinate with EPA in the event the PM_{10} design value in the maintenance area exceeds 98 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS or 40 $\mu g/m^3$ for the annual PM_{10} NAAQS; and to verify the validity of the data and, if warranted based on the data review, develop a full maintenance plan for the maintenance area. The LMP satisfies all applicable requirements of section 175A of the Clean Air Act. Approval of the LMP is conditioned on maintaining levels of ambient PM_{10} below a PM_{10} design value criteria of 98 $\mu g/m^3$ for the 24-hour PM_{10} NAAQS and 40 $\mu g/m^3$ for the annual PM_{10} NAAQS. For the Criscuolo Park site, Connecticut still qualifies for the LMP option if, based on five years of site data, the average design values (ADVs) of the continuous PM_{10} monitor are less than the site-specific critical design value (CDV). If the LMP criteria are no longer satisfied, Connecticut must develop a full maintenance plan to meet Clean Air Act requirements.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.307, the ''Connecticut–PM–10'' table is amended by revising the entry for ''New Haven County City of New Haven'' to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
New Haven County City of New Haven	12/12/05	Attainment.		
* *	*	*	*	* *

* * * * *

[FR Doc. 05–20418 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ET Docket No. 04–295; RM–10865; FCC 05–153]

Communications Assistance for Law Enforcement Act and Broadband Access and Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts a rule establishing that providers of facilities-based broadband Internet access services and providers of interconnected voice over Internet Protocol (VoIP) services—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN)—must comply with the Communications Assistance for Law Enforcement Act (CALEA). This new rule will enhance public safety and ensure that the surveillance needs of law enforcement agencies continue to be met as Internet-based communications technologies proliferate.

DATES: *Effective Date:* This rule is effective November 14, 2005.

Compliance Date: Newly covered entities and providers of newly covered services must comply with CALEA within 18 months of November 14, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2391.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order (1st R&O) in ET Docket No. 04–295, FCC 05–153, adopted August 5, 2005, and released September 23, 2005. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Synopsis of the First Report and Order

1. *Background.* In response to concerns that emerging technologies such as digital and wireless communications were making it increasingly difficult for law enforcement agencies to execute authorized surveillance, Congress enacted CALEA on October 25, 1994. CALEA was intended to preserve the ability of law enforcement agencies to conduct electronic surveillance by requiring that telecommunications carriers and manufacturers of telecommunications equipment modify and design their equipment, facilities, and services to ensure that they have the necessary surveillance capabilities. The Commission began its implementation of CALEA with the release of a Notice of Proposed Rulemaking in 1997 (62 FR 63302, November 27, 1997). Since that time, the Commission has taken several actions and released numerous orders implementing CALEA's requirements.

2. On March 10, 2004, the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, DOJ) filed a petition asking the Commission to declare that broadband Internet access services and VoIP services are covered by CALEA. The Petition also requested that the Commission initiate a rulemaking proceeding to resolve, on an expedited basis, various outstanding issues associated with the implementation of CALEA. The Commission declined to issue a declaratory ruling, finding instead that it was necessary to compile a more complete record on the factual and legal issues surrounding the applicability of CALEA to broadband Internet access services and VoIP services, and thus issued a Notice of Proposed Rulemaking (NPRM) (69 FR 56976, September 23, 2004).

3. The Commission initiated this proceeding both to undertake a comprehensive and thorough examination of the appropriate legal and policy framework of CALEA, and to respond to DOJ's Petition asking the Commission to seek comment on the various outstanding issues associated with the implementation of CALEA, including the potential applicability of CALEA to broadband Internet access services and VoIP services. The NPRM indicated that the Commission would analyze the applicability of CALEA to broadband Internet access services and VoIP services under section 102(8)(B)(ii), a provision of CALEA upon which the Commission had never before relied. That provision—the Substantial Replacement Provision (SRP)—requires the Commission to deem certain service providers to be telecommunications carriers for CALEA purposes even when those providers are not telecommunications carriers under the Communications Act of 1934, as amended (Communications Act). The NPRM indicated that the Commission had never before exercised its section 102(8)(B)(ii) authority to identify additional entities that fall within CALEA's definition of ''telecommunications carrier,'' and had never before solicited comment on the discrete components of that subsection.

4. The NPRM sought comment, among other things, on the Commission's tentative conclusions that: (1) Congress intended the scope of CALEA's definition of ''telecommunications carrier'' to be more inclusive than that of the Communications Act; (2) facilities-based providers of any type of broadband Internet access service are subject to CALEA; (3) ''managed'' VoIP services are subject to CALEA; and (4) the phrase ''a replacement for a substantial portion of the local telephone exchange service'' in section

102 of CALEA calls for assessing the replacement of any portion of an individual subscriber's functionality previously provided via ''plain old telephone service'' (POTS).

5. *Discussion.* In this 1st R&O, we interpret the SRP to cover facilities-based broadband Internet access and interconnected VoIP. Our analysis first interprets the SRP to establish a legal framework for assessing services under CALEA, explaining the basis for all statutory interpretations that inform this framework. Next, we apply this framework to providers of facilities-based broadband Internet access services and interconnected VoIP services. In each case, we find that these providers are subject to CALEA under the SRP. We then discuss the scope of our actions today and the relationship of these actions to the Commission's efforts to resolve a number of outstanding issues related to CALEA, such as assistance capability requirements, compliance, enforcement, identification of future services and entities subject to CALEA, and cost-related matters.

6. *Legal Framework.* In this section, we explain how CALEA's SRP requires us to determine that some providers are subject to CALEA even if they are not telecommunications carriers as defined in the Communications Act. We further explain the relationship between the SRP and CALEA's exclusion for information services. Because the text of CALEA does not provide unambiguous direction, we consider the structure and history of the relevant provisions, including Congress's stated purposes, and interpret the statute in a manner that most faithfully implements Congress's intent. We conclude, as we indicated in the NPRM, that the terms ''telecommunications carrier'' and ''information services'' in CALEA cannot be interpreted identically to the way those terms have been interpreted under the Communications Act in light of the statutory text as well as Congress's intent and purpose in enacting CALEA.

7. *CALEA Definition of ''Telecommunications Carrier.''* We affirm our tentative conclusion that Congress intended the scope of CALEA's definition of ''telecommunications carrier'' to be more inclusive than the similar definition of ''telecommunications carrier'' in the Communications Act. Critically, while certain portions of the definition are the same in both statutes, CALEA's SRP ''has no analogue'' in the Communications Act, thus rendering CALEA's definition of ''telecommunications carrier'' broader than that found in the Communications Act. The SRP directs the Commission to deem certain providers to be telecommunications carriers for CALEA purposes, whether or not they satisfy the definition of telecommunications carrier in sections 102(8)(A) and 102(8)(B)(i). The SRP reflects Congress's intent to ''preserve the government's ability to * * * intercept communications that use advanced technologies such as digital or wireless transmission.'' Under the SRP, a telecommunications carrier is ''a person or entity engaged in providing wire or electronic communication switching or transmission service to the extent that the Commission finds that such service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of [CALEA].''

8. The SRP contains three components, each of which must be satisfied before the Commission can deem a person or entity a telecommunications carrier for purposes of CALEA. We address each of these components in turn. First, the SRP requires that an entity be ''engaged in providing wire or electronic communication switching or transmission service.'' In the NPRM, we interpreted the term ''switching'' in this phrase to include ''routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations.'' We affirm this reading of the statute, which has support in the record. We disagree with commenters who claim that the term ''switching'' as used by Congress in 1994 did not contemplate routers and softswitches, and thus suggest that the interpretation of this term must forever be limited to the function as it was commonly understood in 1994, namely circuit switching in the narrowband PSTN. Our decision today is reinforced by judicial precedent that has found CALEA to apply to certain packet-switched services. Moreover, limiting the interpretation of ''switching'' to circuit-switched technology would effectively eliminate any ability the Commission may have to extend CALEA obligations under the SRP to service providers using advanced digital technologies, in direct contravention of CALEA's stated purpose.

9. Second, the SRP requires that the service provided be ''a replacement for a substantial portion of the local telephone exchange service.'' We conclude that this requirement is satisfied if a service replaces any significant part of an individual subscriber's functionality previously provided via circuit-switched local telephone exchange service. This interpretation of an ambiguous statutory provision is most consistent with the language of section 102(8)(B)(ii), the express purpose of CALEA, and its legislative history. Congress did not enact language consistent with an interpretation offered by some commenters that would require the widespread use of a service before the SRP may be triggered. Instead, the SRP's phrase ''substantial portion of the local telephone exchange service'' indicates that the appropriate test is a functional one. It is triggered when a service replaces a portion of traditional telephone service, *i.e.*, all or some of the components, or functions, of the service. Because the statutory phrase includes the word ''substantial,'' we will require the functions being replaced to be a significant or substantial function of traditional telephone service.

10. As we explained in the NPRM, the legacy local telephone exchange network served two distinct purposes at the time CALEA was enacted: it provided POTS, which enabled customers to make telephone calls to other customers within a defined local service area; and it was the primary, if not the only, conduit (*i.e.*, transmission facility) used to access many non-local exchange services such as long distance services, enhanced services, and the Internet. The legislative history indicates that Congress intended CALEA to cover both the ability to ''make, receive and direct calls'' (*i.e.*, the POTS functionality) and the transmission facilities that provide access to other services (*i.e.*, the access conduit functionality). In 1994, this transmission function was commonly provided by dial-up Internet access, which shows that Congress did not mean to limit CALEA's scope to voice service alone. We therefore agree with DOJ that the language ''substantial portion of the local telephone exchange service'' includes both the POTS service and the transmission conduit functionality provided by local telephone exchange service in 1994. Commenters have not persuaded us otherwise.

11. The SRP's third component requires that the Commission find that ''it is in the public interest to deem * * * a person or entity to be a telecommunications carrier for purposes of [CALEA]'' once that entity has met the first and second components of the SRP. We sought comment in the NPRM

on how to define the ''public interest'' for purposes of CALEA, as the statute does not explicitly define the term. We noted that the House Report specifically identified three factors for the Commission to consider, at a minimum, in making its public interest determination under the SRP: whether deeming an entity a telecommunications carrier would ''promote competition, encourage the development of new technologies, and protect public safety and national security.'' Based on the record before us, we conclude that it is appropriate to rely primarily on these three factors when making our public interest determination for purposes of the SRP. We find that consideration of these three factors balances the goals of competition and innovation with the needs of law enforcement.

12. *CALEA Definition of ''Information Services.''* As we explained in the NPRM, the treatment of information services under CALEA is different from the treatment such services have been afforded under the Communications Act. In keeping with the legislative history of the Communications Act, the Commission interprets that Act's definitions of ''telecommunications service'' and ''information service'' to be mutually exclusive. Moreover, because the definition of ''telecommunications service'' focuses on the character of a provider's ''offering * * * to the public,'' the Commission has concluded that the classification of a particular service as a telecommunications service or an information services ''turns on the nature of the functions that the end user is offered.'' Additionally, the Communications Act's definition of ''telecommunications'' ''only includes transmissions that do not alter the form or content of the information sent,'' a definition that the Commission has found to exclude Internet access services, which ''alter the format of information through computer processing applications.'' For these reasons, the Commission has concluded that a single entity offering an integrated service combining basic telecommunications transmission with certain enhancements, specifically ''capabilities for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information,'' offers only an information service, and not a telecommunications service, for purposes of the Communications Act if the telecommunications and information services are sufficiently intertwined. In other words, the Commission does not recognize the telecommunications component of an information service as a telecommunications service under the Communications Act.

13. In contrast with the Communications Act, CALEA does not define or utilize the term ''telecommunications service,'' it does not adopt the Communications Act's narrow definition of ''telecommunications,'' and it does not construct a definitional framework in which the regulatory treatment of an integrated service depends on its classification into one of two mutually exclusive categories, *i.e.*, telecommunications service or information service. As a result, structural and definitional features of the Communications Act that play a critical role in drawing the Act's regulatory dividing line between telecommunications service and information service, and that undergird the Commission's resulting classification of integrated broadband Internet access service as solely an information service for purposes of the Communications Act, are absent from CALEA. Unlike the Communications Act, CALEA's ''overall statutory scheme'' does not require the Commission to classify an integrated service offering as solely a telecommunications service or solely an information service depending on ''the nature of the functions that the end user is offered,'' and thus the classification of broadband Internet access services under the Communications Act is not controlling under CALEA.

14. The text of the ''information services'' definition is entirely consistent with this interpretive approach. CALEA defines ''information services'' as the offering of a capability for manipulating and storing information ''via telecommunications,'' but the statutory definition does not resolve the question whether the telecommunications functionality used to access that capability itself falls within the information service category. Under the Communications Act's similar definition of information service, we have resolved that ambiguity by concluding that the telecommunications component of an integrated information service offering falls within the information service category, but that result is not compelled by the text of CALEA, and thus the Act leaves the Commission free to resolve the definitional ambiguity as appropriate in light of CALEA's purposes and the public interest, without being bound by the approach followed under the Communications Act.

15. We also reach that same conclusion by a separate, and independent, route. CALEA excludes from its definition of telecommunications carrier ''persons or entities insofar as they are engaged in providing information services,'' and the definition of information services in CALEA is similar to the definition in the Communications Act. The SRP, however, adds a third category of services to the mix. A provider of communication switching or transmission service that is not a telecommunications service under the Communications Act is nonetheless deemed to be a telecommunications carrier under CALEA if the Commission finds that the service replaces a substantial portion of local telephone exchange service and it is in the public interest to treat the provider as a telecommunications carrier. To give significance to the SRP, this new category of services must include some aspects of services that may be ''information services'' under the Communications Act. An ''irreconcilable tension'' would occur if the Commission rendered Congress's deliberate extension of CALEA's requirements to providers satisfying the SRP insignificant by simply applying its Communications Act interpretation of ''information services'' to CALEA. Consequently, to resolve that tension in a manner that the Commission determines best reflects Congressional intent under CALEA as well as the text of the statute, a service classified as an ''information service'' under the Communications Act may not, in all respects, be classified as an ''information service'' under CALEA.

16. In addition to constituting the most reasonable construction of the statutory text, this conclusion is further bolstered by an examination of the legislative history. The House Report's discussion of information services and information service providers for CALEA purposes pertains only to the enhancements to the transmission capability underlying the service, that is, the computing capabilities that transform the service from a ''telecommunications service'' under the Communications Act and the corresponding Commission rules into an ''information service.'' For example, in discussing privacy concerns and the scope of CALEA, the House Report indicates that ''electronic mail providers, on-line service providers, and Internet service providers are not subject to CALEA.'' The House Report goes on to indicate, however, that while the storage of an e-mail message falls within CALEA's Information Services Exclusion, the transmission of an e-mail

message is subject to CALEA. Similarly, the House Report indicates that a portion of voice mail service is also covered by CALEA: ''the 'redirection' of a voice mail message is covered by CALEA, while the storage of the message is not.'' If an information service for purposes of CALEA mirrored the definition and treatment of an information service under the Communications Act, CALEA would never have been able to reach the transmission of all e-mails or voice mails even when CALEA was enacted.

17. That conclusion is further supported by CALEA's structure. CALEA establishes a general rule that telecommunications carriers (including those covered by the SRP) are subject to CALEA's assistance capability requirements. Information services are an exception to that general rule. It is a well recognized principle of statutory construction that ''[w]here a general provision in a statute has certain limited exceptions, all doubts should be resolved in favor of the general provision rather than the exceptions.'' Accordingly, it is appropriate to give the Information Services Exclusion a narrow construction in order to give full effect to CALEA's general rule.

18. We thus find that the classification of a service as an information service under the Communications Act does not necessarily compel a finding that the service falls within CALEA's Information Service Exclusion. Decisions about the applicability of CALEA must be based on CALEA's definitions alone, not on the definitions in the Communications Act. Equally important, the classification of a service provider as a telecommunications carrier under CALEA's SRP does not limit the Commission's options for classifying that provider or service under the Communications Act. In the sections below, we apply this legal framework to providers of facilities-based broadband Internet access and interconnected VoIP services.

19. *Applicability of CALEA to Broadband Internet Access Services.* In this section, we find that facilities-based providers of any type of broadband Internet access service, including but not limited to wireline, cable modem, satellite, wireless, fixed wireless, and broadband access via powerline are subject to CALEA. In finding these providers to be subject to CALEA under the SRP, we reiterate that we do not disturb the Commission's prior decisions that CALEA unambiguously applies to all ''common carriers offering telecommunications services for sale to the public,'' as so classified under the Communications Act. Thus, to the extent that any facilities-based broadband Internet access service provider chooses to offer such service on a common carrier basis, that provider is subject to CALEA pursuant to section 102(8)(A), the Common Carrier Provision.

20. Applying the legal framework set forth above, we determine that facilities-based broadband Internet access providers satisfy each of the three prongs of the SRP: (1) They are providing a switching or transmission functionality; (2) this functionality is a replacement for a substantial portion of the local telephone exchange service, specifically, the portion used for dial-up Internet access; and (3) public interest factors weigh in favor of subjecting broadband Internet access services to CALEA.

21. *Broadband Internet Access Service Providers Are ''Telecommunications Carriers'' Under CALEA: Broadband Internet Access Service Includes Switching or Transmission.* We find that facilities-based broadband Internet access service providers are ''engaged in providing wire or electronic communication switching or transmission service'' and therefore meet the first prong of the SRP. As discussed above, we interpret the ''switching or transmission'' component of the SRP broadly to capture not only transmission or transport capabilities, but also new packet-based equipment and functionalities that direct communications to their intended destinations. No commenter suggests that facilities-based broadband Internet access providers do not provide a transmission or transport function. Indeed, commenters providing broadband Internet access service today describe the underlying transport component of their service as ''switching and forwarding data.''

22. *Broadband Internet Access Service Replaces a Substantial Portion of the Local Telephone Exchange Service.* We next conclude that facilities-based broadband Internet access service providers provide a replacement for a substantial portion of the local telephone exchange service, specifically, the portion of local telephone exchange service that provides subscribers with dial-up Internet access capability. Broadband Internet access service unquestionably ''replaces'' a portion of the functionality that the traditional local telephone exchange service provides—namely, the ability to access the Internet. CALEA's legislative history supports our conclusion that broadband Internet access service was intended to be covered by CALEA, as are both dial-up and common carrier DSL transport services. That history explains the distinction between the portion of e-mail service that was subject to CALEA (a service that was accessible only over the Internet) and the portion that was not. The only way that the ''transmission of an E-mail message'' could have been captured under CALEA in 1994 was through the dial-up facilities and capabilities of narrowband local telephone exchange service. Thus, to the extent that dial-up capabilities are ''replaced'' today by broadband Internet access service, we ensure that the ''transmission of an E-mail message'' continues to be subject to CALEA by finding that the SRP covers the transmission component of broadband Internet access service.

23. *Public Interest Factors Weigh in Favor of Subjecting Broadband Internet Access Service to CALEA.* We further find that it is in the public interest to deem facilities-based broadband Internet access service providers to be ''telecommunications carriers'' for purposes of CALEA under the SRP. The public interest factors that we consider in reaching this determination—the effect on competition, the development and provision of new technologies and services, and public safety and national security—on balance, support this finding.

24. One of the cornerstones of the Commission's broadband policy is achieving the goal of developing a consistent regulatory framework across all broadband platforms by treating providers in the same manner with respect to broadband services providing similar functionality. Because all facilities-based providers of broadband Internet access services will be covered by CALEA, our finding today will have no skewing effect on competition. In addition, covering all broadband Internet access service providers prevents migration of criminal activity onto less regulated platforms.

25. We further determine that our actions today will not hinder the development of new services and technologies. While our action today brings much needed certainty to the application of CALEA to the development of new services and technologies, it does not favor any particular technology over another. Furthermore, nothing in this item will substantially change the deployment incentives currently faced by providers. Broadband Internet access service providers today are already subject to a number of electronic surveillance statutes that compel their cooperation with law enforcement agencies. In

addition, it has been over a year since the Commission issued its tentative conclusion that broadband Internet access service providers would be covered by CALEA. During that time, we have seen an increase in broadband build-out, undermining any arguments that development of these systems would be stifled. In contrast, many commenters have indicated they are currently cooperating with law enforcement agencies to provide CALEA-like capabilities today.

26. The overwhelming importance of CALEA's assistance capability requirements to law enforcement efforts to safeguard homeland security and combat crime weighs heavily in favor of the application of CALEA obligations to all facilities-based broadband Internet access service providers. It is clearly not in the public interest to allow terrorists and criminals to avoid lawful surveillance by law enforcement agencies by using broadband Internet access services as a substitute for dial-up service.

27. Finally, in finding CALEA's SRP to cover facilities-based providers of broadband Internet access service, we conclude that establishments that acquire broadband Internet access service from a facilities-based provider to enable their patrons or customers to access the Internet from their respective establishments are not considered facilities-based broadband Internet access service providers subject to CALEA under the SRP. We note, however, that the provider of underlying facilities to such an establishment would be subject to CALEA, as discussed above. Furthermore, providers of Personal Area Networks (*e.g.*, cordless phones, PDAs, home gateways) are not intended to be covered by our actions today. We find that these services are akin to private networks, which are excluded from CALEA requirements.

28. CALEA's Information Services Exclusion Does Not Apply to Broadband Internet Access Providers. We find that providers of broadband Internet access service are not relieved of CALEA obligations as a result of CALEA's Information Services Exclusion. As we have noted, our interpretation of the term information services in CALEA differs from our interpretation of that term in the Communications Act. Thus, the fact that broadband Internet access service may be classified as an information service under the Communications Act does not determine its classification for CALEA purposes. The appropriate focus of our analysis must be on the meaning of the term in CALEA, and for that, as we have explained, we look to the text of CALEA and its legislative history for guidance. As noted above, the legislative history indicates that under CALEA, telecommunications components are separable for regulatory purposes from information service components within a single service.

29. Our interpretation of the relationship between information services under the Communications Act and the Information Services Exclusion under CALEA does not eviscerate the Information Services Exclusion, as certain commenters claim. Rather, this approach gives meaning to the Information Services Exclusion, as intended by Congress, while reconciling the fact that Congress included the SRP specifically to empower the Commission to bring services such as broadband Internet access within CALEA's reach if appropriate. A facilities-based broadband Internet access service provider continues to have no CALEA obligations with respect to, for example, the storage functions of its e-mail service, its web-hosting and DNS lookup functions or any other ISP functionality of its Internet access service. It is only the ''switching and transmission'' component of its service that is subject to CALEA under our finding today.

30. *Applicability of CALEA to VoIP Services.* We conclude that CALEA applies to providers of ''interconnected VoIP services,'' which include those VoIP services that: (1) Enable real-time, two-way voice communications; (2) require a broadband connection from the user's location; (3) require IP-compatible customer premises equipment; and (4) permit users to receive calls from and terminate calls to the PSTN. We find that providers of interconnected VoIP services satisfy CALEA's definition of ''telecommunications carrier'' under the SRP and that CALEA's Information Services Exclusion does not apply to interconnected VoIP services. To be clear, a service offering is ''interconnected VoIP'' if it offers the capability for users to receive calls from and terminate calls to the PSTN; the offering is covered by CALEA for all VoIP communications, even those that do not involve the PSTN. Furthermore, the offering is covered regardless of how the interconnected VoIP provider facilitates access to and from the PSTN, whether directly or by making arrangements with a third party.

31. In reaching our conclusion, we abandon the distinction the NPRM drew between ''managed'' and ''non-managed'' VoIP services as the dividing line between VoIP services that are covered by CALEA and those that are not. The record has overwhelmingly convinced us that this distinction is unadministrable; even DOJ expressed an openness to a different way of identifying those VoIP services that CALEA covers. We find that using ''interconnected VoIP services'' to define the category of VoIP services that are covered by CALEA provides a clearer, more easily identifiable distinction that is consistent with recent Commission orders addressing the appropriate regulatory treatment of IP-enabled services. Interconnected VoIP services today include many of the types of VoIP offerings that DOJ's Petition indicates should be covered by CALEA, and is thus responsive to DOJ's needs at this time.

32. *Interconnected VoIP Providers Are ''Telecommunications Carriers'' Under CALEA: Interconnected VoIP Includes Switching or Transmission.* We find that providers of interconnected VoIP satisfy the three prongs of the SRP under CALEA's definition of ''telecommunications carrier.'' First, these providers are ''engaged in providing wire or electronic communication switching or transmission services.'' As we have explained, we interpret the term ''switching'' in the CALEA definition of ''telecommunications carrier'' to include ''routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations.'' Interconnected VoIP service providers use these technologies to enable their subscribers to make, receive, and direct calls. The record reflects that any VoIP provider that is interconnected to the PSTN ''must necessarily'' use a router or other server to do so. Thus, even VoIP providers that do not own their own underlying transmission facilities nonetheless are engaged in providing ''switching'' services to their customers.

33. *Interconnected VoIP Replaces a Substantial Portion of the Local Telephone Exchange Service.* Second, interconnected VoIP satisfies the ''replacement for a substantial portion of the local telephone exchange service'' prong of the SRP because it replaces the legacy POTS service functionality of traditional local telephone exchange service. As we explained in our recent *VoIP E911 Order* (70 FR 37273, June 29, 2005), customers who purchase interconnected VoIP service receive a service that ''enables a customer to do everything (or nearly everything) the customer could do using an analog telephone.'' We determine that a service

that is increasingly used to replace analog voice service is exactly the type of service that Congress intended the SRP to reach.

34. *Public Interest Factors Weigh in Favor of Subjecting Interconnected VoIP Providers to CALEA.* Finally, we find that it is in the public interest to deem an interconnected VoIP service provider a telecommunications carrier for purposes of CALEA. In reaching this conclusion, we examine the three prongs of the public interest analysis that the NPRM proposed to consider: promotion of competition, encouragement of the development of new technologies, and protection of public safety and national security. These three factors compel a finding that CALEA should apply to interconnected VoIP. First, our finding today will not have a deleterious effect on competition because all providers of interconnected VoIP will be covered by CALEA. Singling out certain technologies or categories of interconnected VoIP providers would be more harmful to competition than applying CALEA requirements to all providers of interconnected VoIP services, as we do today. Second, we are confident that our decision today will not discourage the development of new technologies and services. Interconnected VoIP providers are already obligated to cooperate with law enforcement agencies under separate electronic surveillance laws. We have seen no evidence that these requirements have deterred the development of new VoIP technologies and services in the period of time since the Commission issued its tentative conclusion that some types of VoIP service are covered by CALEA. Instead, we have seen an increasing effort on the part of many interconnected VoIP providers to develop CALEA capabilities, and the record indicates that VoIP providers are already modifying their operations to ensure that they are able to comply with CALEA. Industry solutions appear to be readily available. Finally, the protection of public safety and national security compels us to apply CALEA to interconnected VoIP service providers. Excluding interconnected VoIP from CALEA coverage could significantly undermine law enforcement's surveillance efforts. Further, broadband Internet access providers alone might not have reasonable access to all of the information that law enforcement needs. Specifically, call management information (such as call forwarding and conference call features) and call set-up information (such as real-time speed dialing information and post-dial digit extraction information) are unlikely to be reasonably available to a broadband Internet access provider. The record thus indicates that the broadband Internet access provider and the interconnected VoIP provider must both be covered by CALEA in order to ensure that law enforcement agencies' surveillance needs are met.

35. *CALEA's Information Services Exclusion Does Not Apply to Interconnected VoIP.* We find that interconnected VoIP service is not subject to the Information Services Exclusion in CALEA. The regulatory classification of interconnected VoIP under the Communications Act is not determinative with regard to this inquiry. Indeed, the Commission has yet to determine the statutory classification of providers of interconnected VoIP for purposes of the Communications Act, but nowhere does CALEA require such a determination before analyzing a service provider under the SRP. Instead, the appropriate focus is on the meaning of the term in CALEA. As we have explained, CALEA's legislative history contains much discussion of ''information services,'' but not once did Congress contemplate that any type of voice service would fall into that category. Most significantly, Congress explicitly distinguished between ''information services'' that are not covered by CALEA and ''services or facilities that enable the subscriber to make, receive or direct calls,'' which are covered. Congress intended the capability to make what appear to the consumer to be ordinary voice calls—regardless of the technology involved—to fall outside the category of excluded information services under CALEA.

36. *Scope of Commission Action.* Our action in this 1st R&O is limited to establishing that CALEA applies to facilities-based broadband Internet access providers and interconnected VoIP service providers. The NPRM raised important questions regarding the ability of broadband Internet access providers and VoIP providers to provide all of the capabilities that are required by section 103 of CALEA, including what those capability requirements mean in a broadband environment. The NPRM also sought comment on a variety of issues relating to identification of future services and entities subject to CALEA, compliance extensions, cost recovery, and enforcement. We will address all of these matters in a future order. Because we acknowledge that providers need a reasonable amount of time to come into compliance with all relevant CALEA requirements, we establish a deadline of 18 months from the effective date of this 1st R&O, by which time newly covered entities and providers of newly covered services must be in full compliance.

Final Paperwork Reduction Act Analysis

37. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Final Regulatory Flexibility Certification

38. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Certification (FRFC) is limited to the matters raised in the NPRM relating to the applicability of CALEA to providers of broadband Internet access services and VoIP services. The present FRFC addresses comments on the IRFA concerning only those issues and conforms to the RFA.

1. Need for, and Objectives of, the Rules

39. Advances in technology, most notably the introduction of digital transmission and processing techniques and the proliferation of wireless and Internet services such as broadband Internet access services and VoIP, have challenged the ability of the law enforcement agencies (LEAs) to conduct lawful surveillance. In light of these difficulties, the Department of Justice, the Federal Bureau of Investigation, and the Drug Enforcement Administration (collectively, DOJ) filed a joint petition for expedited rulemaking in March 2004. In its petition, DOJ asked the Commission immediately to declare that broadband Internet access services and VoIP services are covered by CALEA.

40. In this 1st R&O, we conclude that facilities-based broadband Internet access providers and providers of interconnected VoIP service are subject to CALEA as telecommunications carriers under CALEA's Substantial Replacement Provision (SRP). Because we acknowledge that providers need a reasonable amount of time to come into compliance with all relevant CALEA

requirements, we establish a deadline of 18 months from the effective date of the 1st R&O, by which time newly covered entities and providers of newly covered services must be in full compliance. This 1st R&O is the first critical step needed to apply CALEA obligations to new technologies and services that are increasingly relied upon by the American public to meet their communications needs.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

41. In this section, we respond to commenters who filed directly in response to the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the 1st R&O and are also summarized in part E, below.

42. The Office of Advocacy, U.S. Small Business Administration (SBA) and the National Telecommunications Cooperative Association (NTCA) filed comments directly in response to the IRFA. We note that both commenters raise various concerns about issues that were raised in the NPRM in this proceeding but are not addressed in this 1st R&O. In this FRFC, we address their comments only to the extent that they relate to the applicability of CALEA's SRP to broadband Internet access and VoIP service, as all other concerns will be addressed in the subsequent order.

43. We reject SBA's argument that the Commission failed to analyze the compliance requirements and impacts on small carriers in the IRFA. The SBA argues that this failure made it difficult for small entities to comment on possible ways to minimize any impact. Although the Commission did not list the exact costs, in the NPRM we identified all the potential carriers that may be required to be CALEA compliant under the SRP, described in great detail what these carriers would be required to do if they were subject to CALEA, and requested comment on how the Commission could address the needs of small businesses. Indeed, far from discouraging small entities from participating, the NPRM elicited extensive comment on issues affecting small businesses. Therefore, we believe that small entities received sufficient notice of the implications of CALEA compliance addressed in today's 1st R&O, and a revised IRFA is not necessary.

44. We also reject NTCA and SBA's contention that the Commission failed to include in the IRFA significant alternatives to minimize burdens on small entities. First, NTCA argues that the Commission failed to identify in the IRFA that small entities may be exempted under the SRP's public interest clause. In the NPRM, however, we asked for comment as to whether there are discrete groups of entities for which the public interest may not be served by including them under the SRP. We noted that small businesses that provide wireless broadband Internet access to rural areas may be one example of such a discrete group. In response to the NPRM, several small carriers filed comments claiming that the public interest would not be served by subjecting these providers to CALEA under the SRP. Second, SBA claims the Commission failed to identify in the IRFA the option of granting an extended transition period for small carriers. In the NPRM, however, we specifically invited comment from all entities on the appropriate amount of time to give newly covered entities to comply with CALEA. While we recognize that we did not specifically list in the IRFA the potential exclusion of small businesses under the SRP's public interest clause or the option of extending the time period for small carriers, the IRFA in this proceeding combined with the NPRM appropriately identified all the ways in which the Commission could lessen the regulatory burdens on small businesses in compliance with our RFA obligations.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

45. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in this proceeding. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present FRFC is limited to the matters raised in the NPRM relating to the applicability of Communications Assistance for Law Enforcement Act (CALEA) to providers of broadband Internet access services and VoIP services. The present FRFC addresses comments on the IRFA concerning only those issues and conforms to the RFA.

a. Telecommunications Service Entities

46. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

47. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

48. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the

Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

49. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

50. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

51. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

52. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

53. *Wireless Telecommunications Service Providers.* Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

54. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of paging providers decreased approximately 51 percent from 1997 to 2002. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

55. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

56. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of

firms can be considered small. In the Paging Third Report and Order, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

57. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the Wireless Communications Services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

58. *Wireless Telephony.* Wireless telephony includes cellular, Personal Communications Services (PCS), and Specialized Mobile Radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

59. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

b. Cable Operators

60. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

61. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

62. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

c. Internet Service Providers

63. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and

hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Internet service providers increased approximately five percent from 1997 to 2002.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

64. The 1st R&O requires all facilities-based broadband Internet access providers and providers of interconnected VoIP service to be CALEA compliant. Our decision today does not impose reporting or recordkeeping requirements that would be subject to the Paperwork Reduction Act. Pursuant to CALEA both small and large carriers must design their equipment, facilities, and services to ensure that they have the required surveillance capabilities. We note that a subsequent order will address other important issues under CALEA, such as compliance extensions and exemptions, cost recovery, identification of future services and entities subject to CALEA, and enforcement.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

65. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

66. In the 1st R&O, we conclude that facilities-based broadband Internet access providers and providers of interconnected VoIP service are ''telecommunications carriers'' under CALEA's SRP. In arriving at these conclusions, the Commission first interprets the SRP to establish a legal framework for assessing services under CALEA, explaining the basis for all statutory interpretations that inform this framework. We then apply this framework to providers of facilities-based broadband Internet access services and interconnected VoIP services. The Commission considered various alternatives, which it rejected or accepted for the reasons set forth in the body of the 1st R&O. The significant alternatives that commenters discussed and that we considered in determining that these providers are ''telecommunications carriers'' under CALEA's SRP are as follows.

67. *Legal Framework.* In the 1st R&O, we affirm our tentative conclusion that Congress intended the scope of CALEA's definition of telecommunications carrier to be more inclusive than the similar definition of ''telecommunications carrier'' in the Communications Act. In reaching this conclusion, we rejected arguments that the definition of ''telecommunications carriers'' in CALEA is functionally identical to the definition of that term in the Communications Act. While we recognize that a broader interpretation may include small entities under the definition, CALEA contains several differences that support this broader interpretation of the term ''telecommunications carrier'' under CALEA. As noted above, the most significant difference is the SRP, which ''has no analogue'' in the Communications Act.

68. The SRP applies only to entities ''engaged in providing wire or electronic communication switching or transmission service.'' We conclude that the term ''switching'' in this phrase includes ''routers, softswitches, and other equipment that may provide addressing and intelligence functions for packet-based communications to manage and direct the communications along to their intended destinations.'' We considered but rejected arguments that the term ''switching'' as used by Congress in 1994 did not contemplate routers and softswitches. For instance, some commenters argued that this term must forever be limited to that function as it was commonly understood in 1994, namely circuit switching in the narrowband PSTN. We believe that interpreting CALEA's inclusion of the word ''switching'' to describe a function that Congress intended to be covered—regardless of the specific technology employed to perform that function—is the interpretation most consistent with the purpose of the statute. The alternative approach would effectively eliminate any ability the Commission may have to extend CALEA obligations under the SRP to service providers using advanced digital technologies, in direct contravention of CALEA's stated purpose.

69. The SRP requires that the service provided be ''a replacement for a substantial portion of the local telephone exchange service.'' We affirmed our tentative conclusion that this requirement is satisfied if a service replaces any significant part of an individual subscriber's functionality previously provided via circuit-switched local telephone exchange service. We considered various interpretations. For example, we considered, but declined to adopt, an interpretation that would require the service to be capable of replacing all of the functionalities of local exchange service. Instead, we agree with DOJ that the language ''substantial portion of the local telephone exchange service'' includes both the POTS service and the transmission conduit functionality provided by local telephone exchange service in 1994. While our interpretation will most likely cover small entities, commenters have not persuaded us to adopt a different interpretation.

70. The SRP also requires that the Commission find that ''it is in the public interest to deem * * * a person or entity to be a telecommunications carrier for purposes of [CALEA].'' We conclude that the Commission will consider three factors in its public interest analysis: (1) Promotion of competition; (2) encouragement of the development of new technologies; and (3) protection of public safety and national security. We declined to identify any other specific public interest considerations, which we recognize might benefit small telecommunications carriers.

71. We conclude, as we indicated in the NPRM, that the terms ''telecommunications carrier'' and ''information services'' in CALEA cannot be interpreted identically to the way those terms have been interpreted under the Communications Act in light of Congress's intent and purpose in enacting CALEA. As explained above, we disagree with commenters who argue that we should interpret the statute to narrow the scope of services that are covered today to a more narrow group of services than those covered when CALEA was enacted, particularly in light of CALEA's stated purpose to ''preserve the government's ability to * * * intercept communications that use advanced technologies such as digital or wireless transmission.'' While

we recognize that small entities might benefit by an interpretation that would narrow the scope of services subject to CALEA, we believe that decisions about the applicability of CALEA must be based on CALEA's definitions alone, not on the definitions in the Communications Act.

72. *Facilities-Based Broadband Internet Access Service Providers.* We apply our conclusions concerning the legal framework to providers of facilities-based broadband Internet access services and find that these providers are subject to CALEA under the SRP. In reaching this decision, we considered the comments by small carriers, which generally claimed that the public interest would not be served by subjecting these providers to CALEA under the SRP. Based on our analysis here, we decline to exclude any facilities-based broadband Internet access providers from CALEA requirements at this time. We agree with DOJ that these commenters have not provided sufficient evidence, identified the particular carriers that should be exempted from CALEA's SRP, or addressed law enforcement's needs. These telecommunications carriers have several options under CALEA. We believe that these CALEA provisions will safeguard small entities from any significant adverse economic impacts of CALEA compliance.

73. Additionally, based on comments from these small carriers, we adopt a Further Notice of Proposed Rulemaking (FNPRM), published elsewhere in this issue, that seeks comment on what procedures the Commission should adopt to implement CALEA's exemption provision, as well as the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, such as small or rural entities. We also seek comment on the best way to impose different compliance standards. We believe that the FNPRM will assist the Commission in adopting streamlined exemption procedures, which will ultimately benefit both large and small entities alike. The FNPRM is also a concerted effort by the Commission to adopt any other rules that will reduce CALEA burdens on small entities. We believe our approach represents a reasonable accommodation for small carriers, and we encourage these entities to file comments on the FNPRM to assist the Commission in these efforts.

74. *Interconnected VoIP Service.* We apply our conclusions concerning the legal framework to providers of interconnected VoIP services and find that these providers are subject to CALEA under the SRP. We considered but abandoned the distinction the NPRM drew between ''managed'' and ''non-managed'' VoIP services as the dividing line between VoIP services that are covered by CALEA and those that are not. The record convinced us that this distinction is unadministrable; even DOJ expressed an openness to a different way of identifying those VoIP services that CALEA covers. We believe that the alternative approach, using ''interconnected VoIP services'' to define the category of VoIP services that are covered by CALEA, provides a clearer, more easily identifiable distinction that is consistent with recent Commission orders addressing the appropriate regulatory treatment of IP-enabled services.

75. As a result, certain VoIP service providers are not subject to CALEA obligations imposed in today's 1st R&O. Specifically, the 1st R&O does not apply to those entities not fully interconnected with the PSTN. Because interconnecting with the PSTN can impose substantial costs, we anticipate that many of the entities that elect not to interconnect with the PSTN, and which therefore are not subject to the rules adopted in today's 1st R&O, are small entities. Small entities that provide VoIP services therefore also have some control over whether they will have to be CALEA compliant. Small businesses may still offer VoIP service without being subject to the rules adopted in today's 1st R&O by electing not to provide an interconnected VoIP service.

76. *Scope of 1st R&O.* Our action in the 1st R&O is limited to establishing that CALEA applies to facilities-based broadband Internet access providers and interconnected VoIP service providers. As noted above, we will address in a subsequent order other important outstanding issues under CALEA, such as compliance extensions and exemptions, cost recovery, identification of future services and entities subject to CALEA, and enforcement. The 1st R&O establishes a deadline of 18 months from the effective date of the Order, by which time newly covered entities and providers of newly covered services must be in full compliance with CALEA. We considered various comments advocating, for example, effective dates ranging from 12 months to 24 months. We also considered whether the Commission should grant additional time for small carriers to become CALEA compliant. However, as explained above, we find that 18 months is a reasonable time period to expect all providers of facilities-based broadband Internet access service and interconnected VoIP service to comply with CALEA. This alternative represents a reasonable accommodation for small entities and others, as these newly covered entities can begin planning to incorporate CALEA compliance into their operations. Furthermore, this approach will ensure that the appropriate parties become involved in ongoing discussions among the Commission, law enforcement, and industry representatives to develop standards for CALEA capabilities and compliance.

77. *Report to Congress:* The Commission will send a copy of the 1st R&O, including this FRFC, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the 1st R&O, including this FRFC, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

78. Accordingly, *it is ordered* that pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001, the Report and Order in ET Docket No. 04–295 *is adopted.*

79. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Broadband Internet access services, Interconnected voice over Internet protocol services, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 to read as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Pub.L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.2102 is amended by adding paragraph (d) to read as follows:

§ 64.2102 Definitions.

* * * * *

(d) *Telecommunications Carrier.* The term *Telecommunications Carrier* includes:

(1) A person or entity engaged in the transmission or switching of wire or electronic communications as a common carrier for hire;

(2) A person or entity engaged in providing commercial mobile service (as defined in section 332(d) of the Communications Act of 1934 (47 U.S.C. 332(d)); or

(3) A person or entity that the Commission has found is engaged in providing wire or electronic communication switching or transmission service such that the service is a replacement for a substantial portion of the local telephone exchange service and that it is in the public interest to deem such a person or entity to be a telecommunications carrier for purposes of CALEA.

[FR Doc. 05–20606 Filed 10–12–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 100605C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Atka mackerel total allowable catch (TAC) in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 7, 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 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 Atka mackerel TAC in the Western Aleutian District of the BSAI is 18,500 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 Atka mackerel TAC in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 18,450 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

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 delay the closure of Atka mackerel in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 5, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20541 Filed 10–7–05; 2:30 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. 100605B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 Pacific ocean perch total allowable catch (TAC) in the Western Aleutian District of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 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 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 Pacific ocean perch TAC in the Western Aleutian District of the BSAI is 4,703 metric tons (mt) as established by the 2005 and 2006 final harvest specifications for groundfish in

the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2005 Pacific ocean perch TAC in the Western Aleutian District of the BSAI will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 4,650 mt, and is setting aside the remaining 53 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

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 delay the closure of Pacific ocean perch in the Western Aleutian District of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 5, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 6, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20542 Filed 10–7–05; 2:30 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. 100705A]

Fisheries of the Economic Exclusive Zone Off Alaska; Atka Mackerel 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 Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2005 Atka Mackerel total allowable catch (TAC) specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 9, 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 Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI under § 679.20(d)(1)(i) on September 2, 2005 (70 FR 53101, September 7, 2005).

NMFS has determined that as of October 4, 2005, approximately 1,355 metric tons of Atka mackerel remain in the 2005 Atka mackerel TAC specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. Therefore, in accordance with §§ 679.25(a)(2)(i)(C) and (a)(2)(iii)(D), and to allow the Atka mackerel fishery to resume, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

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 delay the delay the opening of the fishery, not allow the full utilization of the Atka mackerel TAC specified for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

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: October 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20543 Filed 10–7–05; 2:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126333–5040–02; I.D. 100705B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area

630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2005 total allowable catch (TAC) of pollock for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 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 GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (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 TAC of pollock in Statistical Area 630 of the GOA is 18,718 metric tons (mt) as established by the 2005 and 2006 harvest specifications for groundfish of the GOA (70 FR 8958, February 24, 2005).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2005 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 18,708 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

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 delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October xx, 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 § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 7, 2005.

Alan D. Risenhoover,

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

[FR Doc. 05–20544 Filed 10–7–05; 2:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 197
Thursday, October 13, 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

Agricultural Marketing Service

7 CFR Part 1219

[No. FV–03–702]

Hass Avocado Promotion, Research, and Information Order: Definition of ''Substantial Activity''

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a proposed rule published in the **Federal Register** March 18, 2003, which would have terminated the definition of ''substantial activity'' under the Hass Avocado Promotion, Research, and Information Order (Order). The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Based on comments received and other available information, termination of the definition would not be appropriate at this time.

DATES: This proposed rule is withdrawn as of October 14, 2005.

FOR FURTHER INFORMATION CONTACT: Marlene Betts, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW., Room 2535–S, Washington, DC 20250–0244, telephone (202) 720–9915, fax (202) 205–2800, e-mail: *Marlene.Betts@usda.gov.*

SUPPLEMENTARY INFORMATION: The Hass Avocado Promotion, Research, and Consumer Information Order (Order) is issued under the Hass Avocado Promotion, Research, and Information Act of 2000 (Act) [7 U.S.C. 7801–7813].

In determining who is eligible to serve as an importer member of the Board, the Act provides for a substantial activity test. In order to implement this provision, the Order needed to provide criteria to enable the Department to measure substantial activity. The Department determined that basing a person's eligibility on the person's business activity and which industry function (producing or importing) predominates was a reasonable measure that gave a clear and understandable benchmark (67 FR 7290). In order to serve as an importer member on the Board, an importer is defined as a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States. Section 1219.30(d) of the Order states that a substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados.

This document withdraws the proposed rule published in the **Federal Register** March 18, 2003 [68 FR 12881], which would have terminated the definition of substantial activity under the Order. The proposed action was expected to increase the number of importers eligible to serve on the Hass Avocado Board (Board). Nine comments were received in a timely manner by the comment deadline. Seven commenters were importers of Hass avocados. Two commenters were Hass avocado industry organizations, one being the Hass Avocado Board. Seven of the nine commenters opposed changing the definition in the Order, while two were in support of the proposed rule change.

Opposing commentors raised a number of issues including whether other factors limited the number of nominees in the earlier selection process rather than the definition of substantial activity. The commentors stated that the size and pool of the eligible importers (200) was more than adequate to fill the vacancies on the Board. Concern was expressed as to the relationship of producers and importers on the Board.

The supporting commentors were of the view that the substantial activity requirement unnecessarily limited the potential pool of nominees for service on the Board and denied some of the most significant and most qualified individuals in the avocado industry to serve on the Board.

Since the initial nomination process in 2002, there have been significant changes in the industry. For example, the number of states and the months of the year that the Mexican Hass avocado industry can bring avocados in the United States has changed, which can effect importer eligibility on the Board.

Currently, the Department is in the process of appointing 2 importer members to the Board, this would fill all 4 importer positions on the Board. However, nominations were not forthcoming from the industry for the alternate importer positions.

Further, the Department believes that it would be appropriate to publish an advance notice of rulemaking so that the industry can provide comments and other pertinent information prior to the Department publishing any further rulemaking on this issue. An advance notice of rulemaking will be published in the **Federal Register** separately from this document.

Based on comments received and other available information, termination of the definition would not be appropriate at this time. Therefore, the proposed rule regarding the termination of the definition of substantial activity published in the **Federal Register** March 18, 2003 [68 FR 12881] is hereby withdrawn.

List of Subjects in 7 CFR Part 1219

Administrative practice and procedure, Advertising, Consumer Information, Hass avocados, Hass avocado promotion, Marketing agreements, reporting and recordkeeping requirements.

Authority: 7 U.S.C. 7801–7813.

Dated: October 7, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20530 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 050923247–5247–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign

policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 14, 2005.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include ''FPBEC'' in the subject line of the message. Alternatively, comments may be e-mailed to Sheila Quarterman at *squarter@bis.doc.gov*. Also include ''FPBEC'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http:www.bis.doc.gov/PoliciesAndRegulations/05ForPolControls/index.htm* and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION:

Foreign policy based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items, activities and persons, including: high performance computers (§ 742.12); certain general purpose microprocessors for ''military end-uses'' and ''military end-users'' (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§§ 742.15 and 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 742.20, 746.2, 746.3, and 746.7); certain entities in Russia (§ 744.10); individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14); certain persons designated by Executive Order 13315 (''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members'') (§ 744.18); and certain sanctioned entities (§ 744.20). Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non-Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 2, 2005 (70 FR 45273, August 5, 2005), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2005, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by

examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

Dated: October 6, 2005.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 05–20477 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 51

[OAR–2005–0148; FRL–7982–9]

Advance Notice To Solicit Comments, Data and Information for Determining the Emissions Reductions Achieved in Ozone Nonattainment and Maintenance Areas From the Implementation of Rules Limiting the VOC Content of AIM Coatings; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of the comment period.

SUMMARY: EPA is extending the comment period for an advanced notice of proposed rulemaking (ANPR) published on August 31, 2005 (70 FR 51694). In the August 31, 2005 ANPR, EPA solicited comments, data and information for determining how to calculate the reductions in volatile organic compounds (VOC) emissions achieved in ozone nonattainment and maintenance areas from the implementation of rules which limit the VOC content of architectural coatings (commonly referred to as architectural industrial maintenance, or AIM, coatings). In addition to submitting comments, data and information, interested parties may also request to meet with EPA to present their recommended approaches and rationales. Pursuant to requests of the Ozone Transport Commission and the California Air Resources Board, EPA is extending the comment period through December 16, 2005.

DATES: Comments, data, and information must be submitted on or before December 16, 2005. Requests to meet with EPA should be made on or before November 28, 2005.

ADDRESSES: Submit your written comments, data and information, identified by Docket ID No. OAR–2005–0148, by one of the following methods:

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

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

E-mail: Send electronic mail (e-mail) to EPA Docket Center at *a-and-r-Docket@epa.gov.*

Fax: Send faxes to the EPA Docket Center at (202) 566–1741.

Mail: Air and Radiation Docket, U.S. Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attn: Docket ID No. OAR–2005–0148, *Advance Notice for Information on Determining the Emissions Reductions Achieved from Limiting the VOC Content of Architectural Coating.* Please include a total of two copies.

Hand Delivery or Courier: EPA Docket Center (Air and Radiation Docket), U.S. Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for delivery of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2005–0148. The 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.epa.gov/edocket*, 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 EDOCKET, regulations.gov or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, 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 EDOCKET 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 EDOCKET index at *http://www.epa.gov/edocket.* 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 EDOCKET or in hard copy during normal business hours at the Air and Radiation Docket, (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 Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Marcia L. Spink, Associate Director for Air Programs, Air Protection Division, Mail Code 3AP20, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, telephone (215) 814–2104, or by e-mail at *spink.marcia @epa.gov*. To schedule a meeting with EPA, please contact David Sanders, U.S. EPA, Ozone Policy & Strategies Group, Air Quality Strategies & Standards Division, Mail Code C539–02, Office of Air Quality Planning & Standards, Research Triangle Park, NC 27711, telephone (919) 541–3356, or by e-mail at *sanders.dave@epa.gov*.

Dated: October 5, 2005.

William L. Wehrum,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 05–20520 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[RME Docket No. R08–OAR–2005–UT–0001, FRL–7983–2]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Rules Recodification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of Utah on September 20, 1999 and February 5, 2001. The September 20, 1999 submittal revises the numbering and format of the Utah Administrative Code (UAC) rules within Utah's SIP. The February 5, 2001 submittal restores a paragraph that was inadvertently deleted from Utah's rules when the State submitted their September 20, 1999 SIP submittal that renumbered the UAC rules. The intended effect of this action is to make these provisions federally enforceable. In addition, the approval of Utah's September 20, 1999 SIP revision supersedes and replaces previous SIP revisions submitted by Utah on October 26, 2000, September 7, 1999, two SIP revisions submitted February 6, 1996, and one submitted on January 27, 1995. Some of the provisions of the rules submitted in Utah's SIP revisions will be addressed at a later date by more recent SIP actions that have been submitted which supersede and replace the earlier SIP submittal actions. EPA will be removing Utah's Asbestos Work Practices, Contractor Certification, AHERA Accreditation and AHERA Implementation rule R307–1–8 and Eligibility of Pollution Control Expenditures for Sales Tax Exemption rule R307–1–6 from Utah's federally enforceable SIP because these rules are not generally related to attainment of the National Ambient Air Quality Standards (NAAQS) and are therefore not required to be in Utah's SIP. Finally, EPA will be removing Utah's National Emission Standards for Hazardous Air Pollutants rule R307–1–4.12. Utah has delegation of authority for NESHAPs in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act, therefore we are removing the existing language (R307–1–4.12) that was approved into Utah's current SIP because it is no longer required to be in the SIP. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before November 14, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. R08–OAR–2005–UT–0001, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Agency Website: *http://docket.epa.gov/rmepub/index.jsp.* Regional Materials in EDOCKET (RME), EPA's electronic public docket and comment system for regional actions, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- E-mail: *long.richard@epa.gov* and *faulk.libby@epa.gov.*
- Fax: (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466.
- Hand Delivery: Richard R. Long, Director, Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. R08–OAR–2005–UT–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available at *http://docket.epa.gov/rmepub/index.jsp,* 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 EDOCKET, regulations.gov, or e-mail. The EPA's Regional Materials in EDOCKET and federal regulations.gov website are ''anonymous access'' systems, 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 EDOCKET 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. For additional information about EPA's public docket visit EDOCKET online or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the Regional Materials in EDOCKET index at *http://docket.epa.gov/rmepub/index.jsp.* 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 Regional Materials in EDOCKET or in hard copy at the Air and Radiation Program, Environmental Protection Agency (EPA), Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Libby Faulk, EPA, Region 8, 999 18th Street, Ste. 200 (8P–AR), Denver, CO, 80202–2466, (303) 312–6083, *faulk.libby@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'', or ''our'' are used, we mean the Environmental Protection Agency (EPA).

Table of Contents

I. General Information

Definitions—For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* mean the State of Utah, unless the context indicates otherwise.

A. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI. Do not submit this information to EPA through Regional Materials in EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

I. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

II. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

III. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

IV. Describe any assumptions and provide any technical information and/or data that you used.

V. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

II. What Is the Purpose of This Proposed Action?

In this document we are addressing seven State Implementation Plan (SIP) revisions, submitted by the Governor of Utah dated: February 5, 2001, October 26, 2000, September 20, 1999, September 7, 1999, two SIP revisions submitted February 6, 1996, and one submitted on January 27, 1995. These SIP revisions modify the Utah Administrative Code (UAC) rules within Utah's SIP. Each of these SIP submittals is described in more detail below.

The September 20, 1999 submittal revises the numbering and format of the UAC rules within Utah's SIP. The renumbering and reformatting of the UAC rules within Utah's SIP provides for a more consistent numbering system and a coherent structure allowing provisions to be located more easily within Utah's rules. Some provisions of the rules submitted in Utah's September 20, 1999 SIP revision will be addressed at a later date.

We are not acting on a portion of Utah's September 7, 1999 SIP submittal that deletes rule R307–150–1 (existing rule number R307–1–2.2) and rule R307–150–2 (existing rule number R307–1–3.1.7) because the renumbering of these rules have never been approved into the SIP and have since been superseded and replaced by Utah's February 5, 2001 and October 9, 1998 SIP submittals'. Rule R307–150–1 is restored to its appropriate rule section in Utah's February 5, 2001 SIP submittal which we'll be acting on in this action. The February 5, 2001 submittal contains a non-substantive change to correct a minor change that was submitted in the September 20, 1999 submittal that inadvertently deleted rule R307–102–1(2) from Utah's rules and moved the rule to R307–150–1. Rule renumbering R307–150–2 will not be addressed in this action because it will be addressed at a later date when EPA addresses Utah's October 9, 1998 SIP submittal. Therefore, the existing rule R307–1–3.7 which would have been renumbered to R307–150–2 will remain in Utah's SIP.

We are proposing to not act on Utah's February 6, 1996 SIP submittal that pertains to Utah's rule R307–2 and portions of Utah's February 6, 1996 SIP submittal that pertains to rule R307–1–4. These SIP submittals, and portions thereof, are superseded and replaced by Utah's September 20, 1999 SIP submittal.

We are proposing to act on a portion of Utah's January 27, 1995 SIP submittal that pertains to Utah's rules R307–1–2.3.2. Utah's rule R307–1–2.3.2 adds a reference to Utah's Code to clarify where to find further information regarding Utah's variance rule. We will not be addressing Utah's revisions to rule R307–1–3.1.4 or R307–1–3.2.3. Utah's rule R307–1–3.1.4 will be addressed at a later date when EPA addresses Utah's October 9, 1998 SIP submittal. Therefore, rule R307–1–3.1.4 will remain in the current SIP. Utah's rule R307–1–3.2.3 will be addressed at a later date when EPA addresses Utah's PM10 maintenance plan for Utah and Salt Lake County. Therefore, Utah's rule R307–1–3.2.3 will remain in the current SIP.

Finally, we are acting on removing Utah's asbestos rule R307–1–8 from Utah's federally enforceable SIP because the rule is not generally related to attainment of the NAAQS and is therefore, not appropriate to be in Utah's SIP. We are also proposing to not act on Utah's October 26, 2000 SIP submittal because the SIP pertains to changes being made to Utah's asbestos rule R307–1–8 that we are removing from Utah's SIP in this action. EPA informed UDAQ of our intent to not act on Utah's October 26, 2000 SIP submittal and our intent to remove existing asbestos rule language (R307–

1–8) from Utah's federally approved SIP in a letter to UDAQ, dated April 2, 2002.

By this action, EPA has reviewed the Utah Department of Air Quality's (UDAQ) SIP submittals and found that these SIP submittals only renumber and restructure UDAQ's rules. EPA has not reviewed the substance of these rules as part of this action; EPA approved these state rules into the SIP in previous rulemakings. The EPA is now merely approving the renumbering system submitted by the State. The current version of UDAQ's rules does not contain substantive changes from the prior codification that we approved into the SIP. EPA acknowledges that there are ongoing discussions with Utah to address EPA's concerns with some rule language that EPA previously approved into the Utah SIP. In an April 18, 2002 letter from Richard Sprott, Director of Utah's Division of Air Quality, to Richard Long, Director of the Air and Radiation Program in EPA Region 8, UDAQ committed to work with us to address our concerns with the Utah SIP. Because the SIP submittals only restructure and renumber the existing SIP-approved regulations, contain no substantive changes, and UDAQ has committed to address EPA's concerns, we believe it is appropriate to propose to approve the submittal. Approving the restructured and renumbered Utah rules into the SIP will also facilitate future discussions on the rules. EPA will continue to require the State to correct any rule deficiencies despite EPA's approval of this recodificiation.

The specific changes being proposed in this action are explained in more detail below (see III.A., III.B., and III.C.).

III. Utah Rules EPA Is Proposing To Act On

We reviewed Utah's seven submittals and placed each rule section into a category based on the changes that were made in the rule and/or our action on the rule. The first category (see III.A. below) consists of those rules (and all subsections of the rule) which have been recodified and contain non-substantive changes to the text of the rule. We are proposing to approve the recodified rules and the non-substantive changes. The second category (see III.B. below) consists of rules (and all subsections of the rule) that we are proposing to take no action on or are acting to remove the rule language from Utah's SIP. The rule(s) listed under category two have either never been approved into the SIP or have been approved into the SIP and are not appropriate to be in the federally approved SIP because the rule is not generally related to attainment of the National Ambient Air Quality Standards (NAAQS). The third category (see III.C. below) consists of rules (and all subsections of the rule) that have been superseded and replaced by other Utah SIP submittals that recodifies Utah's rules or consists of rule(s) (and all subsections of the rule) that we will be addressing at a later date.

A. Category 1

We are proposing to approve the following rule changes of the Utah Air Quality Rules because the rules have only been renumbered, contain non-substantive changes to the rule that do not effect the meaning of the rule and/or have been modified to move definitions that have already been approved into the SIP to specific rule sections in which the definitions apply. These renumbered rules and all subsections within these rules supersede and replace the prior numbered rules and subsections in Utah's federally approved SIP. These rule changes were submitted under UDAQ's SIP submittals dated January 27, 1995, September 7, 1999, September 20, 1999, and February 5, 2001. Any SIP revision submitted by the State after February 5, 2001 that is not addressed in this notice and has been approved by EPA will remain effective in the SIP and will not be replaced by this action.

1. Rule R307–101—General Requirements (previously found under R307–1). This section contains UDAQ's Forward and Definitions that apply to Utah's air quality rules. We are approving the renumbering of this rule section and all subsections of this rule with the exception of the definitions for ''actual emissions,'' ''major modification,'' ''Part 70 Source,'' ''significant,'' and ''volatile organic compound.'' (See III.B.1.a. and b. below). R307–101 has only been renumbered and contains no changes to the language of the rule that would affect the meaning of the rule. UDAQ relocated some definitions from rule R307–101 to specific rule sections throughout Utah's rules to better coordinate specific definitions that apply in specific rule sections. The definitions that were relocated to other rule sections contain no changes to the language that would affect the meaning of the rule.

2. Rule R307–102—General Requirements: Broadly Applicable Requirements (previously found under R307–1–2.1, R307–1–2.3, R307–1.2.5, and R307–1–4.8). We are approving the renumbering of this rule section and all subsections of this rule that were submitted in Utah's September 20, 1999 and February 5, 2001 SIP submittals''. In Utah's September 20, 1999 SIP submittal Utah inadvertently moved rule R307–1–2.2 to rule section R307–150–1 (State effective September 15, 1998). When Utah realized their error, Utah submitted a SIP revision, dated September 7, 1999 (State effective March 4, 1999), deleting the rule from R307–150–1 and submitted a new SIP revision, dated February 5, 2001 (State effective August 3, 2000), that relocated the original rule R307–1–2.2 that was inadvertently moved to R307–150–1 to its appropriate location under the new numbering R307–102–1. We are also acting to approve a portion of Utah's January 27, 1995 SIP submittal that pertains to rule R307–1–2.3.1 which in this action is being renumbered to R307–102–4(1) through the approval of Utah's September 20, 1999 SIP submittal. Utah's January 27, 1995 SIP submittal that pertains to rule R307–1–2.3.2 (renumbered under this action as R307–102–4(1)) added a reference to Utah's code 19–2–113 clarifying where to find further information regarding applications for variances. EPA considers this change to be a non-substantive change that does not affect the meaning of the rule and is therefore being approved. EPA is also approving rule R307–102–6 which adds language to clarify that should there be more stringent controls listed within Utah's R307 rules, those requirements must be met. EPA considers this change to be a non-substantive change that does not affect the meaning of the rule, but simply clarifies rules which should be met within the SIP.

3. Rule R307–105—General Requirements: Emergency Controls (previously found under R307–1–5.1 through R307–1–5.4). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–105 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

4. Rule R307–107—General Requirements: Unavoidable Breakdown (previously found under R307–1–4.7 through R307–1–4.7.4). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–107–1 through R307–4 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule. We are also approving the addition of rule R307–107–6 which adds language to clarify that should there be more stringent controls listed within Utah's R307 rules, those requirements must be met. EPA considers this change to be a non-substantive change that does not

affect the meaning of the rule but simply clarifies rules which should be met within the SIP.

5. Rule R307–110—General Requirements: State Implementation Plan (previously found under R307–2). We are approving the renumbering and adoption of the following rules because the rules have only been renumbered and contain no changes to the language of the rule that would effect the meaning of the rule: R307–110–1 through R307–110–9, R307–110–11, R307–110–13 through R307–110–15, R307–110–18, R307–110–20 through R307–110–28, R307–110–30, and R307–110–32. EPA will not be addressing the remainder of rule section R307–110 for reasons discussed under III.C.4. below.

6. Rule R307–115—General Conformity (previously found under R307–19). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–115 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

7. Rule R307–130—General Penalty Policy (previously found under R307–4–1 through R307–4–4). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–130 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

8. Rule R307–165—Emission Testing (previously found under R307–1–3.4.1 through R307–1–3.4.4). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–165 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

9. Rule R307–201—Emission Standards: General Emission Standards (previously found under R307–1–4.1, R307–1–4.9, R307–1–4.13.2, and R307–4.1.2 through R307–4.1.9). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–201 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

10. Rule R307–202—Emission Standards: General Burning (previously found under R307–1–2.4 through R307–1–2.4.5). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–202 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

11. Rule R307–203—Emission Standards: Sulfur Content of Fuels (previously found under R307–1–4.2 and R307–1–4.13.1). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–203 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule. EPA is also approving rule R307–203–3 which adds language to clarify that should there be more stringent controls listed within Utah's R307 rules, those requirements must be met. EPA considers this change to be a non-substantive change that does not affect the meaning of the rule, but simply clarifies rules which should be met within the SIP.

12. Rule R307–206—Emission Standards: Abrasive Blasting (previously found under R307–1–4.10.1, 2 and 3). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–206 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule. EPA is also approving the addition of rule R307–206–1 which includes definitions that are already approved in the existing SIP. EPA is also approving rule R307–206–5 which adds language to clarify that should there be more stringent controls listed within Utah's R307 rules, those requirements must be met. EPA considers these changes to be a non-substantive change that does not affect the meaning of the rule but simply clarifies rules which should be met within the SIP.

13. Rule R307–302—Davis, Salt Lake, Utah Counties: Residential Fireplaces and Stoves (previously found under R307–1–4.13.3). We are approving the renumbering of this rule section and all subsections of this rule with the exception of rule section R307–302–2(4) and R307–302–3 (see III.C.10. below). EPA is also approving the addition of rule R307–302–1 which includes definitions that are already approved in the existing SIP. The remainder of rule R307–302 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

14. Rule R307–305—Davis, Salt Lake and Utah Counties and Ogden City, and Nonattainment Areas for PM10: Particulates (previously found under R307–1–4.1.1, R307–1–3.2.1 through R307–1–3.2.6). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–305 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule. In addition to the approval of renumbering of rule R307–305, EPA is retaining Utah's rule R307–1–3.2.3. Utah submitted a SIP revision, dated January 27, 1995, requesting the deletion of rule R307–1–3.2.3(E) which EPA will be addressing at a later date; therefore, this rule will remain in the current SIP.

15. Rule R307–307—Davis, Salt Lake, and Utah Counties: Road Salting and Sanding (previously found under R307–1–3.2.7.A, B and C). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–307 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

16. Rule R307–325—Davis and Salt Lake counties and Ozone Nonattainment Areas: Ozone Provisions (previously found under R307–1–4.9.8 and R307–14–1.F). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–325 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

17. Rule R307–326—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Control of Hydrocarbon Emissions in Refineries (previously found under R307–1–4.9.3). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–326–1 which includes definitions that are already approved in the existing SIP. Rule R307–326 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

18. Rule R307–327—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Petroleum Liquid Storage (previously found under R307–1–4.9.1). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–327–1(2) which includes definitions that are already approved in the existing SIP. Rule R307–327 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

19. Rule R307–328—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Gasoline Transfer and Storage (previously found under R307–1–4.9.2). We are approving the renumbering of this rule section and all

subsections of this rule. EPA is also approving the addition of rule R307–328–1 which includes definitions that are already approved in the existing SIP. Rule R307–328 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

20. Rule R307–335—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Degreasing and Solvent Cleaning Operations (previously found under R307–1–4.9.4). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–335–1 which includes definitions that are already approved in the existing SIP. Rule R307–335 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

21. Rule R307–340 Davis and Salt Lake Counties and Ozone Nonattainment Areas: Surface Coating Processes (previously found under R307–1–4.9.6). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–340–1 which includes definitions that are already approved in the existing SIP. Rule R307–340 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

22. Rule R307–341—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Cutback Asphalt (previously found under R307–1–4.9.5). EPA is also approving the addition of rule R307–341–1 which includes definitions that are already approved in the existing SIP. We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–341 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

23. Rule R307–342—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Qualification of Contractors, Test Procedures for Testing of Vapor Recovery Systems for Gasoline Delivery Tanks (previously found under R307–3). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–342 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

24. Rule R307–401—Permit: Notice of Intent and Approval Order. In this action we are acting only to approve the recodification of subsections R307–401–9 and R307–401–10(1) (previously found under R307–1–3.1.11 and 12). All subsections of rule R307–401–9 and R307–401–10(1) have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule. For EPA's action on the remainder of the rules located under R307–401 (see III.C.11 below).

25. Rule R307–403 '' Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas (previously found under R307–1–3.3). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–403–1 which includes definitions that are already approved in the existing SIP. Rule R307–403 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

26. Rule R307–405—Permits: Prevention of Significant Deterioration of Air Quality (PSD) (previously found under R307–1–3.6). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–405–1 which includes definitions that are already approved in the existing SIP. Rule R307–405 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

27. Rule R307–406—Visibility (previously found under R307–1–3.10). We are approving the renumbering of this rule section and all subsections of this rule. EPA is also approving the addition of rule R307–406–1 which includes definitions that are already approved in the existing SIP. Rule R307–406 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

28. Rule R307–413—Permits: Exemption and Special Provisions (previously found under R307–7–2 and 3). In this action we are approving the recodification of rule R307–413–7 (previously found under R307–7–2 and 3). Rule R307–413–7 has only been renumbered and contains no changes to the language of the rule that would affect the meaning of the rule. We will not be acting on rule sections R307–413–1 through R307–413–6, R307–413–8 and R307–413–9 for the reasons explained in III.C.12. below.

29. Rule R307–414—Permits: Fees for Approval Orders (previously found under R307–1–3.9). We are approving the renumbering of this rule section and all subsections of this rule. Rule R307–414 and all subsections of the rule have only been renumbered and contain no changes to the language of the rule that would affect the meaning of the rule.

B. Category 2

Category two consists of some of Utah's rules (and includes all subsections of the rule) that we are not acting on approving into the SIP or are acting to remove the rule language from the SIP and a discussion of why we believe we cannot act to approve the rules in the SIP. These rule changes were submitted by UDAQ on January 27, 1995, September 20, 1999, and October 26, 2000.

1. We will not be acting on the following rule definition(s) into Utah's SIP either because the definition(s) is not required to be approved into Utah's SIP or because the definition(s) has been superseded and replaced by more recent SIP submittal actions and will therefore be addressed in those actions:

a. Utah's September 20, 1999 SIP submittal wherein Utah recodified Utah's rules included the definition ''Part 70 Source.'' We will not be approving this definition in this action. This definition has never been approved into Utah's SIP and is not required to be in Utah's SIP.

b. Utah's September 20, 1999 SIP submittal wherein Utah recodified Utah's rules included the definition ''actual emissions,'' ''major modification,'' ''significant'' and ''volatile organic compound.'' The ''actual emissions'' and ''major modification'' definitions have been revised by the State and were approved by EPA August 19, 2004 (69 FR 51368). The ''significant'' and ''volatile organic compound'' definitions have been revised by the State and were approved by EPA on February 21, 2002 (67 FR 7961).

2. R307–121—General Requirements: Eligibility of Expenditures for Purchase of Vehicles that Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment to Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits. This rule section has never been approved into Utah's SIP. We are not taking action to incorporate rule R307–121 that pertains to corporate and individual income tax credit into the SIP because the provisions of R307–122 are not generally related to attainment or maintenance of the NAAQS. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not

approve this rule section into Utah's SIP.

3. R307–122—General Requirements: Eligibility of Expenditures for Purchase and Installation Costs of Fireplaces and Wood Stoves that Use Cleaner Burning Fuels. This rule section has never been approved into Utah's SIP. We are not taking action to incorporate rule R307–122 into the SIP that pertains to tax credit because the provisions of R307–122 are not generally related to attainment or maintenance of the NAAQS. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

4. R307–135—Enforcement Response Policy for Asbestos Hazard Emergency Response Act. We are not taking action to incorporate rule R307–135 (formerly R307–4–5 through R307–4–11 in Utah's State rules) into the SIP because provisions of R307–135 are not generally related to attainment or maintenance of the NAAQS and have never been approved into Utah's SIP. Rule R307–135 provisions implement requirements from the Asbestos Hazard Emergency Response Act (AHERA) of 1986, while SIP rules implement Clean Air Act (CAA) Title I provisions. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

5. R307–214—National Emission Standards for Hazardous Air Pollutants. Rule R307–214 (formerly rule R307–10 in Utah's State rules) is the rule the State uses to implement our national emission standards for hazardous air pollutants (NESHAPs) regulations in 40 CFR part 61. Given that the State has delegation of authority for NESHAPs in 40 CFR part 61 (49 FR 36368), pursuant to 110(k)(6) of the Act, we are not approving the new codification of R307–214 into the SIP and are removing existing language that was approved into Utah's current SIP, rule R307–1–4.12, for the same reason stated above. In a letter to EPA from the UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

6. R307–215—Emission Standards: Acid Rain Requirements. We are not taking action to incorporate rule R307–215 (formerly R307–16–02 in Utah's State rules) into the SIP. The provisions of R307–215 have never been approved into Utah's SIP and are not required to be incorporated into the SIP. Rule R307–215 incorporates by reference Acid Rain NO_X emission limitation requirements (40 CFR Part 76) from Title IV of the CAA, while SIP rules implement CAA Title I provisions. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

7. R307–220—Emission Standards: Plan for Designated Facilities. On October 3, 2002, the State adopted rules for Plans for Designated Facilities. We believe we have no legal basis in the Act for approving Utah's rule for Plans for Designated Facilities, rule R307–220, into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS and have never been approved into Utah's SIP. Therefore, we are not taking action to incorporate R307–220 into Utah's SIP. However, on January 14, 1998 (63 FR 2156), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.11110–11112. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

8. R307–221—Emission Standards: Emission Controls for Existing Municipal Solid Waste Landfills. On September 3, 1999, the State adopted rules for Municipal Solid Waste Landfills. We believe we have no legal basis in the Act for approving Utah's rule for Municipal Solid Waste Landfills, rule R307–221, into the SIP because these rules are not generally related to attainment or maintenance of the NAAQS and have never been approved into Utah's SIP. Therefore, we are not taking action to incorporate R307–221 into the SIP. However, on January 14, 1998 (63 FR 2156), we did approve these rules as meeting section 111(d) of the Act. See 40 CFR 62.11110–11112. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

9. R307–320—Davis, Salt Lake and Utah Counties, and Ogden City: Employer Based Trip Reduction Program. We are not acting to approve rule section R307–320 into the SIP. Rule R307–320 has never been approved into Utah's SIP and is not required to be incorporated into the SIP. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

10. R307–332—Davis and Salt Lake Counties and Ozone Nonattainment Areas: Stage II Vapor Recovery Systems. Rule R307–332 (formerly R307–14–10 in Utah's State rules) had never been approved into the Utah SIP. On April 6, 1994 (59 FR 16262) EPA removed the requirements of this rule for ''moderate'' and ''attainment'' areas, and the rule was preserved among the State air quality rules for the eventuality that Davis and Salt Lake Counties would become a non-attainment area. However, since 1994 more effective methods have emerged to achieve meeting the NAAQS if Davis and Salt Lake County should become a nonattainment area, therefore, we are not taking action to incorporate this rule section into the SIP. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

11. R307–410—Permits: Emissions Impact Analysis. We will not be acting to approve the renumbering of rule section R307–410. Revisions were made to this rule section by Utah and submitted to EPA in a SIP submittal, dated November 20, 1996 and May 12, 1998, and were subsequently withdrawn by Utah in a letter addressed to EPA, Regional Administrator, William Yellowtail, dated October 16, 2000. Because Utah's September 20, 1999 SIP, which reorganizes the States rules, still includes the revisions that were made to R307–410 that were ultimately withdrawn by the State, EPA cannot act to approve this rule section. Therefore, the existing rules R307–1–3.7 will remain current in the SIP.

12. R307–415—Permits: Operating Permit Requirements. We are not taking action to incorporate rule R307–415 (formerly R307–15 in Utah's State rules) into the SIP. Provisions of R307–415 have never been approved into Utah's SIP and are not required to be approved into the SIP. Rule R307–415 provisions implement operating permit program requirements from Title V of the CAA, while SIP rules implement CAA Title I provisions. In a letter to EPA from the UDAQ dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

13. R307–417—Permits: Acid Rain Sources. We are not taking action to incorporate R307–417 (formerly R307–17–1 in Utah's State rules) into the SIP. Provisions of R307–417 have never been approved into Utah's SIP and are not required to be approved into the SIP. Rule R307–417 incorporates by reference Acid Rain permitting (40 CFR part 72) requirements from Title IV of the CAA, while SIP rules implement the CAA Title I provisions. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to not approve this rule section into Utah's SIP.

14. R307–1–6 (revised number R307–120)—General Requirements: Tax Exemption for Air and Water Pollution Control Equipment. We are removing from Utah's SIP rule R307–1–6 and all subsections of this rule. EPA is also not

acting on approving the new recodified number for R307–1–6 which is R307–120. This rule language pertains to State Sales Tax Exemptions for Pollution Control Expenditures and is not generally related to attainment of the NAAQS and is, therefore, not appropriate to be in Utah's SIP. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to remove rule R307–1–6 from Utah's SIP and to not approve rule R307–120.

15. R307–1–8 (revised number R307–801)—Asbestos. We are removing from Utah's SIP rule R307–1–8 and all subsections of this rule. EPA is also not acting on approving the new recodified number for R307–1–8 which is R307–801. Finally, we are not acting on Utah's October 26, 2000 SIP submittal because the SIP pertains to changes being made to Utah's asbestos rule R307–1–8 that we are removing from Utah's SIP in this action. This rule language pertains to the regulation of asbestos and is generally not related to attainment of the NAAQS; therefore, it is not appropriate to be in Utah's SIP. EPA informed UDAQ of our intent to not act on Utah's October 26, 2000 SIP submittal and our intent to remove existing asbestos rule language (R307–1–8) from Utah's federally approved SIP in a letter to UDAQ, dated April 2, 2002. In a letter to EPA from UDAQ, dated April 7, 2005, UDAQ agreed with EPA's action to remove rule R307–1–8 from Utah's SIP and to not approve rule R307–801.

C. Category 3

Category three consists of rule(s) (and all subsections of the rule) that we will be addressing at a later date through other SIP submittal revisions that Utah has or intends to submit that supersede and replace the existing rules. These rule changes were submitted by UDAQ on January 27, 1995, February 6, 1996, and September 20, 1999.

1. Utah's February 6, 1996 SIP submittal titled ''Expansion of R307–2'' that recodified and expanded Utah's R307–2. We will not be acting on this SIP submittal because the September 20, 1999 SIP submittal that we are acting on in this notice supersedes and replaces the February 6, 1996 SIP submittal and relocates rules that would have been found under R307–2 to new rule section R307–110.

2. Portions of Utah's February 6, 1996 SIP submittal that recodifies Utah's Emission Standards rule(s) that pertain to subsections: R307–1–4.9 and R307–1–4.12. We will not be acting on these specific rules within this SIP submittal because the September 20, 1999 SIP submittal that we are acting on in this notice supersedes and replaces this revision and relocates rule R307–1–4.9 to rule section R307–325 and rule R307–1–4.12 to rule section R307–203.

3. Utah's February 6, 1996 SIP submittal that recodifies Utah's Emission Standards rule R307–1–4 that pertains to changes made in subsection R307–1–4.6. We will not be acting on subsection R307–1–4.6 of this SIP submittal because this subsection has been superseded and replaced in Utah's SIP submittal dated September 7, 1999 and February 11, 2003 and was approved by EPA on May 15, 2003 (68 FR 26210). Rule R307–1–4.6 is now located under rule section R307–170.

4. Rule R307–110—General Requirements: State Implementation Plan. We are not proposing to act on R307–110–10, R307–110–17, R307–110–19, R307–110–33, and R307–110–35 because these rules were superseded by more recent SIP submittal that have already been approved into Utah's federally approved SIP (see 65 FR 37286, 67 FR 57744, and 67 FR 62891). We are also not addressing rule R307–110–12, R307–110–31, R307–110–34, and R307–110–35 because this rule section will be addressed when EPA addresses Utah's April 1, 2004 and November 29, 2004 SIP submittals. Therefore, the existing rule R307–2–12 that would have been renumbered to R307–110–12 will remain in the SIP. We are also not acting to approve R307–110–16 because Utah repealed this rule from the federally approved SIP in their June 17, 1998 SIP submittal that EPA approved on May 20, 2002 (67 FR 35442). We are not addressing rule R307–110–29 because this rule was revised in Utah's February 6, 1996 SIP submittal which EPA will be addressing at a later date. Therefore, the existing rule R307–2–18 that would have been renumbered to R307–110–29 will remain in the SIP.

5. Utah's September 20, 1999 SIP submittal that recodifies Utah's Continuous Emission Monitoring Systems rule R307–170. We will not be acting on this rule section of the September 20, 1999 SIP submittal because this rule section was already approved by EPA on May 15, 2003 (68 FR 26210).

6. Utah's January 27, 1995 SIP submittal pertaining to rule R307–1–3.1.4 which deletes a reference to unspecify other state, local and federal requirements. We will not be addressing this specific rule revision because the revision has been superseded and replaced by Utah's October 9, 1998 SIP submittal which will be addressed at a later date. Therefore, current rule section R307–1–3.1.4 will remain in the existing SIP.

7. Utah's February 6, 1996 SIP submittal that recodifies Utah's Emission Standards rule R307–1–4 that pertains to changes made in subsection R307–1–4.5. We will not be addressing this rule section of this SIP submittal. This rule section will be addressed at a later date when the UDAQ submits revisions to UDAQ's September 20, 1999 SIP submittal that pertains to Utah's fugitive emissions and fugitive dust rules. Therefore, current rule section R307–1–4.5 will remain in the existing SIP.

8. Utah's September 20, 1999 SIP submittal that recodifies Utah's rules includes rules R307–150 titled ''Periodic Inventories'' and rule R307–155 titled ''Emission Inventories''. Utah's rule section R307–150 has been superseded and replaced by Utah's February 5, 2001 SIP which we are specifically acting on approving in this action for rule section R307–150–1 (see III.A.2. above) and Utah's rule section R307–150–2 and R307–155 will be addressed at a later date when EPA takes action on Utah's October 9, 1998 SIP submittal. Therefore, current rule R307–1–3.1.7 which would have been renumbered to R307–150–2 and current rule R307–1–3.5 which would have been renumbered to R307–155 will remain in the existing SIP.

9. Rule R307–301—Utah and Weber Counties: Oxygenated Gasoline Program (previously found under R307–8). We will not be acting on this rule section in this action. This rule section will be addressed when EPA addresses Utah's April 1, 2004 SIP submittal in which UDAQ requested that EPA remove this rule language from Utah's current SIP.

10. Utah's September 20, 1999 SIP submittal that recodifies Utah's rules includes rules R307–302–2(4) and R307–302–3 which we will not be acting on in this action. Rule section R307–302–2(4) has never been approved into the SIP and is not required to be in the federally enforceable SIP. In a letter to UDAQ from EPA, dated October 6, 2000, EPA informed UDAQ that if a PM10 nonattainment area attained the standard with at least 3 years of clean air quality data, and as long as that area continues to attain the standard, the section 172(c)(9) contingency measure requirement will not apply. Rule section R307–302–3 will be addressed when EPA addresses Utah's April 1, 2004 SIP submittal.

11. R307–401—Permit: Notice of Intent and Approval Order. We will not be addressing the renumbering of rules R307–401–1 through R307–401–8 and R307–401–11 in this action. These rule

sections have been superseded and replaced by Utah's October 9, 1998 SIP submittal which EPA will be addressing at a later date. Therefore, current rule sections R307–1–3.1.1, R307–1–3.1.2, R307–1–3.1.3, R307–1–3.1.4, R307–1–3.1.5, R307–1–3.1.6, R307–1–3.1.8, R307–1–3.1.9, and R307–1–3.1.10 which would have been renumbered to rule section R307–401 will remain in the existing SIP. We will also not be acting to approve R307–401–10(2). Rule section R307–401–10(2) has never been approved into the SIP and is not required to be in the federally enforceable SIP.

12. R307–413—Permits: Exemption and Special Provisions. We will not be addressing the renumbering of rules R307–413–1 through R307–413–6. These rule sections will be addressed when EPA addresses Utah's October 9, 1998 SIP submittal. We will also not be addressing rules R307–413–8 and R308–413–9 because these rule sections will be addressed when EPA addresses Utah's January 8, 1999 SIP submittal. Therefore, the definitions that would have been relocated to rule section R307–413 will remain in the current rule section R307–1–1 and current rule section R307–1–3.1.7 and rule section R307–6–1 that would have been renumbered to rule section R307–413 will remain in the existing SIP.

IV. Statutory and Executive Order Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4).

This proposed 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 proposes to approve 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 proposed 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 proposed 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.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon Monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: September 30, 2005.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 05–20518 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R03–OAR–2005–MD–0012; FRL–7982–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Ambient Air Quality Standard for Ozone and Fine Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Maryland Department of the Environment. The revision consists of modifications to the ambient air quality standards for ozone and fine particulate matter and the replacement of the abbreviation ''ppm'' with parts per million in existing standards. This action is being taken under the Clean Air Act (CAA or the Act).

DATES: Written comments must be received on or before November 14, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R03–OAR–2005–MD–0012 by one of the following methods:

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

Agency Web site: http://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.

E-mail: Campbell.dave@epa.gov.

Mail: R03–OAR–2005–MD–0012, David Campbell, Chief, Air Quality Planning and Analysis Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

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. R03–OAR–2005–MD–0012.

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://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://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, Suite 705, Baltimore, Maryland, 21230.

FOR FURTHER INFORMATION CONTACT: Linda Miller, (215) 814–2068, or by e-mail at *miller.linda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2005, the State of Maryland submitted a formal revision to its SIP. The SIP revision consists of an amendment which includes the revised ambient air quality standards for ozone and particulate matter. EPA promulgated the new, more stringent, national ambient quality standards (NAAQS) for ozone and fine particulate matter on July 18, 1997, 62 FR 38894 and 62 FR 38711, respectively.

In 1997, EPA adopted an 8-hour ozone NAAQS with a level of 0.08 parts per million (ppm) to provide greater protection to public health than the previous standard 0.12 ppm averaged over a 1-hour block of time. At the same time, EPA established a new standard for fine particulate matter (PM2.5) that applies to particles 2.5 microns in diameter or less.

II. Summary of SIP Revision

Maryland's revision incorporates the 1997 Federal 8-hour ozone and PM2.5 standards into Title 26, Subtitle 11, Chapter 4 of the Code of Maryland Adminstrative Regulations (COMAR). The new ozone standard incorporated in this SIP revision is the average of the fourth-highest daily maximum 8-hour average ozone concentration that is less than or equal to 0.08 ppm, averaged over three consecutive years. In addition, the SIP revision adds a new PM2.5 ambient air quality standard. The standards for PM2.5 incorporated in this SIP revision are 65 micrograms per cubic meter based on a 24-hour concentration and 15.0 micrograms per cubic meter annual arithmetic mean concentration. Compliance with the new 8-hour standard and fine particulate matter standards are determined in a manner identical to the NAAQS as defined at 40 CFR part 50. It should be noted that Maryland has not made any revisions to the existing standards for ozone (1-hour standard) or particulate matter (PM10).

The revision also includes a clarification of the unit of measure for ambient air quality standards for sulfur oxides and nitrogen dioxide. The abbreviation ''ppm'' has been replaced by the written form ''parts per million''.

III. Proposed Action

EPA is proposing to approve the Maryland SIP revision for addition of new 8-hour ozone ambient air quality standards and fine particulate matter ambient air quality standards and clarification of unit of measure, which was submitted on March 15, 2005. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 Fed. Reg. 28355 (May 22, 2001)). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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), because it merely proposes to approve a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed 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. 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. This proposed rule to approve addition of ozone and fine particulate standards does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 5, 2005.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 05–20514 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[R01–OAR–2005–CT–0003; A–1–FRL–7979–9]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Redesignation of City of New Haven PM_{10} Nonattainment Area To Attainment and Approval of the Limited Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes a Limited Maintenance Plan (LMP) for the New Haven PM_{10} nonattainment area (New Haven NAA) in the State of Connecticut and grants a request by the State to redesignate the New Haven NAA to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is approving this redesignation and LMP because Connecticut has met the applicable requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before November 14, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2005–CT–0003 by one of the following methods:

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

2. *Agency Web site: http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: conroy.dave@epa.gov*

4. *Fax:* (617) 918–0661

5. *Mail:* ''RME ID Number R01–OAR–2005–CT–0003,'' David Conroy, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. *Hand Delivery or Courier.* Deliver your comments to: David Conroy, Air Programs Branch Chief, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Alison C. Simcox, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1684, fax number (617) 918–0684, e-mail *simcox.alison@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving Connecticut's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates 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 rule, 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. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: September 26, 2005.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 05–20417 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 69

[OAR–2004–0229; FRL–7982–6]

RIN 2060–AJ72

Control of Air Pollution From Motor Vehicles and Nonroad Diesel Engines: Alternative Low-Sulfur Diesel Fuel Transition Program for Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an implementation date of June 1, 2010 for the sulfur, cetane and aromatics requirements for highway, nonroad, locomotive and marine diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska. As of the implementation date, diesel fuel used in these applications would

have to meet a 15 ppm (maximum) sulfur content standard. This action would allow full implementation of the programs for highway and nonroad diesel fuels in Alaska while providing some limited additional leadtime for development of any necessary changes to the fuel distribution system in rural Alaska. This additional leadtime is appropriate given the circumstances of the rural areas, including the expected delay in time before use of new diesel engines requiring sulfur controlled diesel fuel. In 2010 highway and nonroad fuel in rural Alaska would be regulated according to the implementation schedule of fuel property standards applicable in the rest of the U.S., providing the full environmental benefits of these programs to rural Alaska as well. Locomotive and marine diesel fuel used in rural areas of Alaska would meet the 15ppm standard two years earlier than the rest of the U.S., so that all NRLM diesel fuel in rural areas of Alaska would meet the 15ppm standard in 2010. EPA is not proposing changes to or reopening the diesel fuel rules as they apply to the other areas of Alaska. We have not received any information that would warrant such action, and the State has not requested such action. This proposal is consistent with the State's request and comments on the NRLM rule.

DATES: Comments must be received on or before January 11, 2006. However, since we do not plan to hold a public hearing on this proposed rule, any requests for a public hearing must be received on or before November 14, 2005. Requests for a public hearing must be made to the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2004–0229, by one of the following methods:

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

B. Agency Website: *http://www.epa.gov/edocket.* EDOCKET, 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: *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2004–0229, Fax: 202–566–0805.

D. Mail: Attention Docket ID No. OAR–2004–0229, Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E. Hand Delivery: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR–2004–0229. Such deliveries are only accepted during the Docket's normal hours of operation from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2004–0229. 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.epa.gov/edocket,* 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are ''anonymous access'' systems, 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 EDOCKET 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. For additional information about EPA's public docket visit EDOCKET on-line or *see* the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* 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 EDOCKET or in hard copy at the HQ EPA Docket Center, Air Docket, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: David Korotney, Assessment and Standards Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4507; fax number: (734) 214–4051; e-mail address: *korotney.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

You will be regulated by this action if you produce, import, distribute, or sell diesel fuel for use in the rural areas of Alaska. The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR part 80. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Examples of potentially regulated entities	NAICS codes [a]	SIC codes [b]
Petroleum Refiners	32411	2911
Petroleum Bulk Stations, Terminals,	42271	5171
Petroleum and Products Wholesalers	42272	5172
Diesel Fuel Trucking	48422	4212
	48423	4213
Diesel Service Stations	44711	5541
	44719	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is

claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

How Can I Get Copies of This Document and Other Related Information?

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2004–0229. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air 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) 566–1742, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official 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 appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose 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 EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

Outline of This Preamble

I. Background

A. How Was Alaska Treated in the Highway Diesel Rule?

The nationwide implementation dates (including all of Alaska) for highway diesel fuel at 40 CFR 80.500 *et seq.* (66 FR 5002, January 18, 2001) are shown in Table I.A–1.

TABLE IA–1.—FEDERAL IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD

Date	Applicable parties
June 1, 2006	Refiners and importers.
July 15, 2006	Downstream facilities except retailers and wholesale- purchaser consumers.
September 1, 2006	Retailers and wholesale-purchaser consumers.

These implementation dates begin the transition of the nation to ultra-low sulfur (15 ppm sulfur, maximum) highway diesel fuel from the current low sulfur (500 ppm sulfur, maximum) diesel fuel.[1] Until 2010, at least 80 percent of each refiner's production (or imports) must meet the 15 ppm sulfur standard, with the remaining 20 percent or less meeting the 500 ppm sulfur standard-that is, the 80/20 Temporary Compliance Option. Exceptions are made for EPA-approved small refiners, which may produce all their highway fuel to the 500 ppm sulfur standard until later years, and refiners and importers that obtain early use credits, which would allow them to produce or import more than 20 percent of their diesel fuel to the 500 ppm sulfur standard until 2010. However, because of the sensitivity of the 2007 and later model year highway engines and emission control systems to fuel with high sulfur content, those engines may not be fueled with diesel fuel having a sulfur content of greater than 15 ppm. This requires that all 500 ppm sulfur highway diesel fuel (*i.e.*, from the 80/20 Temporary Compliance Option, credit-trading, or by EPA-approved small refiners) be segregated from the 15 ppm sulfur highway diesel fuel and labeled for use, and dispensed, only in 2006 and earlier highway vehicles and engines.

Since the beginning of the 500 ppm highway diesel fuel program in 1993, we have granted Alaska exemptions from both the 500 ppm highway diesel fuel sulfur standard and the nonhighway dye provisions of 40 CFR 80.29 because of its unique geographical, meteorological, air quality, and economic factors.[2] We granted temporary exemptions for areas of the State served by the Federal Aid Highway System (the urban areas), and a permanent exemption for the remaining areas (the rural areas).

On December 12, 1995, Alaska submitted a petition for a permanent exemption for all areas of the State served by the Federal Aid Highway System, that is, those areas previously covered only by a temporary exemption. While considering that petition, we started work on a nationwide rule to consider more stringent highway diesel fuel requirements for sulfur content. In our subsequent highway diesel final rule (66 FR 5002, January 18, 2001) the highway engine emission standards were applied fully in Alaska, and the permanent exemption for rural Alaska from the 500 ppm sulfur standard of 40 CFR 80.29 terminates upon the implementation date of the new 15 ppm sulfur standard in 2006. However, based on factors unique to Alaska, we provided the State with: (1) an extension of the temporary exemption from the 500 ppm sulfur standard in the urban areas until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. In that rule, our goal was to establish a mechanism whereby modifications could be made, as appropriate, for transitioning Alaska to the ultra-low sulfur (15 ppm sulfur maximum) highway diesel fuel program in a manner that minimizes costs while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need.

B. How Was Alaska Treated in the NRLM Diesel Rule?

The nationwide implementation date for nonroad, locomotive, and marine (NRLM) diesel fuel at 40 CFR 80.500 *et seq.* (69 FR 38958, June 29, 2004) is June 1, 2007 for refiners and importers. This implementation date begins the first step of a two-step program of transitioning the nation to 15 ppm sulfur NRLM diesel fuel from uncontrolled non-highway diesel fuel. In this first step beginning in 2007, all NRLM diesel fuel produced or imported must meet the 500 ppm sulfur standard and applicable cetane or aromatic standard. Facilities downstream of the refiners and importers must meet the 500ppm standard on other dates depending on their location and type of facility, as shown below:

TABLE I.B–1.—FEDERAL IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 500 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2007	June 1, 2007	Refiners and importers.

[1] Alaska was granted an exemption from the 500 ppm standard until June 1, 2006.

[2] Under Section 211(i)(4) of the Clean Air Act, the States of Alaska and Hawaii may be exempted from the 500 ppm sulfur content standard (and cetane, automatics and dye requirements) of Section 211(i). Copies of information regarding Alaska's petition for exemption under Section 211(i)(4), subsequent requests by Alaska, public comments received, and actions by EPA are available in public docket A–96–26.

TABLE I.B–1.—FEDERAL IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 500 PPM STANDARD—Continued

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
August 1, 2007	August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2007	October 1, 2010	Retailers and wholesale- purchaser consumers.
December 1, 2007	December 1, 2010	All facilities including farm tanks and construction facility tanks.

For most of the U.S. until June 1, 2010, NRLM diesel fuel with uncontrolled sulfur content (and uncontrolled aromatics content and cetane index) can be produced by EPA-approved small refiners/importers and refiners/importers using early use credits. Until 2010 there is no restriction in the use of this NRLM diesel fuel having uncontrolled sulfur levels in NRLM engines. However, under the regulations applying to the nation as a whole, other diesel fuel with uncontrolled sulfur levels (*i.e.*, all fuel meeting the definition of heating oil) must be segregated from the NRLM diesel fuel, dyed with a yellow marker and red dye, and is prohibited from being used in NRLM engines and equipment.

The NRLM rule requires that heating oil be segregated and marked with a yellow marker and red dye to distinguish it from small refiner or credit-using high sulfur NRLM diesel fuel (40 CFR 80.510). However, the NRLM rule determined that a dye requirement would impose a significant challenge to Alaska's unique distribution system. That State's distribution system cannot easily handle another fuel type that must be segregated, and the same transfer and storage facilities must accommodate jet fuel that must not be contaminated by dye. Therefore the rule exempted Alaska from the dye and marker requirements, but in exchange precluded the use of credits and constrained the flexibility granted to small refiners.[3]

Step two of the nationwide NRLM diesel fuel program implements the 15 ppm sulfur standard for nonroad diesel fuel beginning on June 1, 2010 for refiners and importers. Locomotive and marine diesel fuel produced or imported continues to be subject to the 500 ppm sulfur standard until June 1, 2012. The downstream implementation dates for this second step are shown in Tables I.B–2 and I.B–3.

TABLE I.B–2.—FEDERAL IMPLEMENTATION DATES FOR NR DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2010	June 1, 2010	Refiners and importers.
August 1, 2010	August 1, 2014	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	October 1, 2014	Retailers and wholesale-purchaser consumers.
December 1, 2010	December 1, 2014	All facilities including farm tanks and construction facility tanks.

TABLE I.B–3.—FEDERAL IMPLEMENTATION DATES FOR LM DIESEL FUEL 15 PPM STANDARD

Implementation date for urban Alaska and Northeast/Mid-Atlantic	Implementation date for all other areas	Applicable parties
June 1, 2012	June 1, 2012	Refiners and importers.
August 1, 2012	n/a	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2012	n/a	Retailers and wholesale- purchaser consumers.
December 1, 2012	n/a	All facilities including farm tanks and construction facility tanks.

EPA-approved small refiners/importers and refiners/importers using early use credits may produce or import nonroad diesel fuel that meets the 500 ppm sulfur standard until June 1, 2014. However, the early-use credit provisions do not apply to Alaska. In addition, because of the sensitivity to fuel sulfur content of the 2011 and later model year nonroad engines and emission control systems that will be certified to the Tier 4 emission standards, those engines are prohibited from being fueled with diesel fuel having a sulfur content greater than 15 ppm.

Alaska submitted its suggested modification to the Agency for highway diesel fuel in rural Alaska on June 12, 2003, after publication of our NRLM proposal but before we had completed development of the final NRLM rule. This Alaska submission covered only highway diesel used in rural areas. Urban areas of Alaska were addressed in a previous submission[4] for highway fuel and in Alaska's comments on the NRLM proposed rule, and in both cases the State of Alaska requested that urban areas adhere to the federal fuel sulfur standards and implementation schedule. The provisions for NRLM diesel fuel in urban Alaska were finalized in the NRLM final rule, and they require that NRLM in urban areas meet the same requirements as the contiguous 48 states.

The NRLM final rule stated that our original proposal to permanently exempt all NRLM diesel fuel in rural Alaska from the sulfur content standards was inconsistent with the

[3] For the small refiner flexibilities to be used in Alaska a refiner must first obtain approval from the Administrator for a compliance plan (40 CFR 80.554(a)(4)).

[4] Letter from Michele Brown, Commissioner, Alaska Department of Environmental Conservation, to Jeffrey R. Holmstead, Assistant Administrator of the EPA's Office of Air and Radiation, April 1, 2002.

action requested by the state. Under normal circumstances this would have meant that the NRLM final rule would have included imposition of the sulfur content standards on all NRLM diesel fuel in rural Alaska, along with all the associated labeling, recordkeeping, and reporting requirements. However, we deferred this action until now to coordinate the NRLM and highway sulfur standards. Thus, the NRLM final rule indicated that we would issue a supplemental proposal (*i.e.*, today's proposal) to address the comments submitted by the State for NRLM diesel fuel in the rural areas, as well as the State's suggestion of an alternative implementation plan for highway diesel fuel in the rural areas. However, the NRLM final rule did require that 2011 model year and later nonroad engines in rural areas, which will be manufactured to operate on 15 ppm sulfur diesel fuel, must be fueled with 15 ppm diesel fuel (40 CFR 69.51(f)).

C. Alaska's Highway Submission and Comments to NRLM Proposal

On June 12, 2003, Alaska submitted its suggested modifications to implementation of the highway diesel fuel sulfur standards in Alaska. In its plan, the State indicated that the rural areas do not need the 15 ppm sulfur diesel fuel in the early stage of the highway diesel program. (The rural areas are those areas not served by the Federal Aid Highway System—which includes the marine highway system—as defined by the State of Alaska.) The rural areas could use more time to plan the switch to 15 ppm sulfur diesel fuel, and would be less impacted if we implemented a one-step transition to 15 ppm sulfur rather than a two-step transition which would have required a minimum of 80% of each refinery's highway diesel to meet the 15 ppm standard in 2006, with the remainder meeting the 500 ppm standard. The State requested that the rural areas be exempt from the nationwide program from 2006 to 2010, and join the nationwide program in 2010 when all highway diesel fuel must meet the 15 ppm standard. Thus, the rural areas would switch from uncontrolled to 15 ppm sulfur for all highway diesel fuel in 2010 along with the rest of the nation. However, since all 2007 and later model year highway diesel vehicles will need 15 ppm sulfur diesel fuel, fuel meeting this standard would have to be made available in rural communities that obtain one or more 2007 or later model year highway vehicle prior to 2010. This approach would provide rural Alaska more time to transition to the low sulfur fuel program in a manner that minimizes costs while still ensuring that the 2007 and later model year highway vehicles receive the low sulfur diesel fuel they need.

On September 15, 2003, Alaska submitted its comments to the May 23, 2003 NRLM proposal. In those comments, Alaska asked us to bring the NRLM diesel fuel requirements for Alaska in line with the State's recommendations for highway diesel fuel, as described above. The State indicated the importance of avoiding segregation of rural Alaska's fuel stream. Since the State previously requested June 2010 to be the deadline for conversion of highway diesel fuel in the rural areas, it requested June 2010 to also be the deadline for conversion of all NRLM diesel fuel in the rural areas. This request included an acceleration of the 15 ppm standard applicable to locomotive and marine diesel fuel produced in or imported to rural Alaska from the June 2012 date in the final NRLM rule to June 2010.

Although it is outside the scope of today's proposal, Alaska also commented that in the NRLM final rule we should capture marine engines, locomotive engines, and more engine sizes under the 15 ppm sulfur standard, and that we should allow the State to continue to use dye-free diesel fuel. Alaska also requested our financial and technical assistance to perform a health study of diesel exhaust exposure in rural Alaska because of concern about exposure to diesel exhaust from village electric power generators.[5]

II. What Is EPA Proposing?

A. Highway Diesel Fuel

We are proposing today to delay the implementation dates for the requirements of 40 CFR 80.500 *et seq.* for highway diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska. We are proposing that the rural areas of Alaska would join the rest of Alaska and the nation in implementing the 15 ppm sulfur content standard for highway diesel fuel upon the implementation dates of the nationwide program in 2010.[6] The proposed implementation dates for our highway diesel fuel requirements in the rural areas of Alaska are shown in table II.A–1.

TABLE II.A–1.—PROPOSED IMPLEMENTATION DATES FOR HIGHWAY DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale-purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

The dates shown in Table II.A–1 are slightly different than the downstream dates that mark the end of the Temporary Compliance Option applicable to the nation as a whole. We are proposing the above dates for highway diesel fuel because they would be more consistent with the downstream implementation dates associated with NRLM, as described in Section II.B below.

Prior to the dates shown in Table II.A–1, rural areas of Alaska would continue to be exempt from the sulfur standards. However, because of the sensitivity of the 2007 and later model year highway engines and emission control systems to fuel sulfur content, we would still require that diesel fuel used in those vehicles and engines meet the 15 ppm sulfur content standard. This is the same refueling requirement that applies in the 2006–2010 timeframe

[5] In the June 29, 2004 NRLM final rule, we applied the 15 ppm sulfur content standard to locomotive and marine diesel fuel, but not until June 1, 2012, and we exempted Alaska from the dye and marker requirements.

[6] Canada also requires 15 ppm sulfur highway diesel fuel beginning June 1, 2006, and in October 2004 proposed that its NRLM diesel fuel meet a 500 ppm limit beginning June 1, 2007, its nonroad diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2010, and that its locomotive and marine diesel fuel meet the 15 ppm sulfur limit beginning June 1, 2012. If finalized as proposed, the sulfur requirements for highway and NRLM diesel fuel in Canada would be harmonized with those of the U.S., and today's proposal would have rural Alaska catch up to the requirements in both the U.S. and Canada on June 1, 2010.

for urban areas of Alaska and in all areas of the rest of the nation.

To fully implement this transition program for rural Alaska, we are proposing to extend the current exemption from the 500 ppm sulfur standard of 40 CFR 80.29 until the proposed implementation dates in 2010. In the absence of this proposed extension, highway diesel fuel in the rural areas of Alaska would be required to meet the 500 ppm sulfur standard of 40 CFR 80.29 beginning in 2006, when the current exemption expires, regardless of the proposed exclusion under 40 CFR 80.500 *et al.* Under today's proposal, highway diesel fuel in rural Alaska could remain at uncontrolled sulfur levels until the proposed implementation dates in 2010.

We are not proposing changes to the implementation schedule of the highway diesel fuel requirements as they apply to the urban areas of Alaska, and are not reopening the provisions of the highway requirements previously adopted for urban areas. We have not received any information that would warrant such reopening, and the State did not request such a change and indicated the urban areas should be subject to the national implementation schedule for highway diesel fuel. We agree with the State's reasoning that urban areas of Alaska may not only have a large number of 2007+ model year highway vehicles in the 2006–2010 timeframe, but also that urban areas have the means for distributing, storing, and segregating highway diesel fuel meeting with 15 ppm sulfur standard.

B. Nonroad, Locomotive and Marine Diesel Fuel

In the nonroad, locomotive and marine (NRLM) diesel final rule, we covered urban Alaska along with the rest of the nation, but held off on finalizing any provisions for rural Alaska so they could be aligned with the provisions for the highway diesel program in rural Alaska. We are proposing today that NRLM diesel fuel produced or imported for, distributed to, or used in the rural areas of Alaska be subject to the requirements of 40 CFR 80.500 *et seq.*, but not until 2010. Thus, during the first step of the nationwide program from June 1, 2007 until June 1, 2010, NRLM diesel fuel in rural Alaska could remain at uncontrolled sulfur levels. Beginning June 1, 2010, nonroad diesel fuel in rural Alaska would join the rest of Alaska and the nation in implementing the nonroad diesel fuel requirements of 40 CFR 80.500 *et seq.* However, due to the unique circumstances in rural Alaska which limit the number of grades of diesel fuel that can be stored and distributed, we propose that the 15 ppm standard applicable to locomotive and marine fuel (LM) be moved forward to 2010 to be consistent with the implementation schedule for nonroad (NR) diesel fuel. In this way, there will only be a single grade of NRLM diesel fuel in rural areas in 2010 and 2011 instead of the two separate grades (*i.e.* 15 ppm and 500 ppm) that will exist elsewhere in the U.S. The proposed initial implementation dates for NRLM diesel fuel sulfur standards are shown in Table II.B–1. We request comment on the delay of the NR requirements until 2010, and also the acceleration of the LM 15 ppm sulfur standard to 2010 instead of 2012.

TABLE II.B–1.—PROPOSED IMPLEMENTATION DATES FOR NRLM DIESEL FUEL 15 PPM STANDARD IN RURAL ALASKA

Date	Applicable parties
June 1, 2010	Refiners and importers.
August 1, 2010	Downstream facilities except retailers and wholesale- purchaser consumers.
October 1, 2010	Retailers and wholesale-purchaser consumers.
December 1, 2010	All facilities including farm tanks and construction facility tanks.

Since the urban areas of Alaska would follow the nationwide schedule for sulfur standards, some LM fuel meeting only the 500 ppm standard would be available in these areas in the 2010–2012 timeframe when nonroad engines requiring 15 ppm fuel will be available. Due to the potential for misfueling, 2011+ nonroad engines are prohibited from using LM fuel meeting only the 500 ppm sulfur standard. Also, heating oil will remain uncontrolled for sulfur content in all areas of Alaska, and would not be permitted to be used in any 2007 or later model year highway vehicles or engines, or in any 2011 model year nonroad engines or equipment. Finally, in order to coordinate with engine and fuel requirements being proposed for stationary internal combustion engines, 2011+ stationary engines will also be prohibited from using fuel above the 15 ppm sulfur standard. All diesel fuel used in engines covered by the stationary internal combustion engine standards will also be subject to the requirements of 40 CFR 80.500 *et seq.* following the implementation schedule applicable to NRLM fuel.

We are not proposing changes to the implementation schedule of the NRLM diesel fuel requirements as they apply to the urban areas of Alaska, and are not reopening the provisions of the NRLM requirements previously adopted for urban areas. We have not received any information that would warrant such reopening, and the State did not request such a change and indicated the urban areas should be subject to the national diesel fuel implementation schedule. We agree with the State that urban areas have the means for distributing, storing, and segregating NRLM diesel fuel meeting the 500 ppm standard in 2006 and the 15 ppm standard in 2010.

C. Summary of Proposed Sulfur Standards for Alaska

Table II.C–1 shows all of the existing federal and proposed Alaskan sulfur standards for highway and NRLM diesel fuel. Note that Alaska must still ensure that 2007 and later highway engines and 2011 and later nonroad engines are only fueled with fuel meeting the 15 ppm standard.

TABLE II.C–1.—SUMMARY OF EXISTING FEDERAL AND PROPOSED ALASKAN SULFUR STANDARDS FOR DIESEL PRODUCTION AND IMPORTS (PARTS PER MILLION)

Area	Fuel	Before 2006	2006	2007–2009	2010–2011	2012+
Federal	HW ..	500	15‡	15‡	15	15
Urban Alaska	HW ..	none	15‡	15‡	15	15

TABLE II.C–1.—SUMMARY OF EXISTING FEDERAL AND PROPOSED ALASKAN SULFUR STANDARDS FOR DIESEL PRODUCTION AND IMPORTS (PARTS PER MILLION)—Continued

Area	Fuel	Before 2006	2006	2007–2009	2010–2011	2012+
Rural Alaska	HW ..	none	none	none	15†	15
Federal	NR ..	none	none	500†	15†	15
Urban Alaska	NR ..	none	none	500†	15†	15
Rural Alaska	NR ..	none	none	none	15†	15
Federal	LM ...	none	none	500†	500	15†
Urban Alaska	LM ...	none	none	500†	500	15†
Rural Alaska	LM ...	none	none	none	15†	15

† Refinery gate standard begins on June 1 of the first applicable year
‡ Temporary Compliance Option in effect: Up to 20% of a refinery's production may exceed the 15 ppm standard so long as it meets the 500ppm standard, is segregated from 15ppm, and is not used in MY2007+ engines.

III. Why Are We Proposing a June 1, 2010 Effective Date for Rural Areas of Alaska?

Rural Alaska represents a rather unique situation. The majority of distillate fuel used in rural Alaska is for stationary sources such as power generation and home heating. The State estimates that highway vehicles consume only about one percent of the distillate fuel in the rural areas. ''Heating oil'' consumes approximately 95 percent (about 50 percent for heating and 45 percent for electricity generation) and marine engines consume the remaining four percent. There is no significant consumption of other nonroad or locomotive diesel fuel in rural Alaska. Thus, in rural Alaska, only a very small proportion of the distillate fuel used is currently regulated for sulfur content (and aromatics content and/or cetane index).[7] A single grade of fuel is generally distributed to rural Alaska. In order to ensure the fuel can be used in the arctic conditions, the fuel is usually Jet A (which has a pour point of −50 degrees) that has been downgraded. If the nationwide requirements were followed, either multiple grades of arctic grade fuel would need to be transported and stored, or a single grade of fuel meeting the 15 ppm standard would need to be used. For multiple fuel grades, the limited transportation and storage capabilities in rural Alaska would force communities to build additional infrastructure to handle the additional grades. For a single grade meeting the 15 ppm standard, these small communities would be forced to pay a premium for fuel that is only required for a very small number of engines in the 2006–2010 timeframe. Both approaches represent significant economic hardship for the many rural communities consisting primarily of subsistence economies.

Our goal is to allow Alaska to transition to the low sulfur fuel programs in a manner that minimizes costs while still ensuring that the small number of model year 2007 and later highway vehicles and engines, and the small number of model year 2011 and later nonroad engines and equipment certified to the Tier 4 nonroad standards beginning with the 2011 model year, receive the 15 ppm sulfur diesel fuel they need. By coordinating the transition of both highway and NRLM fuels to 15 ppm in 2010, rural communities can make individual decisions about retaining only one grade of diesel fuel (*e.g.,* ultra low) or build additional storage tanks to handle two grades of fuel that retains space heating and power generation production with high sulfur diesel fuel. In addition, requiring rural areas to provide 15 ppm diesel fuel for all NRLM applications beginning in 2010, rather than exempting them permanently,[8] helps those rural areas to avoid the temptation for misfueling that may arise as the number of 2011+ engines increases and rural communities are faced with the choice of either building additional tankage or storing only 15 ppm fuel.

A. Highway Diesel Fuel

Under the highway diesel rule, at least 80 percent of a refinery's highway diesel fuel production (except for that produced by small refiners approved by EPA under 40 CFR 80.550–553), must meet the ultra-low sulfur content standard (15 ppm sulfur, maximum) by 2006 (see Table I.A–1). The remaining highway diesel fuel must meet the low sulfur content standard (500 ppm sulfur, maximum) and may not be used in 2007 and later model year highway diesel vehicles. These nationwide standards and deadlines apply to Alaska, including the rural areas. Since the current fuel supply in rural Alaska is primarily high sulfur, these nationwide requirements for highway fuel would cause the highway fuel supply in rural Alaska to switch to the 15 ppm sulfur diesel fuel, and possibly some to the 500 ppm sulfur diesel fuel, in 2006.

As previously discussed, Alaska has been exempt from the sulfur and dye provisions of 40 CFR 80.29 since the beginning of the 500 ppm highway diesel fuel program in 1993 because of its unique geographical, meteorological, air quality, and economic factors. The rural areas have been permanently exempt, and the urban areas have been temporarily exempt. When we finalized the 15 ppm sulfur content standard for highway diesel fuel, we recognized the factors unique to Alaska and provided the State with: (1) An extension of the temporary exemption for the urban areas from the 500 ppm sulfur standard until the implementation date of the new 15 ppm sulfur standard for highway diesel fuel in 2006, (2) an opportunity to request an alternative implementation plan for the 15 ppm sulfur diesel fuel program, and (3) a permanent exemption from the diesel fuel dye provisions. As stated in that rule and in today's proposal, our goal is to allow Alaska to transition to the 15 ppm sulfur standard for highway diesel fuel in a manner that minimizes costs while still ensuring that model year 2007 and later highway vehicles and engines receive the 15 ppm sulfur diesel fuel they need. In its subsequent request for an alternative implementation plan for the rural areas, the State indicated that the rural areas will have few if any model year 2007 and later highway vehicles in the early stage of the highway diesel program, and thus will need little if any 15 ppm sulfur diesel fuel in this timeframe. The State also indicated that rural areas could use

[7] Personal communication from Ron King, Alaska Department of Environmental Conservation. July 2, 2002.

[8] The permanent exemption under the existing regulations would still require all 2011+ nonroad engines to be fueled with 15 ppm fuel.

more time to plan the switch to 15 ppm sulfur diesel fuel, and would be less impacted if we implemented a one-step transition to 15 ppm sulfur rather than a two-step transition.

There are about 600 highway diesel vehicles in the rural areas of Alaska, and their average age is about 18 years. Many replacement vehicles are typically pre-owned, and only about five to 15 new diesel vehicles are brought into the rural areas each year.[9] Thus, most of the approximately 250 rural area villages may not obtain their first 2007 or later model year diesel highway vehicle for some time.

According to the State, the fuel storage and barge infrastructure in rural Alaska is currently designed for one grade of diesel fuel. Jet fuel is distributed, downgraded (and sometimes mixed with #1 diesel), sold, and used as #1 diesel because it meets arctic specifications. This fuel is primarily high sulfur. The efficiency and cost effectiveness of this system discourages the introduction of a small volume of a specialty fuel, such as low or ultra-low sulfur highway diesel fuel. However, the rural hub communities with jet service still have to import jet fuel untainted by dye for aviation purposes. The fuel storage tanks in the rural communities are owned and maintained by the communities, thus, any requirement for new tankage or additional tank maintenance will fall directly on the rural communities, which have a subsistence economy.

We agree with the State that a 2010 implementation date in rural Alaska is justified. We expect only a very small demand for the 15 ppm sulfur fuel in rural Alaska between 2006 and 2010 because of the very small number of 2007 and later highway diesel vehicles expected to enter the rural Alaska market during those years. Requiring the rural areas to comply with the nationwide requirements for 15 ppm fuel [10] during the first step of the highway program (2006–2010) would cause significant burden on rural Alaska's distribution system and communities without corresponding environmental benefits. We also agree that 2010 is an appropriate time to implement a sulfur content requirement for highway diesel fuel in the rural areas. The number of 2007 and later highway vehicles, and thus the benefits of the 15 ppm sulfur diesel fuel will be increasing. Extending the lead time for sulfur-controlled diesel fuel by an additional four years (from 2006 to 2010) should be adequate for the distributors and rural communities to make decisions on the most economical way to transition to sulfur-controlled highway diesel fuel, and to make any necessary capital improvements. Finally, 2010 marks the points at which both the Temporary Compliance Provision for highway diesel fuel ends and the requirement for 15ppm nonroad diesel fuel begins. Distribution of diesel fuel to meet demand will thus be made more efficient if the same sulfur standards apply everywhere. As a result 2010 represents an ideal year in which to transition rural Alaska to 15 ppm fuel in a single step.

We are not proposing to require 500 ppm sulfur highway diesel fuel between June 1, 2006 and June 1, 2010 as a transition to 15 ppm sulfur highway diesel fuel. Such an interim step would create the same burden to Alaska's distribution system and rural communities as requiring 15 ppm sulfur highway diesel fuel on June 1, 2006. As discussed in more detail below, the primary burden of requiring low sulfur highway diesel fuel in rural Alaska is not the source of the low-sulfur diesel fuel, or whether it meets the 500 or 15 ppm sulfur standard, but the distribution and storage tank constraints associated with an additional fuel type and the associated economic burden of increased fuel costs imposed on communities having subsistence economies. If we imposed a 500 ppm sulfur content standard on June 1, 2006 as a transition to 15 ppm sulfur highway diesel fuel, rural Alaska would not get the relief intended by today's proposal.

As discussed in the January 18, 2001 **Federal Register** notice, any revisions to the final rule for highway diesel fuel in Alaska would, at a minimum, have to: (1) Ensure an adequate supply (either through production or imports) of 15 ppm fuel to meet the demand of any 2007 or later model year vehicles, (2) ensure sufficient retail availability of low sulfur fuel for new vehicles in Alaska, (3) address the growth of supply and availability over time as more new vehicles enter the fleet, (4) include measures to ensure segregation of the 15 ppm fuel and avoid contamination and misfueling, and (5) ensure enforceability. We believe that the provisions proposed in this notice meet these criteria, as discussed below.

1. Ensure an Adequate Supply (Either Through Production or Imports) of 15 ppm Sulfur Diesel Fuel To Meet the Demand of Any 2007 or Later Model Year Vehicles

Alaska has nearly 9,000 highway diesel vehicles. The fuel provided to those vehicles in the areas served by the Federal Aid Highway System—approximately 8,400 vehicles—must meet the requirements of the highway rule, regardless of today's proposal. At least 80 percent of that fuel produced or imported, except that which is produced or imported by a small refiner having EPA approval under 40 CFR 80.550–553, must meet the 15 ppm sulfur standard beginning June 1, 2006. The remainder of that fuel must meet the 500 ppm sulfur standard.

Consumption of highway diesel fuel in the rural areas is about seven percent of highway diesel fuel consumption in Alaska (assuming the same average vehicle consumption throughout the state). Consumption of highway diesel fuel by the five to 15 new vehicles per year from 2007 through 2010 (for a total of 20 to 60 model year 2007 and later vehicles by the end of 2010) will be much smaller—less than one percent of the highway diesel fuel consumption in Alaska. Thus, production or imports of 15 ppm sulfur diesel fuel for the model year 2007 and later highway vehicles in the rural areas until June 1, 2010 under today's proposal should not be a challenge, and is less than what would be required under the current regulations.

The significant challenge in the rural areas is the distribution and storage infrastructure, which is currently designed to handle only one type of distillate fuel. The highway diesel rule would require changes to the distribution and storage infrastructure to handle the additional fuel type, or a shift to 15 ppm sulfur diesel fuel for all purposes, to occur by July 15, 2006. However, under today's proposal, changes to the distribution and storage infrastructure, or a shift to 15 ppm sulfur diesel fuel for all purposes, would not be required to occur in the rural areas until October 1, 2010. Thus, this proposal would grant the rural area fuel distributors and villages four additional years to make the necessary changes, but they would still have to supply the required 15 ppm sulfur fuel to all 2007 and later model year highway vehicles and engines.

Supplying 15 ppm sulfur diesel fuel for 2007 and later model year diesel vehicles until October 1, 2010 can be accomplished several ways. A village not having any 2007 or later model year

[9] Diesel vehicle registration data (12,000 pound and greater, unladed weight) as of October 1998 provided by the State of Alaska.

[10] The first step of the nationwide highway program would require only 80% of each refinery's production to meet the 15 ppm standard; the rest must meet a 500 ppm standard.

diesel vehicles or engines would not have a need for the new fuel and/or infrastructure changes until October 1, 2010. When a village obtains one or more 2007 or later model year highway vehicles or engines, 15 ppm sulfur fuel could be shipped in 55 gallon drums, or the fuel infrastructure can be changed to handle a second diesel fuel type, or the village could shift to 15 ppm sulfur fuel for all purposes.

The first option—using 55 gallon drums—would likely have additional transportation costs for shipping the new fuel for the 2007 and later model year diesel vehicles, but the volume would be very low (only 20 to 60 of those vehicles by the end of 2010 distributed among the approximate 250 villages in rural Alaska). Thus, the overall incremental cost of diesel fuel in rural Alaska would be negligible on average.

The second option (changing the fuel infrastructure to handle the additional fuel type) probably has the most cost impact because the distributors would need to split their barge deliveries into multiple fuel types, and the villages would need to have multiple storage, handling, and delivery systems. All of these distribution modifications will cost money. The need to have multiple fuel types will likely impact the consumer by increasing the cost for all fuel, not just the 15 ppm diesel.

The third option (switching all diesel uses to 15 ppm sulfur) would avoid any incremental transportation, storage and delivery systems costs, but may incur the higher cost of the 15 ppm sulfur fuel for all purposes in the villages. This probable higher fuel cost would be imposed on heating and electricity generation, which accounts for all but about five percent of the distillate consumption in the villages.

Under today's proposal, it is possible that all of the above options, or a combination of these options, might be found prior to December 1, 2010 among the villages that need the fuel. In any case, we believe an adequate supply of 15 ppm sulfur diesel fuel for all 2007 and later model year vehicles and engines in the rural areas should present no significant challenge in this time period.

2. Ensure Sufficient Retail Availability of Low Sulfur Fuel for New Vehicles in Alaska

Sufficient retail availability [11] is not an issue if adequate supply is provided to rural Alaska. Fuel deliveries to rural Alaska are made to village tank farms (typically one tank farm per village). Some villages have no separate consumer tanks and pumps. In such cases the villagers withdraw the fuel directly from the tank farm. In villages having one or more optional refueling locations, those pumps are filled directly from the village tank farm. Presumably, any fuel deliveries in 55 gallon drums would be delivered either to the village tank farm or directly to the vehicle owners.

3. Address the Growth of Supply and Availability Over Time as More New Vehicles Enter the Fleet

Under today's proposal, all diesel fuel for 2007 and later model year highway diesel vehicles and engines in the rural areas must meet the 15 ppm sulfur standard, as it is required nationwide. As previously discussed, the demand from 2007 and later model year diesel vehicles in the rural areas is expected to be very low—between 20 and 60 vehicles from late 2006 to December 1, 2010, the proposed implementation date by which all highway diesel fuel in the rural area retail facilities would have to meet the 15 ppm sulfur content standard. Whether the small volume of fuel that would be needed for these vehicles prior to December 1, 2010 is distributed and stored in 55 gallon drums, in segregated tanks, or in village tanks from which diesel fuel for all purposes is withdrawn, incremental increases to that small volume for a few additional new vehicles should present no significant challenge.

4. Include Measures To Ensure Segregation of the 15 ppm Fuel and Avoid Contamination and Misfueling

All segregation and contamination avoidance measures that apply nationwide to highway diesel fuel, except for the dye requirements, would be applicable under today's proposal to any diesel fuel used in the rural areas between 2006 and December 1, 2010 in 2007 and later model year highway vehicles and engines. We believe that Alaska can meet these requirements and no additional measures beyond these will be needed. Beyond 2010, all diesel fuel meeting the 15 ppm standard must be segregated from all other diesel fuel.

5. Ensure Enforceability

All quality assurance measures (including testing and sampling) and enforcement provisions that apply nationwide to highway diesel fuel, except for the dye requirements, would be applicable under today's proposal to any diesel fuel used in the rural areas between 2006 and December 1, 2010 in 2007 and later model year highway vehicles and engines. We do not believe that any additional measures beyond these will be needed.

B. NRLM Diesel Fuel

As discussed above, today's proposal would require 15 ppm sulfur highway diesel fuel in retail facilities in the rural areas by December 1, 2010. In its comments on the NRLM proposal, the State also asked that we apply the nationwide NRLM fuel requirements to the rural areas beginning in 2010 (except for the dye and marker requirements). This approach allows for the coordination of the highway and NRLM diesel fuel requirements in the rural areas. Given the significant distribution limitations in rural areas, this is a critical need.

With one exception, today's proposal would apply the nationwide NRLM standards and implementation deadlines to diesel fuel produced or imported for, distributed to, or used in rural Alaska beginning June 1, 2010. The one exception is that locomotive and marine diesel fuel would be required to meet the 15 ppm sulfur standard in 2010 instead of 2012.

We believe that imposing the 15 ppm standard on all NRLM diesel fuel in rural Alaska, rather than allowing the current exemption to continue indefinitely, is both warranted and feasible. First, all NRLM fuel in urban areas, and all highway diesel fuel, will meet the 15 ppm standard by 2010. Given the limited ability of the distribution system for handling multiple grades, much if not all of the NRLM diesel fuel that would end up in the rural areas may meet the 15 ppm standard even under the existing regulations. Second, because 2011+ nonroad engines will represent an increasing fraction of the nonroad fleet beginning in 2010, under the existing indefinite exemption rural communities will be faced with the decision about when their NRLM fuel should be switched entirely to 15 ppm. There may be a temptation to misfuel 2011+ engines in order to avoid having to make this switch. If misfueling occurs, the environmental benefits of the 2011+ nonroad engines may be lost. Finally, there are logistical and economic benefits for coordinating the implementation of highway and NRLM 15 ppm sulfur standards in urban and rural areas of Alaska and with the rest of the nation. We believe that these benefits exceed the costs in rural Alaska.

The NRLM final rule exempts all areas in Alaska from the red dye and yellow marker requirements, and the

[11] For the purpose of this discussion concerning rural Alaska, we assume that retail availability means availability to the end user (*e.g.* diesel vehicle or engine owner/operator).

related segregation requirements that would otherwise apply for fuels meeting the same sulfur, aromatics and/or cetane standards. Thus, in rural Alaska prior to June 1, 2010, uncontrolled highway and non-highway diesel fuels could continue to be commingled. Beginning June 1, 2010, the highway and NRLM diesel fuels could continue to be allowed to be commingled if they both met the 15 ppm sulfur standard and applicable aromatics and/or cetane standards, thus eliminating the need for segregation. The market would determine on a case-by-case basis whether to supply segregated or commingled distillate fuel for highway, NR, LM, and heating oil applications.

IV. What Is the Emissions Impact of Today's Proposal?

The flexibility offered by today's proposal would not increase diesel emissions over current levels, but would likely result in a delay of some sulfate emission reduction benefits in the rural areas of Alaska until low sulfur diesel fuel becomes available to consumers in those areas starting in 2010. The sulfate emissions of pre-2007 model year highway vehicles and engines and of all marine engines in rural Alaska would remain at current levels for as long as high sulfur diesel fuel is used, but not later than December 1, 2010.

The State of Alaska previously indicated that there are approximately 600 diesel highway vehicles distributed throughout the approximate 250 villages and communities. This averages to less than three diesel vehicles per village, although the actual numbers may vary considerably between the smallest and largest villages. We believe that the sulfate emission reductions from the small number of pre-2007 model year diesel highway vehicles that would be delayed until December 1, 2010 by today's proposal would be very small. The villages would receive the full emission reduction benefits from the 2007 and later model year diesel highway vehicles, because they would be fueled with 15 ppm sulfur diesel fuel, but their numbers will be very small.

We do not know the number of NRLM equipment and engines in rural Alaska. However, we do know that the consumption of distillate fuel in the rural areas by marine engines is about four percent, and is negligible for other nonroad and locomotive engines (if any). Thus, the sulfate emission benefits from NRLM sources are almost entirely from marine engines and would be delayed as long as high sulfur diesel fuel is used, but no later than December 1, 2010. At that time, given the distribution limitations in rural Alaska, ULSD may also be used much more broadly in locomotive, marine, heating, and power generation services. If this were the case, there would be significantly greater sulfate PM benefits than strictly required.

As in previous actions to grant Alaska exemptions from the current 500 ppm sulfur standard, we would not base any vehicle or engine recall on emissions exceedences caused by the use of high sulfur fuel (greater than 500 ppm sulfur for pre-2007 model year vehicles and engines; greater than 15 ppm sulfur for 2007 and later vehicles and engines) in rural Alaska during the period prior to the proposed implementation dates of this notice. Our in-use testing goals are to establish whether representative engines, when properly maintained and used, will meet emission standards for their useful lives. These goals are consistent with the requirements for recall outlined in Section 207(c)(1) of the CAA. Further, manufacturers may have a reasonable basis for denying emission related warranties where damage or failures are caused by the use of high sulfur fuel in rural Alaska.

The Engine Manufacturers Association commented in previous actions to grant Alaska sulfur exemptions that the level of protection provided to engine manufacturers falls short of what they believe is reasonable and necessary. It asserted that the use of high sulfur diesel fuel by an engine should raise a ''rebuttable presumption'' that the fuel has caused the engine failure, and that EPA should have the burden of rebutting that presumption. It also asserted that the emissions warranty is a regulatory requirement under Section 207, that only EPA has the authority to exclude claims based on the use of high sulfur diesel fuel.

We understand and concur with the manufacturers' concerns about in-use testing of engines operated in an area exempt from fuel sulfur requirements, or in the case of today's proposal, engines operated in an area with an implementation date later than that of the rest of the country. Consequently, we affirm that, for recall purposes, we would not seek to conduct or cause the in-use testing of engines we know have been exposed to high sulfur fuels in rural Alaska. We would likely screen any engines used in our testing program to see if they have been operated in rural Alaska. We believe we can readily obtain sufficient samples of engines without testing engines operated in rural Alaska. In reviewing the warranty concerns of the Engine Manufacturers Association associated with previous actions to grant sulfur exemptions, we have determined that our position regarding warranties, as previously stated and described above, is consistent with section 207(a) and (b) of the CAA and does not require any new or amended regulatory language to implement.

V. Public Participation

We request comment on all aspects of this proposal. This section describes how you can participate in this process.

A. How and to Whom Do I Submit Comments?

We are opening a formal comment period by publishing this document. We will accept comments for the period indicated under DATES above. If you have an interest in the program described in this document, we encourage you to comment on any aspect of this rulemaking. We request comment on various topics throughout this proposal. Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. If you disagree with parts of the proposed program, we encourage you to suggest and analyze alternate approaches to meeting the air quality goals described in this proposal. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES**) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Please follow the instructions in Section I.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

B. Will There Be a Public Hearing?

We do not plan to hold a public hearing on this proposed rule. If you would like to request a public hearing, you must make that request to the person identified in the **FOR FURTHER INFORMATION CONTACT** section no later than 30 days after publication. If a request for public hearing is made by this date, we will publish the date and location in a separate **Federal Register** notice.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

It has been determined that this rule does not meet any of the criteria above, and thus is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The Paperwork Reduction Act stipulates that every federal agency must obtain approval from the Office of Management and Budget (OMB) before collecting the same or similar information from 10 or more members of the public. If the Environmental Protection Agency decides to gather information, the appropriate program office must prepare an Information Collection Request (ICR) and submit it to OMB for approval. An ICR describes the information to be collected, gives the reason the information is needed, and estimates the time and cost for the public to answer the request.

OMB has previously approved the ICRs contained in the existing regulations at 40 CFR 80.500 *et seq.* and has assigned OMB control number 2060–0308 and EPA ICR numbers 1718.03 (dyeing of tax exempt diesel fuel), 1718.04 (motor vehicle diesel fuel), and 1718.05 (NRLM diesel fuel). A copy of the OMB approved ICRs may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Today's proposed rule would not establish any new requirements for highway diesel fuel sold in Alaska, but instead would only delay the requirements for 15ppm fuel from 2006 to 2010 in rural areas of Alaska. Since the burden of reporting would be exactly the same in rural Alaska after 2010 under today's proposed rule as it is under the requirements of the final rule for highway diesel sulfur, the previously approved ICR for highway diesel fuel still applies to rural Alaska. Thus no new ICR or amended ICR is required for highway fuel.

The requirements for NRLM diesel fuel in rural Alaska as proposed in today's action are new, in that the NRLM final rule did not finalize the sulfur standards for rural Alaska (although it did impose the requirement that all 2011 and later engines in rural Alaska must use diesel fuel meeting the 15ppm sulfur standard). However, these new requirements for NRLM diesel fuel in rural Alaska do not require a new or amended ICR. The approved ICR for the nonroad final rule (ICR number 1718.05; OMB Control Number 2060–0308) already covers all U.S. states, including rural Alaska. For instance, this ICR made additions to the existing fuels regulations applicable to diesel fuel, where ''diesel fuel'' was explicitly defined as fuel sold in any state or territory of the U.S. In addition, the product transfer documents required in the nonroad final rule explicitly included those used to identify fuel for use in Alaska. Finally, the calculation of total information collection costs associated with the nonroad final rule represented maximum costs and included all areas of Alaska. As a result the existing ICR generated for the nonroad final rule remains applicable under the actions being proposed in today's action.

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.

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.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that meets the definitions based on the Small Business Administration's (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Today's proposed rule applies a delayed implementation date for ultra-low sulfur highway diesel fuel in rural Alaska compared to the existing regulations and extends this same deadline to NRLM diesel fuel in rural Alaska to bring those areas in line with the national standards. Since this proposed rule would delay the 15 ppm highway sulfur standard in rural areas, the regulatory burden is effectively relieved in this respect. As a result this

proposed rule would not have an adverse economic impact on small entities in rural areas which distribute, store, or using highway diesel fuel.

Regarding NRLM diesel fuel, the requirements in today's action are new in that rural areas of Alaska were not covered by the 15 ppm sulfur standard in the NRLM final rule. As stated in that rule, it was our intention to add the 15 ppm requirement to rural Alaska at the time of the NRLM final rule, but we deferred that action so that it could be coordinated with our actions on highway diesel fuel in rural Alaska.

Even though the NRLM sulfur standards proposed in this rule are new, they do not impose a significant economic impact on a substantial number of small entities. Within the approximately 250 rural area villages in Alaska, their unique circumstances limit the number of grades of diesel fuel that can be stored and distributed. The efficiency and cost effectiveness of the rural distribution and storage system discourages the introduction of a small volume of a specialty fuel, such that these communities must generally choose between using a single fuel for all diesel applications, or purchasing extra storage and distribution equipment. The latter approach is generally more expensive and would only be pursued if the dual storage and distribution system would be needed long term. However, the number of 2011+ model year nonroad and marine engines in these rural communities will increase after 2010, requiring a greater and greater proportion of the fuel to meet the 15 ppm standard. Thus in the long term, dual segregated storage and distribution capacity would become superfluous. In addition, since the highway fuel used in rural areas will already be required to meet the 15 ppm sulfur standard by 2010, many rural communities would simply switch entirely to diesel fuel meeting the 15 ppm standard for all their diesel applications at this time to avoid the need to install additional segregated storage and distribution capacity. This proposal's requirement that all NRLM diesel fuel used in rural areas meet the 15 ppm standard starting in 2010 is therefore unlikely to create an additional economic burden for most rural areas.

Therefore, after considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 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, EPA 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, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposal contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It would impose no enforceable duty on any State, local or tribal governments or the private sector, and does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Rather, this proposal relieves burden by applying a delayed implementation date for ultra-low sulfur highway, nonroad, locomotive and marine diesel fuel in rural Alaska compared to the existing regulations and the rest of the country. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA 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 the Executive Order 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.''

This proposed rule does not have federalism implications. It will 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. This proposed rule simply applies a delayed implementation date for low sulfur highway diesel fuel in the rural areas of Alaska, and provides for inclusion of rural Alaska in the nationwide nonroad, locomotive and marine (NRLM) diesel fuel program but with a delayed implementation date. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of the State of Alaska, who spent much time getting feedback from the rural communities about our highway and proposed NRLM diesel fuel requirements. In fact, this proposed rule is the direct result of, and is consistent with, State submittals to EPA of an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska, and comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by

tribal officials in the development of regulatory policies that have tribal implications.''

This proposed rule does not have tribal implications as specified in Executive Order 13175. The regulations that this proposed rule amends will be implemented at the Federal level and impose compliance costs only on diesel fuel producers, importers, distributors, retailers and consumers of diesel fuel. This proposed rule relates to the standards and deadlines that apply specifically to the rural areas of Alaska, and tribal governments in the rural areas of Alaska will be affected only to the extent they purchase and use diesel fuel.

Nevertheless, tribal officials were consulted by State representatives early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. State representatives spent much time getting feedback from the rural communities, including tribal representatives, about our highway and proposed NRLM diesel fuel requirements. That feedback was considered in the State's submittals to EPA of an alternative implementation plan for low sulfur highway diesel fuel in rural Alaska, and comments to the proposed NRLM diesel rule as it relates to rural Alaska, as mentioned previously in this preamble. EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 F.R. 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This proposed action would affect only highway diesel fuel sold in rural areas of Alaska which have unique meteorological conditions and sparse populations that make environmental health and safety risks extremely small.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assessed results of early life exposure to the sulfur-based emissions (primarily SO^2) that are proposed for regulation in today's action.

H. Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule 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 under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

VII. Statutory Provisions and Legal Authority

Statutory authority for the proposal is found in sections 211(c) and 211(i) of the CAA, which allow EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment which is in general use or has been in general use. 42 U.S.C. 7545 (c) and (i). Additional support for the procedural and enforcement-related aspects of fuel controls, including record keeping requirements, comes from sections 114(a) and 301(a) of the CAA. 42 U.S.C. 7414(a) and 7601(a).

List of Subjects in 40 CFR Part 69

Environmental protection, Air pollution control.

Dated: October 4, 2005.

Stephen L. Johnson,

Administrator.

For the reasons set forth in the preamble, we propose to amend part 69 of title 40 of the Code of Federal Regulations as follows:

PART 69—SPECIAL EXEMPTIONS FROM THE REQUIREMENTS OF THE CLEAN AIR ACT

1. The authority citation for part 69 continues to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

2. Section 69.51 is revised to read as follows:

§ 69.51 Motor vehicle diesel fuel.

(a) *Definitions.* (1) *Areas accessible by the Federal Aid Highway System* are the geographical areas of Alaska designated by the State of Alaska as being accessible by the Federal Aid Highway System.

(2) *Areas not accessible by the Federal Aid Highway System* are all other geographical areas of Alaska.

(b) Diesel fuel that is designated for use only in Alaska and is used only in Alaska, is exempt from the sulfur standard of 40 CFR 80.29(a)(1) and the dye provisions of 40 CFR 80.29(a)(3) and 80.29(b) until the implementation dates of 40 CFR 80.500, provided that:

(1) The fuel is segregated from nonexempt diesel fuel from the point of such designation; and

(2) On each occasion that any person transfers custody or title to the fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating:

''This diesel fuel is for use only in Alaska. It is exempt from the federal low sulfur standards applicable to highway diesel fuel and red dye requirements applicable to non-highway diesel fuel only if it is used in Alaska.''

(c) Beginning on the implementation dates under 40 CFR 80.500, motor vehicle diesel fuel that is designated for use in areas of Alaska accessible by the Federal Aid Highway System, or is used in areas of Alaska accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel.

(d) From the implementation dates of 40 CFR 80.500 until the implementation dates specified in paragraph (e) of this section, motor vehicle diesel fuel that is

designated for use in areas of Alaska not accessible by the Federal Aid Highway System, and is used in areas of Alaska not accessible by the Federal Aid Highway System, is exempt from the sulfur standard of 40 CFR 80.29(a)(1), the dye provisions of 40 CFR 80.29(a)(3) and 40 CFR 80.29(b), and the motor vehicle diesel fuel standards under 40 CFR 80.520 and associated requirements, provided that:

(1) The exempt fuel is not used in 2007 and later model year highway vehicles and engines,

(2) The exempt fuel is segregated from nonexempt highway diesel fuel from the point of such designation; and

(3) On each occasion that any person transfers custody or title to the exempt fuel, except when it is dispensed at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide to the transferee a product transfer document stating:

''This fuel is for use only in those areas of Alaska not accessible by the FAHS''.

(4) The exempt fuel must meet the labeling requirements under § 80.570, except the following language shall be substituted for the language on the labels:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines. Its use may damage these vehicles and engines.''

(e) Beginning on the following implementation dates, motor vehicle diesel fuel that is designated for use in areas of Alaska not accessible by the Federal Aid Highway System, or is used in areas of Alaska not accessible by the Federal Aid Highway System, is subject to the applicable provisions of 40 CFR part 80, subpart I, except as provided under 40 CFR 69.52(c), (d), and (e) for commingled motor vehicle and non-motor vehicle diesel fuel:

(1) June 1, 2010 for diesel fuel produced or imported by any refiner or importer,

(2) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(3) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(4) December 1, 2010 at all locations.

3. Section 69.52 is amended as follows:

a. By adding paragraph (a)(4).

b. By revising paragraphs (c)(1) and (c)(2).

c. By revising paragraphs (f) and (g).

d. By adding paragraph (h).

§ 69.52 Non-motor vehicle diesel fuel.

(a) * * *

(4) Heating oil has the meaning given in 40 CFR 80.2.

* * * * *

(c) * * *

(1) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the red dye requirements, and the presumptions associated with the red dye requirements, under 40 CFR 80.520(b)(2) and 80.510(d)(5), (e)(5), and (f)(5).

(2) NRLM diesel fuel and heating oil referred to in paragraphs (b) and (g) of this section are exempt from the marker solvent yellow 124 requirements, and the presumptions associated with the marker solvent yellow 124 requirements, under 40 CFR 80.510(d) through (f).

* * * * *

(f) Non-motor vehicle diesel fuel and heating oil that is intended for use and used only in areas of Alaska not accessible by the Federal Aid Highway System, are excluded from the applicable provisions of 40 CFR Part 80, Subpart I and 40 CFR Part 60, Subpart IIII until the implementation dates specified in paragraph (g) of this section, except that:

(1) All model year 2011 and later nonroad and stationary diesel engines and equipment must be fueled only with diesel fuel that meets the specifications for NR fuel in 40 CFR 80.510(b) or (c);

(2) The following language shall be added to any product transfer document: ''This fuel is for use only in those areas of Alaska not accessible by the FAHS;'' and

(3) Pump labels for such fuel that does not meet the specifications of 40 CFR 80.510(b) or 80.510(c) shall contain the following language:

''HIGH SULFUR DIESEL FUEL (may be greater than 15 Sulfur ppm)

WARNING

Federal Law prohibits use in model year 2007 and later highway diesel vehicles and engines, or in model year 2011 and later nonroad diesel engines and equipment. Its use may damage these vehicles and engines.''

(g) *NRLM standards.* (1) Beginning on the following implementation dates, NRLM diesel fuel that is used or intended for use in areas of Alaska not accessible by the Federal Aid Highway System is subject to the provisions of 40 CFR part 80, subpart I, except as provided in paragraphs (c), (d), (e), and (g)(2) of this section:

(i) June 1, 2010 or diesel fuel produced or imported by any refiner or importer,

(ii) August 1, 2010 at all downstream locations, except at retail facilities and wholesale-purchaser consumers,

(iii) October 1, 2010 at retail facilities and wholesale-purchaser consumers, and

(iv) December 1, 2010 at all locations.

(2) The per-gallon sulfur content standard for all LM diesel fuel shall be 15 ppm maximum.

(3) Diesel fuel used in new stationary internal combustion engines regulated under 40 CFR Part 60 Subpart IIII shall be subject to the fuel-related provisions of that subpart beginning December 1, 2010.

(h) Alternative labels to those specified in paragraphs (e)(3) and (f)(2) of this section may be used as approved by the Administrator.

[FR Doc. 05–20519 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[ET Docket No. 04–295; RM–10865; FCC 05–153]

Communications Assistance for Law Enforcement Act and Broadband Access and Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission (Commission) initiates this rulemaking to explore whether the Communications Assistance for Law Enforcement Act (CALEA) should apply to providers of voice over Internet Protocol (VoIP) services that are not interconnected, meaning VoIP services that do not allow users generally to receive calls originating from and to terminate calls to the public switched telephone network (PSTN). This rulemaking will also explore the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers of facilities-based broadband Internet access services. This rulemaking will enhance public safety and ensure that the surveillance needs of law enforcement agencies continue to be met as Internet-based communications technologies proliferate.

DATES: Comments are due on or before November 14, 2005, and reply comments are due on or before December 12, 2005.

ADDRESSES: You may submit comments, identified by ET Docket No. 04–295, by any of the following methods:

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

• Agency Web Site: *http://www.fcc.gov.* Follow the instructions for submitting comments on *http://www.fcc.gov/cgb/ecfs/.*

• E-mail: *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Mail: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

• Hand Delivery/Courier: 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs/*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go *http://www.fcc.gov/cgb/ecfs/.*

FOR FURTHER INFORMATION CONTACT: Carol Simpson, Attorney-Advisor, Competition Policy Division, Wireline Competition Bureau, at (202) 418–2391.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking in ET Docket No. 04–295, FCC 05–153, adopted August 5, 2005, and released September 23, 2005. The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Public Participation

Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

• For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

• Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties should also send a copy of their filings to Janice Myles, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Room 5–C140, 445 12th Street, SW., Washington, DC 20554, or by e-mail to *janice.myles@fcc.gov.* Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, or via e-mail to *fcc@bcpiweb.com.*

Synopsis of the Further Notice of Proposed Rulemaking

1. In this Further Notice of Proposed Rulemaking (FNPRM), we seek comment on two aspects of the conclusions reached in the Order accompanying this FNPRM, which is published elsewhere in this issue of the **Federal Register**. In the Order, we conclude that providers of facilities-based broadband Internet access services and providers of interconnected VoIP services—meaning VoIP service that allows a user generally to receive calls originating from and to terminate calls to the PSTN—must comply with CALEA. In the FNPRM, we first ask, with respect to interconnected VoIP, whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, are there any types of ''managed'' VoIP service that are not covered by today's Order, but that should be subject to CALEA?

2. Second, some commenters in this proceeding have argued that certain classes or categories of facilities-based broadband Internet access providers—notably small and rural providers and providers of broadband networks for educational and research institutions—should be exempt from CALEA. We reach no conclusions in the Order accompanying this FNPRM about the merits of these arguments, as we believe that additional information is necessary before reaching a decision. In this FNPRM, we seek comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards.

3. Section 102(8)(C)(ii) of CALEA provides the Commission with authority to grant exemptions from CALEA for entities that would otherwise fall within the definition of ''telecommunications carrier'' under section 102(8)(A) or (B). Specifically, section 102(8)(C)(ii) excludes from CALEA's definition of

telecommunications carrier ''any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.'' The Commission has never exempted telecommunications carriers under this provision, nor has it adopted specific procedures for doing so. We therefore seek comment on what procedures, if any, the Commission should adopt for exempting entities under section 102(8)(C)(ii). In particular, we seek comment on how the phrase ''by rule'' should be interpreted. In addition, CALEA's exemption provision requires ''consultation with the Attorney General.'' The Commission has implemented other statutory provisions requiring consultation with the Attorney General and we ask commenters to consider whether we should interpret ''consultation'' for purposes of CALEA in a similar manner considering the unique expertise of the Attorney General's office in combating crime, supporting homeland security, and conducting electronic surveillance.

4. To the extent that the Commission determines that a class or category of providers is exempt under section 102(8)(C)(ii), does that mean the class or category of telecommunications carriers is exempted indefinitely from CALEA compliance? Can or should the Commission limit the exemption for a certain period of time, requiring exempted entities to demonstrate that continued exemption is warranted at some future time? Commenters should consider these and any other issues that may be relevant to granting an exemption request.

5. Commenters addressing exemptions from CALEA understandably focused on section 102(8) of CALEA, which authorizes the Commission to exclude providers from the definition of telecommunications carrier. But our examination of the record has made us curious about the possibility of taking a different approach to this issue. Specifically, we seek comment on whether it might be preferable to define the requirements of CALEA differently for certain classes of providers, rather than exempting those providers from CALEA entirely. Does the Commission have authority to create different compliance requirements for different types of providers? Would this approach be consistent with the language of the statute? Would it satisfy the needs of law enforcement, as well as the classes of providers seeking exemptions? What advantages and disadvantages would this approach have compared to granting exemptions under section 102(8)(C)?

Initial Paperwork Reduction Act of 1995 Analysis

6. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from today's FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided above. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

1. Need for, and Objectives of, the Proposed Rules

8. In the FNPRM, we seek comment on two aspects of the conclusions reached in the Order accompanying this FNPRM. First, with respect to interconnected VoIP, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, we ask whether there any types of ''managed'' VoIP service that are not covered by today's Order, but that should be subject to CALEA. Second, some commenters in this proceeding have argued that certain classes or categories of facilities-based broadband Internet access providers—notably small and rural providers and providers of broadband networks for educational and research institutions—should be exempt from CALEA. We reach no conclusions in today's Order about the merits of these arguments, as we believe that additional information is necessary before reaching a decision. However, the Commission seeks comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. In addition, the Commission seeks comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. Our objective is to adopt streamlined exemption procedures, which will ultimately benefit both large and small entities alike and is also a concerted effort by the Commission to adopt any other rules that will reduce CALEA burdens on small entities or other categories of telecommunications carriers.

2. Legal Basis

9. The legal basis for any action that may be taken pursuant to the FNPRM is contained in sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules May Apply

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). This FNPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be directly affected by our action.

a. Telecommunications Service Entities

11. *Wireline Carriers and Service Providers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small

incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,303 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,303 carriers, an estimated 1,020 have 1,500 or fewer employees and 283 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

13. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 769 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 769 carriers, an estimated 676 have 1,500 or fewer employees and 93 have more than 1,500 employees. In addition, 12 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 12 are estimated to have 1,500 or fewer employees. In addition, 39 carriers have reported that they are ''Other Local Service Providers.'' Of the 39, an estimated 38 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

14. *Payphone Service Providers (PSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 654 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 652 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

15. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 316 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 292 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

16. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 20 have 1,500 or fewer employees and three have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of wired communications carriers increased approximately 34 percent from 1997 to 2002.

17. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 89 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, 88 are estimated to have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that all or the majority of prepaid calling card providers are small entities that may be affected by our action.

18. *Wireless Telecommunications Service Providers.* Below, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

19. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional

12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small. In addition, limited preliminary census data for 2002 indicate that the total number of paging providers decreased approximately 51 percent from 1997 to 2002. In addition, limited preliminary census data for 2002 indicate that the total number of cellular and other wireless telecommunications carriers increased approximately 321 percent from 1997 to 2002.

20. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. Also, according to Commission data, 437 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio (SMR) Telephony services, which are placed together in the data. We have estimated that 260 of these are small, under the SBA small business size standard.

21. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census category, ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. In the Paging Third Report and Order, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. Also, according to Commission data, 375 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 370 are small, under the SBA-approved small business size standard.

22. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

23. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 437 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 260 of these are small under the SBA small business size standard.

24. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant.

b. Cable Operators

25. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

26. *Cable System Operators (Rate Regulation Standard).* The Commission has developed its own small business size standard for cable system operators, for purposes of rate regulation. Under

the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, the Commission estimates that there are now fewer than 1,439 small entity cable system operators that may be affected by the rules and policies adopted herein.

27. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore are unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

c. Internet Service Providers

28. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action. In addition, limited preliminary census data for 2002 indicate that the total number of Internet service providers increased approximately five percent from 1997 to 2002.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

29. In the FNPRM, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. We also seek comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. These proposals do not impose reporting or recordkeeping requirements that would be subject to the Paperwork Reduction Act. Therefore, we have not attempted here to provide an estimate in terms of burden hours. Rather, we are asking commenters to provide the Commission with reliable information and comments on any costs and burdens on small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

30. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

31. In the FNPRM, with respect to interconnected VoIP, we seek comment on whether we should extend CALEA obligations to providers of other types of VoIP services. Specifically, we invite comment as to whether there are any types of ''managed'' VoIP service that are not covered by today's Order, but that should be subject to CALEA. For purposes of this IRFA, we specifically seek comment from small entities on these issues, in particular, on the extent to which any ''managed'' VoIP service that the Commission may find subject to CALEA could impact them economically.

32. In the FNPRM, the Commission also considers and asks questions about two alternative approaches to requiring full CALEA compliance to address the impact of CALEA applicability on small entities. First, it addresses an exemption process. Next, it addresses the possibility of requiring something less than full CALEA compliance for small entities. Finally, it asks commenters to propose any other alternatives that have not been considered or identified.

33. The FNPRM seeks comment on what procedures, if any, the Commission should adopt to implement CALEA's exemption provision. Section 102(8)(C)(ii) excludes from CALEA's definition of telecommunications carrier ''any class or category of telecommunications carriers that the Commission exempts by rule after consultation with the Attorney General.'' In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. Our goal is to adopt streamlined exemption procedures or any other rules that will ultimately assist the Commission in reducing burdens on small entities or other categories of telecommunications carriers.

34. With respect to the exemption provision, the Commission has never exempted telecommunications carriers under this provision, nor has it adopted specific procedures for doing so. We seek comment on what procedures, if any, the Commission should adopt for exempting entities under section 102(8)(C)(ii). In the FNPRM, the Commission evaluates how to properly interpret the provision. We seek comment, for example, on how the phrase ''by rule'' should be interpreted, as we recognize that the Commission's interpretation of this phrase could create burdens for small entities.

35. In addition, we seek comment on the appropriateness of requiring something less than full CALEA compliance for certain classes or categories of providers, as well as the best way to impose different compliance standards. The Commission seeks comment on significant alternatives and recommends that small entities file comments in response to the FNPRM. We anticipate that the record will be developed concerning alternative ways

in which the Commission could lesson the burden on classes of carrier or entities and will most likely benefit small entities more, relative to large entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

Ordering Clauses

37. *It is ordered* that that pursuant to sections 1, 4(i), 7(a), 229, 301, 303, 332, and 410 of the Communications Act of 1934, as amended, and section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001, the Further Notice of Proposed Rulemaking in ET Docket No. 04–295 *is adopted.*

38. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–20607 Filed 10–12–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI97

Migratory Bird Permits; Educational Use Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are soliciting public comments to help us develop permit regulations governing possession of live migratory birds and eagles for educational use.

DATES: Written comments should be submitted by December 12, 2005, to the address below.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP 4107, Arlington, Virginia 22203. You also may submit comments via the Internet to: *MB_education@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service; (703) 358–1714.

SUPPLEMENTARY INFORMATION: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your message, contact us directly at (703) 358–1714.

Background

This scoping notice is intended to help the U.S. Fish and Wildlife Service (the Service) gather information and suggestions about current practices and public views regarding educational use of live migratory birds and eagles, in anticipation of drafting new permit regulations for possession of migratory birds and eagles for educational purposes. Feedback from this notice will enable us to propose regulations that will already have benefited from input from the regulated community. (The proposed regulations will then be subject to the standard public notice and comment for purposes of crafting final regulations.)

The Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*) prohibits possession of any bird listed under treaties between the United States and Canada, Mexico, Japan, and Russia. Birds protected by the MBTA are referred to as ''migratory birds.'' In order to possess migratory birds or their parts or feathers for use in educational programs, you must obtain a permit from the Service (unless you are an institution exempted from the permit requirement under 50 CFR 21.12(b)). The Service issues such permits to authorize educational programs and exhibits that use nonreleasable or captive-bred migratory birds to teach people about migratory bird conservation and ecology. Permits are also required to possess migratory bird parts and feathers for educational use; however, at this time, we seek input only on issues pertaining to possession of live migratory birds and eagles for educational use.

Currently, because no regulations pertain specifically to educational use permits, educational activities that involve migratory birds are authorized by issuance of a special purpose permit under 50 CFR 21.27. That miscellaneous permit category is used to authorize activities not specifically addressed in existing migratory bird permit regulations. In the absence of specific regulations addressing educational activities using migratory birds, the terms and requirements governing educational activities using migratory birds are currently promulgated via a list of standard conditions that are issued with each permit. Approximately 1200 permits for possession of live birds (including eagles) for educational use are currently active.

In a future rulemaking, we intend to propose a new permit regulation that will incorporate many of the longstanding policies and practices that are the basis of the current special purpose—education permit conditions. However, those conditions have never been the subject of notice and comment and may benefit from revision as a result of public input. Also, the special purpose—education permit conditions are not specific enough to provide sufficient guidance to the Service or to permittees to address many of the issues that arise in the regulation of possession of migratory birds for educational purposes. By creating a new permit category specifically for this purpose, the Service hopes to bring specificity and clarity to this area of migratory bird use.

As part of that same rulemaking, we intend to revise permit regulations governing exhibition of bald and golden eagles for educational purposes. Eagle permits are addressed through separate regulations from those governing educational use of other migratory birds because, in addition to the MBTA, eagles are further protected by the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668), which contains different, more restrictive provisions than the MBTA. We anticipate that the new proposed eagle exhibition regulations will incorporate by reference the regulations proposed for non-eagle migratory bird educational use, but with some variations that will be necessary to comply with the BGEPA.

Despite the differences between the MBTA and the BGEPA, many of the same issues arise in developing educational use regulations for eagles as for other migratory birds. Most of the questions we pose in this scoping notice are not addressed directly by either the MBTA or the BGEPA. For this reason, we are soliciting input regarding both eagles and other migratory birds on each question, except where specifically noted.

Regarding what the educational use permits will or will not authorize, some longstanding Service positions are well-established, based on traditional and/or existing precedents, while other issues

are less settled. For example, the Service's current and historical policy is that birds protected by the MBTA, including eagles, may not be taken from the wild for educational purposes. (We distinguish between educational purposes and scientific purposes. We issue permits for take of migratory birds for scientific purposes, under 50 CFR 21.23 (migratory birds) and 50 CFR 22.21 (eagles).) Migratory birds held under educational use permits must be either captive-bred or nonreleasable. In this context, nonreleasable designates a bird that was taken from the wild because of injury, illness, or some other factor that rendered the bird unlikely, even after appropriate rehabilitative treatment, to survive in the wild should it be released. Because sufficient numbers of nonreleasable and captive-bred migratory birds are available to meet the needs of educators, we do not believe that allowing birds to be taken from the wild for this purpose would be consistent with the MBTA's objective to conserve wild populations of birds.

Another established Service policy concerning educational use of migratory birds is the requirement that any program, exhibition, or display using those birds must include a substantive ecological, biological, and/or conservation message. Migratory bird possession must be consistent with the mission to conserve and protect wild populations of migratory birds. Thus, exhibition of such birds must be accompanied by a public message that explains the wild nature of birds, their ecological needs and/or conservation status, and their status as a public trust resource. Absent such messages, the public may assume that birds can be kept for personal use or entertainment. Demand for such birds would likely grow—with potentially negative consequences for wild populations, including black market trade, pressure to change regulations to authorize take from the wild, and a degraded status through the public's growing perception of them as pets, rather than wildlife.

Commercial trade was a large factor in the decline of the nation's migratory bird resource and the subsequent enactment of the MBTA in 1918. Subsequently, we have prohibited most commercial use of birds. Today, we authorize some commercial use, including propagation and sale of captive-bred raptors, waterfowl, and game birds. And, we have permitted a number of for-profit educational migratory bird programs that include ecological and or conservation education as a meaningful component of their programs. However, the use of eagles in educational formats has been limited by law to nonprofit entities because the BGEPA restricts eagle exhibition permits to certain ''public'' (nonprofit) institutions (see #9 below).

Product endorsement is prohibited under the current special purpose permit. We believe that endorsement of commercial products or services is not an acceptable use of migratory birds because such endorsement tends to obscure or even negate any educational component, compromising the Service's mission to protect migratory birds as wildlife.

Within the framework discussed above, the regulation of migratory bird possession for educational use entails a number of unresolved and/or novel issues on which we seek input from the public. Comments are particularly sought concerning the following issues:

(1) *Facilities.* We seek suggestions regarding criteria for housing birds under an educational use permit. We wish to adopt standards that ensure humane treatment of the birds but which are flexible enough to reasonably accommodate different circumstances. Should caging dimensions be based on whether birds are flighted or non-flighted? Among flighted birds, should the rule require different caging dimensions based on whether the birds are regularly trained or exercised outside of their enclosures, or not? Should the regulation stipulate that certain materials be used or avoided in constructing enclosures?

(2) *Adequate experience.* What level of experience should an applicant be required to have in order to qualify a permit to hold live birds for educational use? The Service is considering establishing a minimal hourly requirement for hands-on experience with the type(s) of species that the educator will be using in his or her programs. What type(s) of hand-on experience should count towards this requirement (*e.g.*, conducting educational programs as a subpermittee under another's permit, working as a migratory bird rehabilitator, working in a zoo)? How many hours of hands-on experience should be adequate to qualify for a permit? Need the applicant have worked with each specific species that he or she intends to use for their programs? What kind of certification should be required to demonstrate that the applicant has met this requirement?

Should the regulation set forth different qualifying criteria between those who work with flighted and non-flighted birds? Or is it more important to develop criteria based on whether birds will be held on the glove during programs versus displayed in enclosures?

What type and amount of experience should a person be required to have to qualify to hold a live eagle under an eagle exhibition permit? Permits to possess eagles for education/exhibition are limited to certain types of public institutions (see Item #9). As with other migratory birds, however, additional criteria must be met in order to obtain a permit to possess eagles for education, including the requirement that the applicant have sufficient experience handling and presenting programs with the type of species that will be held under the permit. Eagles are distinct from other raptors because of their size, strength, and temperament. Combined, these characteristics would appear to demand a greater degree of expertise from their handlers in order to ensure the safety of the handler, the public and the birds themselves. How much and what type(s) of additional experience should be required before a person qualifies to hold a live eagle under an eagle exhibition permit?

(3) *Audience Contact.* How should the regulations address audience contact with migratory birds and eagles? In November 2000, the Service published a Request for Comments on a variety of issues related to falconry education facilities (65 FR 69726). Based on the response to that notice, and on other information, it is our current policy to allow members of the public without permits to hold trained, captive-bred falconry birds on the glove in falconry education programs that adhere to certain conditions developed to ensure that the birds are safely handled (*i.e.*, the programs are conducted by a permitted general or master class falconer, the birds are held under educational use (as opposed to falconry) permits, sufficient instruction is provided regarding safety, activities are conducted at a designated locations, among other conditions). How should we treat audience contact with birds in more typical educational settings where fewer institutional safeguards are in place? Outside of situations where the facility meets qualifications to allow individuals to hold falconry birds on the glove (as noted above), should all audience contact with live migratory birds be prohibited by this regulation?

(4) *Free-flying Birds.* The current special purpose—education permit is silent as to whether birds may be free-flown at open-area venues. A number of avian exhibitors now engage in this practice, sometimes using bald and golden eagles. We are soliciting public opinion on whether this activity should be permitted under the new regulations. How significant are the safety issues inherent in free-flying birds, both for the

birds themselves, and for the audience? Can such venues adequately convey the required conservation or ecological message? Is the educational component lost, or is concern for conservation enhanced by the experience of observing free-flying birds? Are alternative techniques available that may be less risky which avian trainers could employ to fly birds in open settings?

(5) *Commercial Venues.* Educators may charge money for programs, but may not use migratory birds to endorse any product. Should permittees be prohibited from conducting programs at businesses and other primarily commercial venues, even if the message is about conservation, wildlife biology, and/or ecology and not about product endorsement?

(6) *What Constitutes Conservation Education?* Must the presentation be strictly about conservation, wildlife biology, and/or ecology? If not, how much discussion of conservation education is sufficient to justify possession and exhibition? For example, would a 2-minute trailer addressing the decline of a species in the wild justify authorizing the use of a bird in a 2-hour film about the adventures of a clever magpie that performs tricks for children? What criteria should the Service use to evaluate whether a permittee's presentation (or film or other medium) incorporates sufficient conservation education to legitimately provide a conservation benefit? Should migratory birds be permitted to be used for entertainment or other purposes as long as conservation education requirements also are met?

(7) *Effect on Nonprofit Conservation Education.* Will the opportunity to make a profit using migratory birds result in fewer educators taking their programs to schools and other nonprofit venues, with the result that fewer children and other nonpaying audiences will be exposed to migratory birds through conservation education? Since migratory birds are a public resource, should all permittees be required to conduct a minimum number of not-for-profit educational programs?

(8) *Limit on Number of Birds.* Should the regulations establish a numerical limit on the birds an educator may hold? A fixed limit would prevent permittees from collecting live birds that they do not use in educational programs. However, some larger facilities may be able to accommodate greater numbers of birds than others, while continuing to use the birds in public programs. For the Service to select a single number of birds that would be appropriate for all facilities and venues would be difficult. Any maximum number we establish would probably be inappropriately large for individual educators with smaller facilities. If the regulation does not establish a fixed limit on educational birds, then the number of birds a permittee may possess will be set on an individual case-by-case basis. What criteria should the Service use to determine whether an educator may acquire additional birds? Whether we establish an across-the-board limit on how many birds a permittee may possess, or we provide for the number to be established on a case-by-case basis, how should the permit regulation address birds that were formerly used in educational programs, but are no longer suitable because of age or other conditions?

(9) *Who should qualify as ''public'' under the Bald and Golden Eagle Protection Act?* This question pertains solely to the regulation of eagles. The BGEPA provides that—other than Native Americans, who may possess bald and golden eagles for religious use, and falconers—the only entities who may be granted permits for eagle possession are: ''public museums, scientific societies, and zoological parks.'' The Service has never established regulatory definitions of those terms. Instead, we have relied on the regulatory definition of ''public'' found in 50 CFR part 10, which applies to all the Service's permit programs, not just to migratory bird and/or eagle permit regulations. That definition reads as follows:

> Public as used in referring to museums, zoological parks, and scientific or educational institutions, refers to such as are open to the general public, and are either established, maintained, and operated as a governmental service or are privately endowed and organized but not operated for profit.

We have the opportunity to establish regulatory definitions for ''public museum,'' ''public scientific society,'' and ''public zoological park.'' We are not seeking to redefine the definition of public found at 50 CFR part 10 because that undertaking would require a joint rulemaking process involving all the Service programs to which part 10 applies. Rather, we seek to define the three terms ''public museum,'' ''public scientific society,'' and ''public zoological park'' as part of the eagle permit regulations in 50 CFR part 22. The new definitions would apply only to eagle permitting regulations. Because an executive agency may never establish regulations that conflict with the statute or statutes that provide the authority for the agency's actions, the new definitions must be in accordance with the BGEPA's intent to protect wild populations of eagles. At the same time, to the extent possible, we would like to make the definitions as broad as possible within that intent so that the maximum number of otherwise qualified individuals are able to use nonreleasable bald and golden eagles for conservation education.

We need to consider that the lawmakers who enacted the BGEPA and limited eagle permits to public museums, public scientific societies, and public zoological parks likely envisioned that the eagles in question would be taken from the wild, as opposed to being nonreleasable birds that are already removed from wild populations. While the Service cannot revise the BGEPA, we can attempt to define the terms ''public museum,'' ''public scientific society,'' and ''public zoological park'' in a manner that reasonably accommodates today's circumstances without conflicting with the BGEPA's spirit and intent.

The requirement in the 50 CFR part 10 definition of ''public'' that an institution must be privately endowed serves as a form of insurance. If an institution were suddenly to suffer from a loss of financial support, the endowment would help to insulate the museum's collection—including its live birds—from neglect, disposal, or abandonment. However well meaning this concept may be, we question whether it should remain a requirement for obtaining permits to keep eagles for purposes of education, in light of the fact that the eagles in question cannot humanely be released to the wild and may not otherwise be placed.

To help us define ''public museum,'' ''public scientific society,'' and ''public zoological park,'' we seek public input on the following issues:

9a. Should endowment be a required condition for qualifying as a public museum, public scientific society, or public zoological park under the BGEPA?

9b. Should museums, scientific societies, and zoological parks be nonprofit in order to be considered ''public'' for purposes of obtaining an eagle exhibition permit?

9c. How many hours should an institution be open to the public in order to be considered ''public'' for purposes of obtaining an eagle exhibition permit?

9d. Should accreditation by a respected accrediting body be a requirement for public museums, scientific societies, and zoological parks, for purposes of obtaining an eagle exhibition permit?

We welcome comments on the issues described above and encourage the submission of new ideas and suggestions.

Public Comments Solicited

Interested persons are invited to submit comments on issues related to permitting possession and use of migratory birds for educational purposes. We request suggestions, materials, recommendations, and arguments from the public; permitted educators; avian trainers, ornithological organizations; environmental organizations; corporations; local, State, Tribal, and Federal agencies; and any other interested party. Please ensure that any comments submitted in response to this request for comments pertain to issues presented in this notice.

Our practice is to make comments, including names and home addresses of respondents, available for public review by appointment during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: The authorities for this notice are the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668a).

Dated: October 3, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20593 Filed 10–11–05; 12:36 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 70, No. 197

Thursday, October 13, 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

Submission for OMB Review; Comment Request

October 6, 2005.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agricultural Statistics Service

Title: Field Crops Objective Yield.

OMB Control Number: 0535–0088.

Summary of Collection: The primary function of the National Agricultural Statistics Service (NASS) is to prepare and issue current official State and national estimates of crop and livestock production. General authority for these data collection activities is granted under U.S. Code Title 7, Section 2204. This statue specifies the ''The Secretary of Agriculture shall procure and preserve all information concerning agriculture which he can obtain * * * by the collection of statistics * * * and shall distribute them among agriculturists''. Data is collected provides yield estimates for corn, cotton, potatoes, soybeans and wheat. The yield estimates are extremely important because they're used in conjunction with price data to estimate production and in making policy decisions in agricultural sectors.

Need and Use of the Information: NASS will collect information on sample fields of, corn, cotton, soybeans, potatoes, and winter, Durum and other Spring wheat. The information will be use to anticipate loan receipts and pricing of loan stocks for grains.

Description of Respondents: Farms.

Number of Respondents: 8,555.

Frequency of Responses: Reporting: Monthly during growing season.

Total Burden Hours: 3,058.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 05–20479 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Advisory Committee on Biotechnology and 21st Century Agriculture; Nominations

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Research Service is requesting nominations for qualified persons to serve as members of the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The charge for the AC21 is two-fold: to examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

DATES: Written nominations must be received by fax or postmarked on or before November 14, 2005.

ADDRESSES: All nomination materials should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250. Forms may also be submitted by fax to (202) 690–4265.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Michael Schechtman, Designated Federal Official, telephone (202) 720–3817; fax (202) 690–4265; e-mail *mschechtman@ars.usda.gov*. To obtain form AD–755 ONLY please contact Dianne Harmon, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; e-mail *dharmon@ars.usda.gov.*

SUPPLEMENTARY INFORMATION:

AC21 members serve staggered 2-year terms, with terms for half of the Committee members expiring in any given year. Nominations are being sought for open Committee seats. The terms of 9 members of the AC21 will expire in early 2006. The AC21 Charter allows for flexibility to appoint up to a total of 10 members. Members can be reappointed to serve up to 6 consecutive years. Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominees of the AC21 should have recognized expertise in one or more of the following areas: Recombinant-DNA (rDNA) research and applications using

plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; biodiversity; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration. Over the next two years, it is expected that the AC21 will address topics related to biotechnology coexistence issues, priorities for development of biotechnology-derived crops other than major uses of commodity crops, transgenic animals, and perhaps other topics.

Nominations for AC21 membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755.

The AC21 meets in Washington, DC, up to four (4) times per year. The function of the AC21 is solely advisory. Members of the AC21 and its subcommittees serve without pay, but with reimbursement of travel expenses and per diem for attendance at AC21 and subcommittee functions for those AC21 members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by REE, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under Section 5703 of Title 5, United States Code.

Submitting Nominations: Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the AC21.

2. A resume or curriculum vitae.

3. A completed copy of form AD–755.

Nominations should be sent to Michael Schechtman at the address listed above, and be postmarked no later than November 14, 2005.

Dated: October 6, 2005.

Bernice Slutsky,

Senior Advisor to the Secretary for Biotechnology.

[FR Doc. 05–20478 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Special Supplemental Nutrition Program for Women, Infants and Children (WIC) Proposed Collection; Comment Request—Monitoring Trends in the Public Health Workforce Survey

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. FNS wishes to monitor trends in education and training, work experience, areas of practice, and training needs of the public health and community nutrition workforce at the State and local government levels. A descriptive profile will assist FNS to determine the extent to which the current and future workforce has the necessary training to administer the WIC Program, for which FNS is responsible.

DATES: Comments on this notice must be received by December 12, 2005 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this proposed collection of information to Patricia N. Daniels, Director, Supplemental Food Programs Division; Food and Nutrition Service; 3101 Park Center Drive; Room 528; Alexandria, VA 22302–1500. 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 will have practical utility; (b) 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; (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. All responses to this notice will be summarized and included in the request for OMB clearance. All comments will thus become public documents.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Chief, Policy and Program Development Branch, Supplemental Food Programs Division, Food and Nutrition Service, Department of Agriculture, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: Monitoring Trends in the Public Health Nutrition Workforce.

OMB Number: Not yet assigned.

Expiration Date: N/A.

Type of Request: New collection of information.

Abstract: The Department of Agriculture's (USDA) Food and Nutrition Service (FNS) wishes to obtain information to assess the agency's efforts to recruit and retain public health and community nutritionists to staff the WIC Program. Goal 2, Objective 2.2 of the USDA/FNS Corporate Priorities focuses on improving agency support for Program management. This priority addresses management of human capital to ensure a high quality workforce and work environment that attracts and retains employees. Since 1992, FNS has been involved in an initiative targeted at assisting WIC State and local agencies in recruiting and retaining qualified nutrition staff. Recruitment and retention of qualified staff is essential to maintaining quality nutrition services by providing an environment where staff are appropriately selected, trained, and supported. Opportunities for ongoing training, job advancement, challenging duties, and competitive salaries are important considerations in recruiting and retaining qualified nutrition staff. Workforce profile data are essential to evaluate the impact of the agency's effort to recruit and retain public health and community nutritionists. State nutrition directors use descriptive information about the community nutrition workforce in their respective States to support recruitment and retention efforts, design training programs, and advise on licensure and certification policy. According to the findings from previous workforce surveys conducted by the Association of State and Territorial Public Health Nutrition Directors, 90 percent of the public health and community nutrition workforce is employed in WIC Programs.

This survey will be implemented as a Web-based survey to expedite the survey and data collection and analysis

process. In addition to the Web-based version, a paper version of the questionnaire will be available for those respondents who do not have Internet access.

This data collection will be carried out by State public health nutrition directors through their professional association—the Association of State and Territorial Public Health Nutrition Directors (ASTPHND), and will result in a national profile of the public health and community nutrition workforce. State nutrition directors will be responsible for coordinating data collection within their respective State including identifying appropriate respondents, assigning unique identifiers, distributing the Web site URL and/or paper version of the questionnaire, providing technical assistance to respondents on how to complete the web-or paper version of the questionnaire, answering any questions from respondents, providing follow-up to non-respondents, and assisting in editing data as needed. ASTPHND has conducted five previous surveys of the public health and community nutrition workforce and the State nutrition directors have performed a similar function in the previous surveys.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 20 hours per State nutrition director. Per individual respondent, the average estimated burden is 20.6 minutes for those who are completing the Web-based questionnaire and 25.1 minutes for those completing the written, fixed-response version (print version) of the questionnaire.

Respondents: There are two classes or levels of respondents: (1) The designated State and territorial public health nutrition directors and (2) persons employed in public health nutrition programs within States, including persons employed by Inter-Tribal Organizations.

Estimated Number of Respondents: Fifty-five State and territorial public health nutrition directors will be surveyed. They will survey approximately 10,000 nutrition workers in their respective States and territories. It is expected that 85 percent of individual respondents will complete the web-based survey (8,500) and 15 percent will complete the paper version (1,500).

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: Public reporting burden for this collection of information is estimated to average 20 hours per State or 1,100 hours (calculated at 20 hours by 55 State designees). In addition, the estimated reporting burden for individual respondents using the web-based version is 2,918 hours (calculated at 20.6 minutes per individual with 8,500 respondents) and 627 hours (calculated at 25.1 minutes per individual respondent with 1,500 respondents) for the paper version for a total estimated individual reporting burden of 3,545 hours. The total expected public reporting burden is 4,645 hours.

Dated: October 5, 2005.

Roberto Salazar,

Administrator.

[FR Doc. 05–20515 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, November 3, 2005. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Welcome/Introductions/Agenda.

(2) Panel Discussion Between Incoming/Outgoing Members.

(3) Recognition of Outgoing Members.

(4) Orientation for Incoming Members.

(5) Introduction of Nature Watch Demonstration Area Topic.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments received at Land Between The Lakes will be provided to the members.

DATES: The meeting will be held on Thursday, November 3, 2005, 10:30 a.m. to 3 p.m., CST.

ADDRESSES: The meeting will be held at the Administrative Building, Land Between The Lakes, Golden Pond, KY, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

Dated: October 6, 2005.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. 05–20495 Filed 10–12–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Project Proposal/Possible Action, (5) Web site Update, (6) General Discussion, (7) Next Agenda.

DATES: The meeting will be held on October 24, 2005, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by October 21, 2005 will have the opportunity to address the committee at those sessions.

Dated: October 6, 2005.

Arthur Quintana,

Acting Designated Federal Official.

[FR Doc. 05–20486 Filed 10–12–05; 8:45 am]

BILLING CODE 34310–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Firearms Convention

ACTION: Proposed collection: Request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, (202) 482–0266, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. (or via internet at *DHynek@doc.gov.*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, Department of Commerce, Room 6703, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required to implement the Firearms Convention. The first requirement is for U.S. exporters to acquire an Import Certificate from the government of the importing country. The U.S. exporter provides the certificate number to BIS and retains the certificate in company records. The Import Certificate is essential to the prevention of the spread of illicit firearms. The second requirement is the imposition of a licensing requirement for Firearms Convention items destined to Canada, a Convention Signatory. Previously, U.S. exporters exported such items for Canada without a license. The United States already required a license for the export of such items to the other Convention Signatories.

II. Method of Collection

Submission to BIS.

III. Data

OMB Number: 0694–0114.
Form Number: N/A.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 1,100.

Estimated Time Per Response: 30 minutes per response.

Estimated Total Annual Burden Hours: 550.

Estimated Total Annual Cost: No start-up capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20473 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Statement by Ultimate Consignee and Purchaser

ACTION: Proposed Collection: Request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 12, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230. (or via Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Larry Hall, BIS ICB Liaison, (202) 482–4895, Department of Commerce, Room 6703, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Statement by Ultimate Consignee and Purchaser is required in support of an export license application where the country of ultimate destination is in Country Group Q,S,V,W,Y or Z. It is used by licensing officers in determining the validity of the end use.

II. Method of Collection

Submitted to BIS on form BIS–711 or company letterhead.

III. Data

OMB Number: 0694–0021.
Form Number: Form BIS–711.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 3,594.
Estimated Time Per Response: 16 minutes per response.
Estimated Total Annual Burden Hours: 959.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 6, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–20474 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 27, 2005, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Introductions and Interest in the Meeting.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentation.
4. New business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Yvette Springer at *yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 7, 2005, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public. For more information contact Yvette Springer on (202) 482–4814.

Dated: October 7, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–20576 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–899]

Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China

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

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Jon Freed or Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–3818 or (202) 482–3434, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determination

On April 28, 2005, the Department of Commerce (''Department'') published the initiation of the antidumping duty investigation of imports of certain artist canvas from the People's Republic of China. *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China*, 70 FR 21996 (April 28, 2005). The notice of initiation stated that we would make our preliminary determination for this antidumping duty investigation no later than 140 days after the date of issuance of the initiation.

On August 11, 2005, Tara Materials Inc. (''Petitioner'') made a timely request pursuant to 19 CFR §351.205(e) for a 29–day postponement of the preliminary determination until October 7, 2005. On August 19, 2005, the Department published a notice in the **Federal Register** postponing the preliminary determination by 29 days to October 7, 2005. *See Notice of Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Artist Canvas from the People's Republic of China*, 70 FR 48667, (August 19, 2005).

On September 29, 2005, Petitioner made a timely request for a postponement of the preliminary determination for the maximum period authorized by section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), until October 28, 2005. Petitioner requested postponement of the preliminary determination because it believes extraordinarily complex issues exist with respect to this case and additional time is necessary to allow it to review the responses to the supplemental questionnaires and submit comments to the Department, and also to allow the Department time to analyze thoroughly the respondents' data and to seek additional information, if necessary.

Under section 733(c)(1)(A) of the Act, if Petitioner makes a timely request for a postponement of the preliminary determination, the Department may postpone the preliminary determination under subsection (b)(1) until no later than the 190th day after the initiation of the investigation.

Therefore, for the reasons identified by Petitioner, and because there are no compelling reasons to deny the request, we are postponing the preliminary determination under section 733(c)(1)(A) of the Act by an additional 21 days to October 28, 2005. The deadline for the final determination will continue to be 75 days after the date of the preliminary determination.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(i).

Dated: October 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5602 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Notice of Extension of Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada

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

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or David Neubacher, at (202) 482–1784 or (202) 482–5823, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue (1) the preliminary results of a review within 245 days after the last day of the month in which occurs the anniversary of the date of publication of an order or finding for which a review is requested, and (2) 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 that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and the final results to a maximum of 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results. *See also* 19 CFR 351.213(h)(2).

Extension of Final Results of Review

The preliminary results of this review were published on July 20, 2005. We determine that it is not practicable to complete the final results of this review within the original time limits. Due to the complexity of issues present in this administrative review, such as the issues of interest expense and a request to split the reporting period for cost of production, the Department needs more time to address these items and evaluate the issues more thoroughly. Therefore, we are extending the deadline for the final results of the above–referenced review by 60 days and the final results will be issued no later than, Monday, January 16, 2006. This extension is in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: October 6, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5605 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Postponement of Preliminary Determinations of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China (A–570–900) and the Republic of Korea (A–580–855)

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

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy (People's Republic of China) or Mark Manning (Republic of Korea), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–5403 or (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Postponement of Preliminary Determinations

On June 21, 2005, the Department of Commerce (''Department'') published the initiation of the antidumping duty investigations of imports of diamond sawblades and parts thereof from the People's Republic of China and the Republic of Korea. *See Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625 (June 21, 2005). The notice of initiation stated that the Department would make its preliminary determinations for these antidumping duty investigations no later than 140 days after the date of issuance of the initiation.

On September 26, 2005, the Diamond Sawblade Manufacturers' Coalition and its individual members (''Petitioners'') made timely requests pursuant to 19 CFR 351.205(e) for a fifty-day postponement of these preliminary determinations, until December 20, 2005. Petitioners requested postponement of these preliminary determinations to allow the Department additional time in which to review the responses and issue requests for clarification and additional information.

For the reasons identified by the Petitioners, and because there are no compelling reasons to deny the request, the Department is postponing these preliminary determinations under section 733(c)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), by fifty days to December 20, 2005. The deadline for these final determinations will continue to be 75 days after the date of these preliminary determinations, unless extended.

This notice is issued and published pursuant to sections 733(c)(2) of the Act and 19 CFR 351.205(f)(1).

Dated: October 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5600 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and Notice of Partial Rescission: Certain Forged Stainless Steel Flanges from India

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

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0408 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published an antidumping duty order on certain forged stainless steel flanges from India on February 9, 1994. *See Amended Final Determination and Antidumping Duty Order; Certain Forged Stainless Steel Flanges from India*, 59 FR 5994 (February 9, 1994). On February 28, 2005, Echjay Forgings, Ltd. (Echjay), Hilton Forge India (Hilton Forge), Paramount Forge Ltd./Ganguly Associates (Paramount), and Viraj Forgings, Ltd. (Viraj), Indian producers of subject merchandise, requested that the Department conduct an

administrative review. On March 23, 2005, the Department initiated this administrative review. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 14643 (March 23, 2005).

Partial Rescission

On April 18, 2005, respondents Viraj and Hilton Forge withdrew their requests for review. *See* Letter from Respondents to the Department dated April 18, 2005, which is on file in the Central Records Unit (CRU), room B–099, of the main Commerce Department building. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party who requested an administrative review withdraws the request within 90 days of the publication of the notice of initiation of the requested review, the Secretary will rescind the review. Viraj and Hilton Forge withdrew their requests within the 90-day deadline, in accordance with 19 CFR 351.213(d)(1). No other party requested an administrative review of Viraj and Hilton Forge. Therefore, for Viraj and Hilton Forge, we are rescinding this review of the antidumping duty order on certain forged stainless steel flanges from India covering the period March 1, 2004, through February 28, 2005.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the deadlines for preliminary and final results of this administrative review are October 31, 2005, and February 28, 2006, respectively. The Department, however, may extend the deadline for completion of the preliminary results of a review if it determines it is not practicable to complete the preliminary results within the statutory time limit. *See* section 751(a)(3)(A) of the Tariff Act and 19 CFR 351.213(h)(2). In this case, the Department has determined it is not practicable to complete this review within the statutory time limit because of significant issues that require additional time to evaluate. These include potential affiliation issues and questions concerning the questionnaire responses that may require additional supplemental questionnaires. Therefore, the Department is extending the time limit for completion of the preliminary results for Echjay and Paramount until February 28, 2006, in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will be 120 days after publication of the preliminary results in the **Federal Register**. *See* section 751(a)(3)(A) of the Tariff Act; 19 CFR 351.213(h)(2).

This notice is issued and published in accordance with sections 751(a)(3)(A), 751(a)(1) and 777(i)(l) of the Tariff Act and 19 CFR 351.213(d)(4).

Dated: September 29, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5604 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Notice of Court Decision Not In Harmony

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

SUMMARY: On September 22, 2005, in *Tianjin Machinery Import & Export Corp., v. United States and Ames True Temper*, Slip Op. 05–127, the Court of International Trade (CIT) affirmed the Results of Redetermination Pursuant to Court Remand released by the Department of Commerce (the Department) on July 20, 2004. Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (Timken), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection (CBP) to liquidate all relevant entries from Tianjin Machinery Import & Export Corporation (TMC), as appropriate.

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Martin, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–3936, fax 202–482–5105.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 2003, the Department issued its final scope ruling in which we determined that the cast picks imported by TMC are included within the scope of the antidumping duty order on picks/mattocks. *See* Memorandum to the File from Thomas Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary for Group II, ''Final Scope Ruling - Request by Tianjin Machinery Import & Export Corporation for a Ruling on Cast Picks,'' dated September 22, 2003 (TMC Scope Ruling). TMC filed a summons and complaint with the CIT on October 8 and 17, 2003, respectively, challenging the TMC Scope Ruling. In response to TMC's motion for judgment on the administrative record, the Department moved for and obtained from the CIT an order for a voluntary remand to reconsider the determination made in the TMC Scope Ruling in view of the decision of the CAFC in *Duferco Steel, Inc. v. United States*, 296 F.3d 1087 (Fed Cir. 2002). On April 7, 2004, the CIT granted the Department's unopposed motion for a voluntary remand. The Department filed its redetermination pursuant to the CIT's remand on July 20, 2004, in which the Department reconsidered the determination set forth in the TMC Scope Ruling and concluded that the cast picks at issue do not fall within the scope of the picks/mattocks order. *See* Results of Redetermination Pursuant to Court Remand for Tianjin Machinery Import & Export Corporation v. United States and Ames True Temper at 1 (July 20, 2004). On September 22, 2005, the CIT affirmed the Department's redetermination.

Suspension of Liquidation

The CAFC, in *Timken*, held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills that obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation of unliquidated entries pending the expiration of the period to appeal the CIT's September 22, 2005, decision affirming the Department's remand results or pending a final decision of the CAFC if that decision is appealed. The Department will instruct CBP to liquidate relevant unliquidated entries of the subject merchandise without regard to antidumping duties in the event that the CIT's ruling is not appealed, or if appealed and upheld by the CAFC.

We are issuing and publishing this notice in accordance with section

516A(c)(1) of the Tariff Act of 1930, as amended.

Dated: October 5, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5607 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–838]

Notice of Final Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada

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

SUMMARY: The Department of Commerce (the Department) has determined, pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), that Produits Forestiers Arbec Inc. (Arbec) is the successor–in-interest to Uniforêt Inc. (Uniforêt) and, as a result, should be accorded the same treatment previously accorded to Uniforêt in regard to the antidumping order on certain softwood lumber products from Canada as of the date of publication of this notice in the **Federal Register**.

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Saliha Loucif or Constance Handley, at (202) 482–1779 or (202) 482–0631, respectively; AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 29, 2005, Uniforêt requested that the Department initiate and conduct an expedited changed circumstances review, in accordance with section 751(b) of the Act and sections 351.216(b) and 351.221(c)(3) of the Department's regulations, to confirm that Arbec is the successor–in-interest to Uniforêt. On August 26, 2005, the Department initiated this review and simultaneously issued its preliminary results that Arbec is the successor–in-interest to Uniforêt and should receive Uniforêt's cash deposit rate of 11.54 percent. *See Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products from Canada*, 70 FR 50299 (August 26, 2005) (*Preliminary Results*). This rate reflects the ''all others'' rate from the investigation as modified in the *Notice of Determination Under Section 129 of the Uruguay Round Agreements Act: Antidumping Measures on Certain Softwood Lumber Products From Canada*, 70 FR 22636 (May 2, 2005).

In the *Preliminary Results*, we stated that interested parties could request a hearing or submit case briefs and/or written comments to the Department no later than 30 days after publication of the *Preliminary Results* notice in the **Federal Register**, and submit rebuttal briefs, limited to the issues raised in those case briefs, seven days subsequent to the due date of the case briefs. We did not receive any hearing requests, case or rebuttal briefs, or comments on the *Preliminary Results*.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger–jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger–jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v–jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger–jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90
- I–joist beams
- assembled box spring frames
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors
- edge–glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- properly classified complete door frames
- properly classified complete window frames
- properly classified furniture

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers* (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40)
- *Box–spring frame kits*: if they contain the following wooden pieces - two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius–cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box–spring frame, with no further processing required. None of the components exceeds 1'' in actual thickness or 83'' in length.
- *Radius–cut box–spring-frame components*, not exceeding 1'' in actual thickness or 83'' in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1'' or less in actual thickness, up to 8'' wide, 6' or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog–eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring 3/4 inch or more.

- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: 1) the processing occurring in Canada is limited to kiln–drying, planing to create smooth–to-size board, and sanding; and 2) if the importer establishes to U.S. Customs and Border Protections's (CBP) satisfaction that the lumber is of U.S. origin.
- *Softwood lumber products contained in single family home packages or kits*,[1] regardless of tariff classification, are excluded from the scope of this order if the following criteria are met:

(A) The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

(B) The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

(C) Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

(D) The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

(E) The following documentation must be included with the entry documents:

- a copy of the appropriate home design, plan, or blueprint matching the entry;
- a purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- a listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- in the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order, provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box–spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non–subject status based on U.S. country of origin will be treated as non–subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non–subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Final Results of Changed Circumstances Review

Based on the information provided by Arbec, and the fact that the Department did not receive any comments during the comment period following the preliminary results of this review, the Department hereby determines that Arbec is the successor–in-interest to Uniforêt for antidumping duty cash deposit purposes.

Instructions to U.S. Customs and Border Protection

Because both Arbec and Uniforêt are currently subject to the ''all others'' rate, there is no need to send instructions to CBP at this time. However, Uniforêt is currently participating in the second administrative review and will receive the ''review–specific rate'' once this review is completed. Thus, once the final results for the second administrative review are issued, the Department will instruct CBP to suspend liquidation of all shipments of the subject merchandise produced and exported by Arbec at the rate determined for Uniforêt.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is in accordance with sections 751(b) and 777(i)(1) of the Act, and section 351.216(e) of the Department's regulations.

Dated: October 6, 2005.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E5–5601 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

[1] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days. We also instructed importers to retain and make available for inspection specific documentation in support of each entry.

[2] *See* the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B-099 of the main Commerce Building.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–837]

Notice of Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review: Certain Cut–to-Length Carbon Quality Steel Plate from Korea

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

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, 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) 482–1767.

SUPPLEMENTARY INFORMATION:

Background Information

On March 23, 2005, the U.S. Department of Commerce (''the Department'') published a notice of initiation of the administrative review on the countervailing duty order of certain cut–to-length carbon quality steel plate (''CTL Plate'') from the Republic of Korea, covering the period January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 14643 (March 23, 2005). The preliminary results of this review are currently due no later than October 31, 2005.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable for the following reason. The Department is considering a verification of this proceeding and due to scheduling conflicts would not be able to do so by the current preliminary due date. Given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the preliminary results of review by 120 days. Therefore, the preliminary results are now due no later than February 28, 2005. The final results continue to be due 120 days after publication of the preliminary results.

Dated: October 4, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5606 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta from Italy: Notice of Partial Rescission of Countervailing Duty Administrative Review

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

SUMMARY: In response to a request made on July 28, 2005, by Pastificio Laporta S.a.s., the Department of Commerce initiated an administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2004, through December 31, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). As a result of a timely withdrawal of the request for review by Pastificio Laporta S.a.s., we are rescinding this review, in part.

EFFECTIVE DATE: October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published a countervailing duty order on certain pasta from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta (''Pasta'') From Italy*, 61 FR 38543 (July 24, 1996). On July 28, 2005, Pastificio Laporta S.a.s. requested an administrative review of the countervailing duty order on certain pasta from Italy covering the period January 1, 2004, through December 31, 2004. In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 29, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 51009 (August 29, 2005). On September 15, 2005, Pastificio Laporta S.a.s. withdrew its request for review. No other party requested a review for Pastificio Laporta S.a.s.

Scope of the Countervailing Duty Order

Imports covered by this order are shipments of certain non–egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L. In addition, based on publically available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See Memorandum from Eric B. Greynolds to Melissa G. Skinner*, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

The Department has issued the following scope rulings:

1. On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See Memorandum from Edward Easton to Richard Moreland*, dated August 25, 1997, which is on file in the CRU.

2. On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See*

Letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

3. On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti–Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

4. On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland*, dated May 24, 1999, which is available in the CRU.

5. On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and Countervailing Duty Orders*, 68 FR 54888 (September 19, 2003).

Rescission of Review

The Department's regulations at 19 CFR 351.213(d)(1) provide that the Department will rescind an administrative review, in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Pastificio Laporta S.a.s. withdrew its request for an administrative review on September 15, 2005, which is within the 90-day deadline, and no other party requested a review with respect to this company. Therefore, the Department is rescinding this administrative review, in part, for Pastificio Laporta S.a.s..

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: October 6, 2005.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E5–5603 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904 NAFTA Panel Reviews; Notice of Panel Decision

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

ACTION: Notice of panel decision.

SUMMARY: On October 5, 2005, the binational panel issued its decision in the review of the final results of the countervailing duty determination made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–03) affirmed in part and remanded in part the determination of the Department of Commerce. The Department will return the determination on remand no later than October 28, 2005. A copy of the complete panel decision is available from the NAFTA Secretariat.

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

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On October 5, 2005, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final antidumping duty determination. The following issues were remanded to the Department:

1. The Department was directed to determine the amount of log seller profit to be C$4.34, and to refrain from apportioning this amount.

2. The Department was directed to adjust the profit figures for Ontario, Manitoba, and Saskatchewan to the extent that their profit figures are derivative of the profit figure for Quebec.

The Investigating Authority was directed to complete its remand determination no later than October 28, 2005.

Dated: October 6, 2005.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E5–5590 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100605F]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of Public Hearings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public hearings to solicit comments on draft Amendment 26 to the Reef Fish Fishery Management Plan (FMP) that contains alternatives to establish an individual fishing quota (IFQ) program for the commercial red snapper fishery in the Gulf of Mexico that has been declared to be overfished and undergoing overfishing.

DATES: The public hearings and workshops will held from October 17 through October 26 at 8 locations throughout the Gulf of Mexico. For those who are unable to attend one of these meetings, a conference call number will be available on Wednesday, October 19, 2005. For specific dates and times see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The public hearings and workshops will be held in the following locations: Brownsville, Galveston, and Port Aransas, Texas; Baton Rouge, Louisiana; Pascagoula, Mississippi; Orange Beach, Alabama; and Panama City and Tampa, Florida. For specific dates and times (see **SUPPLEMENTARY INFORMATION**).

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council will convene pubic hearings to solicit comments on Draft Amendment 26 to the Reef Fish Fishery Management Plan (FMP) that contains alternatives to establish an individual fishing quota (IFQ) program for the commercial red snapper fishery in the Gulf of Mexico that has been declared to be overfished and undergoing overfishing. The IFQ program is being considered to address existing and emerging problems resulting from overcapitalization in this fishery while it recovers. Actions being considered as part of the IFQ program include: its duration; eligibility for shares; initial allocation of shares; potential caps and/or restrictions on shares; and transferability of shares. Other actions being considered include: whether or not shares must be used; how adjustments to the commercial quota will affect allocations and shares; the possible requirement of vessel monitoring systems (VMS) on participating vessels; and a cost recovery plan.

The public hearings will begin at 6 p.m. and conclude no later than 10 p.m. at each of the following locations:

Monday, October 17, 2005, National Marine Fisheries Service Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408, (850) 234-6541;

Tuesday, October 18, 2005, Hilton Garden Inn Orange Beach, 23092 Perdido Beach Boulevard, Orange Beach, AL 36561, (251) 974-1600;

Wednesday, October 19, 2005, LaFont Inn, 2703 Denny Avenue, Pascagoula, MS 39567, (228) 762-7111;

Wednesday, October 19, 2005, Tampa Marriott Westshore, 1001 North Westshore Boulevard, Tampa, FL 33607, (813) 287-2555;

Thursday, October 20, 2005, Sheraton Baton Rouge, 102 France Street, Baton Rouge, LA 70802, (225) 242-2600;

Monday, October 24, 2005, Four Points by Sheraton, 3777 North Expressway, Brownsville, TX 78520, (956) 547-1500;

Tuesday, October 25, 2005, University of Texas Marine Science Institute Auditorium, 750 Channel View Drive, Port Aransas, TX 78373, (361) 749-6711;

Wednesday, October 26, 2005, Holiday Inn Galveston, 5002 Seawall Boulevard, Galveston, TX 77550, (409) 740-3581.

Individuals interested in participating in the public hearing process but are unable to attend any of the scheduled hearings, may participate during the October 19, 2005 hearing via telephone. Interested parties should call (800) 547-5078 from any phone at 6 p.m. EDT. A copy of the amendment and related materials can be obtained by calling the Council office at (813) 348-1630. These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 6, 2005.

Emily Menashes,

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

[FR Doc. E5–5593 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100605D]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting; public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet to discuss measures for reducing interactions between seabirds and longline fishing.

DATES: The meeting will be held on Tuesday, November 1, 2005, at 12 noon HST.

ADDRESSES: The meeting will be held via telephone conference call at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813; telephone: (808) 522–8220; fax: (808) 522–8226. The call-in number for the conference call is: (866) 867–8289, and the passcode is: 1683776.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Council Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: The items of discussion in the Council meeting's agenda are as follows:

1. Pelagic Fisheries.

On April 6, 2005, the Council transmitted to NMFS an amendment to the Council's Fishery Management Plan for Pelagic Fisheries in the Western Pacific (FMP), that recommended new measures for mitigating interactions between pelagic longline vessels and seabirds. This amendment would require all Hawaii-based longline fishing vessels to either (a) side-set (deploy longline gear from the side of the vessel rather than from the stern), or (b) use a combination of other mitigation measures to prevent seabirds (e.g., Laysan and black-footed albatrosses), from being accidentally hooked or entangled during fishing operations in certain areas. These measures would also reduce the potential for fishery interactions with endangered short-tailed albatrosses that are known to be in the area in which the fishery operates. On July 13, 2005, NMFS published a proposed rule (70 FR 40302) with a request for public comments. Comments received indicated that modification of some aspects of the proposed measures should be considered, based on recent observer and experimental observations.

Under the proposed rule, seabird mitigation measures would be required everywhere for Hawaii-based vessels using shallow-set longline fishing gear, and north of 23°N latitude for Hawaii-based vessels using deep-set longline fishing gear. Operators of shallow-setting longline vessels that elect not to side-set would continue to be required

to use thawed, blue-dyed bait, to start and complete the setting process during the night (specifically to begin deployment of the gear no earlier than one hour after local sunset and to finish deployment no later than local sunrise), and to strategically discard fish offal (i.e., on the opposite side from where the longline is being set). Under the proposed rule, they would also be required to employ a bird scaring device, or tori line, in addition to the above measures.

Public comments received on the proposed rule questioned the need to deploy tori lines on shallow-setting vessels. Also, recent analyses of information collected by Federal observers (required on all Hawaii-based shallow-setting longline vessels) in the first half of 2005 found that seabird interaction rates during this time period were less than 10% of the historical average. This appears to result from the night-setting requirement established in 2004, and is consistent with earlier research results. The Council will, therefore, consider action to modify the proposed rule to remove the tori line requirement for these vessels.

Under the proposed rule, 60 g (2.1 oz) weights would be required within one meter of each hook when side-setting. Public comments received during the development of the amendment and on the proposed rule indicated that there were serious safety concerns about the required use of these relatively large weights, although such weights are currently used on some vessels. Commenters stated that fishery participants can be and have been seriously injured or killed when struck by longline weights ricocheting from snapped lines. Although the original trials which led to the development of the amendment employed 60 g weights, subsequent research found that the sink times of 40g and 60 g weights differ by only a tenth of a second, suggesting that the 45 g weights, which are most commonly employed in the Hawaii-based longline fishery, would not affect the efficacy of side-setting in minimizing seabird interactions. Therefore, the Council will also consider action to require weights of 45 g or heavier when side-setting, instead of the 60 g weights included in the proposed rule.

A public hearing will be held during the Council meeting to give the public opportunity to comment before the Council takes action on this agenda item.

2. Other Business.

Although non-emergency issues that are not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, telephone: (808) 522–8220, fax: (808) 522–8226, at least 5 working days prior to the meeting date.

Dated: October 6, 2005.

Emily Menashes,

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

[FR Doc. E5–5592 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092905C]

Marine Mammals; File No. 1078–1796

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that The Georgia Aquarium, 2451 Cumberland Parkway, Suite 3639, Atlanta, GA 30339–6157 [Jeffery S. Swanagan, Responsible Party] has been issued a permit to import two beluga whales (Delphinapterus leucas) for public display.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 5, 2005, notice was published in the **Federal Register** (70 FR 38658) that a request for a public display permit to import two male, adult beluga whales from Grupo Empresarial Chapultepec, S.A. DE C.V., Mexico City, Mexico to the Georgia Aquarium in Atlanta, GA had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: October 6, 2005.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–20553 Filed 10–12–05; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Amendment to Ban on Infant Pillows (Petition HP 05–1)

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The United States Consumer Product Safety Commission (Commission or CPSC) has received a petition (HP 05–1) requesting that the Commission amend the ban on infant pillows to permit the use of such pillows if they are designed, intended and promoted for nursing, and when such pillows are requested by a pediatrician or board certified lactation consultant. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by December 12, 2005.

ADDRESSES: Comments on the petition may be filed by e-mail to *cpsc-os@cpsc.gov.* Comments may also be filed by facsimile to (301) 504–0127 or by mail, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission,

Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments should be captioned ''Petition HP 05–1, Petition Requesting Amendment to Ban on Infant Pillows.'' A copy of the petition is available for inspection at the Commission's Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC web site at *www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rochelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Boston Billows, Inc. requesting that the Commission amend 16 C.F.R. 1500.18(a)(16)(i), to permit the use of banned infant pillows, such as the Boston Billow Nursing Pillow (Boston Pillow), when the pillow is designed, intended and promoted for a mother's use during breastfeeding and when such pillows are requested by a pediatrician or a board certified lactation consultant.

Boston Billows asserts such an amendment is necessary given the current use of the Boston Pillow in hospitals and by lactation consultants. In addition, Boston Billows states that due to the physical configuration of the Boston Pillow, it is unlikely that an infant could fall asleep on it in a position that would compromise the infant's ability to breathe.

The request for an amendment to the ban on infant pillows is docketed as petition number HP 05–1 under the Federal Hazardous Substances Act, 15 U.S.C. 1261–1278.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC Web site at *www.cpsc.gov*.

Dated: October 7, 2005.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 05–20524 Filed 10–12–05; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0142]

Federal Acquisition Regulation; Submission for OMB Review; Past Performance Information

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning past performance information. A request for public comments was published in the **Federal Register** at 70 FR 45370, August 5, 2005. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 14, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Ms. Cecelia Davis, Contract Policy Division, GSA, (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

B. Annual Reporting Burden

Respondents: 150,000.
Responses Per Respondent: 4.
Annual Responses: 600,000.
Hours Per Response: 2.
Total Burden Hours: 1,200,000.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: October 6, 2005.

Gerald Zaffos,

Acting Director, Contract Policy Division.

[FR Doc. 05–20480 Filed 10–12–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Federal Acquisition Regulation; Information Collection; Progress Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement

concerning progress payments. This OMB clearance currently expires on December 31, 2005.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 12, 2005.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Contract Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

Respondents: *27,000*.
Responses Per Respondent: *32*.
Annual Responses: *864,000*.
Hours Per Response: *.55*.
Total Burden Hours: *475,000*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: October 6, 2005.

Gerald Zaffos,

Acting Director, Contract Policy Division.

[FR Doc. 05–20552 Filed 10–12–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date: Monday, November 14, 2005.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, 2nd floor, Bldg. 600, West Point, NY.

Start Time of Meeting: Approximately 10 a.m.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Shaun T. Wurzbach, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: *Proposed Agenda:* Annual Fall Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–20505 Filed 10–12–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of a Novel Fiberglass Technology for Exclusive, Partially Exclusive or Non-Exclusive Licenses

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive or non-exclusive licenses relative to a novel fiberglass technology (e-glass; s-glass) as described in U.S. Patent Application No. 10/724,704; entitled ''Nano-Textured Solid Surfaces and Methods for Producing Same''; Jensen and McKnight. Any license shall comply with 35 U.S.C. 209 and 37 CFR 404.

FOR FURTHER INFORMATION CONTACT: Michael D. Rausa, U.S. Army Research Laboratory, Office of Research and Technology Applications, ATTN: AMSRL–DP–T/Bldg. 434, Aberdeen Proving Ground, MD 21005–5425, Telephone: (410) 278–5028.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–20504 Filed 10–12–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Notice of membership—2005 DLA PRB.

SUMMARY: This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency with respect to pay level adjustments and performance awards and other actions related to management of the SES cadre.

EFFECTIVE DATE: September 26, 2005.

ADDRESSES: Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, Virginia 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Shonna Eagleton, SES Program Manager, Human Resources (J–1), Defense Logistics Agency, Department of Defense, (703) 767–3122.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 12-month term which begins on September 26, 2005.

PRB Chair: Major General Loren M. Reno, USAF, Vice Director.

Members: Mr. Larry Glasco, Director, Customer Operations and Readiness; Mr. Jeffrey Neal, Director, Human

Resources; and Ms. Mae DeVincentis, Director, Information Operations.

Keith W. Lippert,

Director, Defense Logistics Agency.

[FR Doc. 05–20499 Filed 10–13–05; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board (CERB)

AGENCY: Department of the Army, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Coastal Engineering Research Board (CERB).

Date of Meeting: November 2–4, 2005.

Place: Hilton St. Petersburg, 333 First Street South, St. Petersburg, FL 33701.

Time: 3 p.m. to 5:15 p.m. (November 2, 2005); 8 a.m. to 5:30 p.m. (November 3, 2005); and 8 a.m. to 12 p.m. (November 4, 2005).

FOR FURTHER INFORMATION CONTACT: Inquiries and notice of intent to attend the meeting may be addressed to Colonel James R. Rowan, Executive Secretary, Commander, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: On Tuesday afternoon, November 2, there will be presentations entitled ''Overview of Hurricane Katrina and Its Effects,'' ''Overview of Hurricane Season 2005,'' and ''Technical View of the Impacts of Major Hurricanes to the Gulf Coast Region.'' On Wednesday morning, November 3, presentations will continue concerning the impacts of Hurricane Katrina. These include ''Preliminary Report of the ASCE Coastal, Oceans, Ports, and River Institute Katrina Committee;'' ''Implications of Hurricane Katrina from the Perspective of the Gulf of Mexico Alliance;'' ''Implications of Hurricane Katrina to the Louisiana Wetlands;'' and ''Mapping of Damages—Post Hurricane Katrina.'' The afternoon session on November 3, will include presentations concerning shore protection project consideration. These include ''Shore Protection Project Performance Improvement Initiative'' and ''Engineering Lessons Learned from Reconstruction of Florida Beaches.'' There will be two panel discussions in the afternoon. One panel is entitled ''Environmental Aspects of Beach Restoration.'' The second panel is entitled ''Sand Shortage'' and will include presentations entitled ''Strategic Sand Resources,'' ''Sand Stability and Quality Assurance,'' and ''Where is the Sand?'' The members of the Board will meet in Executive Session on Friday morning, November 4.

These meetings are open to the public; participation by the public is scheduled for 4:45 p.m. on November 3.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 05–20506 Filed 10–12–05; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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 December 12, 2005.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. 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: October 6, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Paul Douglas Teacher Scholarship Program Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden: Responses: 57. Burden Hours: 684.

Abstract: This program has not received funding since 1995. It was originally designed to assist State agencies to provide scholarships to talented and meritorious students who were seeking teaching careers at the preschool, elementary, and secondary levels.

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 2902. 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. 05–20497 Filed 10–12–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Overview Information Comprehensive Centers—Great Lakes West Region; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.283B.

DATES: *Applications Available:* October 13, 2005.

Deadline for Transmittal of Applications: November 28, 2005.

Deadline for Intergovernmental Review: December 27, 2005.

Eligible Applicants: Research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this notice. An application from a consortium of eligible entities must include a consortium agreement. Letters of support do not meet the requirement for a consortium agreement.

Note: The Department will reject any application that does not meet these eligibility requirements.

Number of Awards: 1.

Estimated Available Funds: $1,243,322 for a start-up award of approximately 6 months. The actual level of funding, if any, is contingent on final congressional action on the Department's FY 2006 appropriations bill.

Estimated Size of Award: $1,243,322. Funding for the Regional Center (as defined in Section I of this notice) for the Great Lakes West region was calculated by formula, based equally on shares of population and poor children, ages 5–17 in the States (including DC, Puerto Rico, and the Outlying Areas). The most recent Department estimates for awards to the comprehensive centers, including the Great Lakes Regional Center, are provided at: *http://www.ed.gov/programs/newccp/index.html.*

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 57 months.

Budget Period: The first budget period will be approximately six months. Budget periods 2 through 4 will be 12 months. Budget period 5 will be 15 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Comprehensive Centers program supports the establishment of not fewer than 20 comprehensive technical assistance centers that provide technical assistance to States as States work to help districts and schools to close achievement gaps in core content areas and raise student achievement in schools, especially those in need of improvement (as defined by section 1116(b) of the Elementary and Secondary Act of 1965, as amended (ESEA)).

Background: On June 3, 2005, the Department published a notice announcing a competition for the Comprehensive Centers program (70 FR 32583; correction notice 70 FR 35415). The notice invited applications for 21 comprehensive centers—16 regional comprehensive centers to serve States within defined geographic boundaries (Regional Centers) and 5 content comprehensive centers, each having a specific content expertise and focus, to support the work of the Regional Centers (Content Centers). The comprehensive centers provide technical assistance to States as States work to help districts and schools to close achievement gaps in core content areas and raise student achievement in schools, especially those in need of improvement (as defined by section 1116(b) of the ESEA).

As a result of the competition announced on June 3, 2005, the Department funded 20 Centers—15 Regional Centers and 5 Content Centers—with FY 2005 funds. However, the Department did not fund a Regional Center for the region designated to serve the States of Illinois and Wisconsin, the region identified as the Great Lakes West region.

This notice, therefore, invites applications for a Regional Center to serve the Great Lakes West region so as to complete the Comprehensive Centers program's technical assistance system established by the Department in FY 2005.

For more information on the functions and activities of the five Content Centers funded in FY 2005 and how they relate to the Regional Centers, see 70 FR 32583.

Background on the Comprehensive Centers Program: The ESEA, as amended by the No Child Left Behind Act of 2001 (NCLB), holds States accountable for closing achievement gaps and ensuring that all children, regardless of ethnicity, income, language proficiency, or disability, receive a high-quality education and meet State academic standards in reading/language arts and mathematics by 2013–2014.

To that end, NCLB requires States to set standards for student performance, implement statewide testing and accountability systems to measure school and student performance toward achieving those standards, adopt research-based instructional and program improvements related to teaching and learning in the classroom, ensure that all teachers in core subject areas are highly qualified, and improve or ultimately restructure schools that are consistently low-performing.

The comprehensive centers funded under the Comprehensive Centers program, including the Regional Center funded under this competition, will begin providing technical assistance at a time when States, districts, and schools have accomplished much of the initial implementation of NCLB but still require assistance in many areas.

Specifically, the new centers funded under this program will provide intensive technical assistance in several areas that are key to success in meeting NCLB goals. Recent assessments conducted to help determine technical assistance priorities for the Comprehensive Centers program indicate that States need assistance, for example, in helping districts and schools to implement improvements and meet school and district adequate yearly progress requirements; in identifying and adopting instructional and assessment methods that have been proven effective through scientifically based research, especially for students with special needs; in designing programs and strategies and allocating resources to recruit, retain, and train talented teachers and school leaders; and in enhancing assessment and accountability systems.

Because States have the primary responsibility for school improvement efforts, the comprehensive centers, including the Regional Center funded under this competition, will focus

technical assistance on States and on helping States increase their capacity to provide sustained support to districts and schools as they implement NCLB reforms.

The comprehensive centers will serve as field agents for the Department to help further the understanding of the States they serve of the provisions and purposes of NCLB and related Federal programs and help those States adopt proven approaches to achieve the school improvement and student performance goals required under NCLB. The centers will work closely with, and leverage the resources of, other technical assistance providers and research organizations, including the Regional Educational Laboratories, the Special Education Technical Assistance Network, the Parental Information and Resource Centers, the Equity Assistance Centers, the Reading First National Technical Assistance Center, the Institute of Education Sciences' research centers and its What Works Clearinghouse, and other Federal, regional, and State entities and postsecondary institutions, to gather and disseminate information and knowledge about what works and to help States translate that knowledge into meaningful practice.

The approach to technical assistance delivery for the Comprehensive Centers system is two-tiered: the Regional Centers have the primary relationships with, and provide services to, the States in their regions; in serving their State clients, the Regional Centers will draw heavily on the research-based information, products, guidance, and knowledge on key NCLB topics supplied by the Content Centers.

Regional Centers must provide frontline assistance to States to help them implement NCLB and other related Federal school improvement programs and help increase State capacity to assist districts and schools meet their student achievement goals. Regional Centers must be embedded in regions and responsible for developing strong relationships and partnerships within their regional community. While Content Centers must focus almost entirely on specific content areas, analyzing research, and developing useful products and tools for Regional Centers and other clients, the Regional Centers will be the ''on-the-ground'' providers to States.

Drawing from the information and resources provided by the Content Centers funded through this program and other sources, the Regional Centers must provide a program of technical assistance to States that will enable them to, among other things—

1. Assess the improvement needs of districts and schools and assist them in developing solutions to address those needs;

2. Build and sustain systemic support for district and school improvement efforts to—(a) Close existing achievement gaps; and (b) adopt proven practices to improve instruction and achievement outcomes for students in schools identified as in need of improvement; and

3. Improve the tools and systems for school improvement and accountability for achievement outcomes.

The Department intends to have substantial and sustained involvement in the activities of the center to be funded under this competition, including by shaping grantee priorities, activities, and major products to meet the purposes of this program. The details and parameters of the Department's expectations and involvement with each center funded under this program will be included in the Department's cooperative agreement with the grantee that receives an award for that center.

Regional Advisory Committees: To help inform the Secretary's priorities for the comprehensive centers, the Secretary (in accordance with section 206 of the Educational Technical Assistance Act of 2002 (TA Act)) established 10 Regional Advisory Committees (RACs) charged with conducting education needs assessments within the geographical regions served by the current regional educational laboratories.

The RACs conducted their needs assessments during the period from December 2004 to March 2005 and submitted their reports to the Secretary on March 31, 2005. The full reports are available at: *http://www.ed.gov/programs/newccp/index.html.*

Applicants for the Regional Center for the Great Lakes West Region are encouraged to consider the specific priorities and recommendations contained in the RAC report for Wisconsin and Illinois when preparing their applications.

Priorities: We are using these priorities in accordance with section 437(d)(1) of the General Education Provisions Act. These absolute priorities are the same priorities established in the FY 2005 Comprehensive Centers competition for all centers and for Regional Centers.

For the Regional Center—Great Lakes West Region award, under 34 CFR 75.105(c)(3) we consider only applications that meet these priorities.

Absolute Priorities

Priority 1—Focus on States: To meet this priority, applicants must propose a plan of technical assistance specifically focused on helping the two States in the Great Lakes West Region (Illinois and Wisconsin) implement the provisions of NCLB applicable to those States, and helping the States in the Great Lakes West region build the capacity to help school districts and schools implement NCLB provisions and programs.

To the extent that an applicant proposes to work with individual school districts and schools, the applicant must propose a technical assistance plan that proposes work with districts and schools only where the effort: (a) Involves a high-leverage strategy (*i.e.*, reaches a large number or proportion of schools, teachers, and administrators needing the assistance within the State); (b) responds to a need identified by the State; *and* (c) is planned and coordinated with the State.

Note: This priority does not support research, program evaluation, or curriculum development. Thus, an applicant will not satisfy this priority if it proposes a technical assistance plan to—

a. Design or develop curricula or instructional materials for use in classrooms or develop professional development programs where proven models already exist; or

b. Conduct basic research or program evaluations on behalf of States or districts.

Priority 2—Crosscutting Expertise. To meet this priority, an applicant must demonstrate that proposed center staff have expertise on several issues of crosscutting importance related to the delivery of technical assistance in specific regions and content areas. These issues are:

a. Proven strategies for addressing the needs of schools with populations at risk of failure, especially children who have limited proficiency in English, children with disabilities, and children from economically disadvantaged families.

b. Effective uses of technology to improve instruction, and as an efficient means of delivering technical assistance.

c. Implementing school improvement reforms within urban and rural contexts.

Priority 3—Location of Regional Center. In order to meet the requirement of this priority, the proposed Regional Center must be located in and serve the Great Lakes West region defined by the Department as the following States: Illinois and Wisconsin.

Priority 4—Regional Technical Assistance Activities. To meet this priority, the work of the proposed

Regional Center must involve activities that address State technical assistance needs by:

(a) Working closely with each State in its region on an ongoing basis;

(b) Linking States with the resources of Content Centers, Department staff, Regional Educational Laboratories, the What Works Clearinghouse, and other entities that have, or may be able to, design products and services tailored to State needs;

(c) Suggesting sources of appropriate service providers or assistance for State activities that are not within the core mission of the centers—including, for example, activities to address needs related to curriculum development, designing school-level training programs, or conducting basic research or impact evaluations;

(d) Assisting State efforts to build statewide systems of support for districts and schools in need of improvement, partly by leveraging the resources of Content Centers and other sources of scientifically based education research and high-quality technical assistance on behalf of State and district clients;

(e) Working to identify, broker, leverage, and deliver information, resources, and services from the Content Centers and other sources that focus on research-based knowledge of promising practices, including assistance to States and districts on securing high-quality consultants and experts to meet specific education needs;

(f) Convening, in partnership with Content Centers and others, as appropriate, States and districts to receive training and information on best practices and research-based improvement strategies;

(g) Providing guidance and training on implementation of requirements under NCLB and other related Federal programs;

(h) Facilitating collaboration at the State level to align Federal, State, district, and school improvement programs and help States understand and use the flexibility provided by NCLB to target resources and programs to address the greatest needs; and

(i) Helping Content Centers to identify, document, and disseminate emerging promising practices by working with States to distill and document the experiences of high-performing districts and schools.

Priority 5—Knowledge and Expertise. To satisfy this priority, the proposed Regional Center must demonstrate in-depth knowledge of regional and local issues, conditions, and needs, particularly as those relate to the roles and responsibilities of States, districts, and schools in implementing the provisions of NCLB and other related Federal programs. In addition, the proposed Regional Center must have expertise in comprehensive planning, needs assessment, and State, district, and school improvement processes.

Priority 6—Coordination and Cooperation. To meet this priority, the proposed Regional Center must create and maintain cooperative working relationships with the States in the Great Lakes West region and other technical assistance providers serving that region, including the Regional Educational Laboratories, the Special Education Technical Assistance Network, Parental Information and Resource Centers, Equity Assistance Centers, the Reading First National Technical Assistance Center, and other regional and State entities, including, for example, regional service providers and postsecondary institutions.

Additional Requirements

1. *Plan of Technical Assistance.* All applicants under this competition must submit as part of their application a 5-year plan of technical assistance that describes the strategies and approaches the applicant will use to carry out the activities of the proposed center in a manner that addresses the statutory requirements of sections 203 through 207 of the TA Act, and the priorities and additional requirements described in this notice.

2. *Focus on Districts and Schools that are High-Need and Identified as in Need of Improvement.* Applicants must demonstrate how the proposed plan of technical assistance will give priority to helping States, districts, and schools build the capacity to develop and implement programs targeted specifically to meet the educational needs of students in school districts and schools with high percentages or numbers of school-age children from low-income families, including such school districts and schools in rural and urban areas; and schools in the region that have been identified for school improvement under section 1116(b) of the ESEA.

3. *Focus on State/Regional Priorities.* Applicants must tailor the strategies and activities they propose to address to the educational priorities and related technical assistance needs of States. The applicant's proposed plan of technical assistance must reflect a thorough understanding of the technical assistance needs and propose strategies that specifically address those needs for the States the Regional Center will serve, considering: (a) The educational goals and priorities of States to be served, including major reform efforts underway; (b) the current status of States in meeting the requirements and goals of NCLB; (c) the types of technical assistance and related strategies that would help States, districts, and schools implement the programs and goals of NCLB and close existing achievement gaps in the content areas; and (d) State and regional student demographics and other contextual factors, such as urban and rural locality.

4. *Allocation of Resources.* Proposed technical assistance plans must allocate resources to and within States and regions in a manner that reflects the need for assistance, taking into account such factors as the proportion of economically disadvantaged students, the increased cost burden of service delivery in areas of sparse population, and any special initiatives being undertaken by State, intermediate, and local educational agencies, or schools funded under the jurisdiction of the Bureau of Indian Affairs, which may require special assistance from the center.

5. *Coordination and Collaboration.* Each applicant must describe in its technical assistance plan how the proposed center will: (a) Communicate regularly with the U.S. Department of Education, other comprehensive centers, the Regional Educational Laboratories, State educational agencies, and other technical assistance providers as appropriate; and (b) plan and coordinate activities funded under this competition with the activities of those other entities to leverage available knowledge and resources and avoid duplicating efforts.

6. *Advisory Board.* Each application must propose, as part of its technical assistance plan, establishing an advisory board to advise the proposed comprehensive center on: (a) The activities of the center relating to its allocation of resources to and within each State in a manner that reflects the need for assistance in accordance with section 203(d) of Title II of the TA Act; (b) strategies for monitoring and addressing the educational needs of the region, on an ongoing basis; (c) maintaining a high standard of quality in the performance of the center's activities; and (d) carrying out the center's duties in a manner that promotes progress toward improving student academic achievement.

The plan must (1) detail the composition of the board by name and affiliation in accordance with the requirements described in section 203 of the TA Act and in the application instructions found in the application package, and (2) include a letter of

commitment from each proposed board member. In the alternative to submitting a plan that meets the requirements in (1) and (2) in the previous sentence, an applicant may include, in its plan, a statement of commitment that it will comply with section 203(g) of the TA Act as well as a narrative statement of how the board will operate.

7. *Evaluation Plan.* Each applicant must provide, as part of its technical assistance plan, a plan to assess: (a) The needs of the States served by the comprehensive center on an ongoing basis, and (b) the progress and performance of the center in meeting the educational needs of its clients. The plan must identify the performance objectives the project intends to achieve and performance measures for each performance objective; explain the quantitative and qualitative methods that will be used to collect, analyze, and report performance data; and describe the methods that it uses to monitor progress and make mid-course corrections, as appropriate.

8. *Project Meetings.* Applicants must budget for:

(a) The Project Director to attend a 2-day meeting in Washington, DC at least once a year for each year of the project period.

(b) Key staff to attend the following:

(i) A 2-day post-award conference with Department officials in Washington, DC, to be held within 45 days from the grant award date. The purpose of this conference will be to:

- Refine the grantee's technical assistance plan as appropriate;
- Review with the grantee the Department's intentions regarding the role of the grantee's center;
- Define how the grantee's center and the Department will work together as partners to accomplish the purposes of the grant;
- Establish lines of communication and feedback between grantees and the Department;
- Establish content for a cooperative agreement; and

(ii) A 1-day annual performance review with Department officials in Washington DC beginning one year after the post-award conference and each year of the grant thereafter.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities and other non-statutory program requirements. Section 437(d)(1) of the General Education Provisions Act (20 U.S.C. 1232(d)(1)), however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first competition under a new program authority. The Comprehensive Centers—Great Lakes West Regional Center is part of the first competition for new Comprehensive Centers program under Title II of the TA Act and, therefore, qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the absolute priorities, selection criteria and non-statutory requirements under section 437(d)(1). These absolute priorities, selection criteria, and non-statutory requirements will apply to this grant competition only.

Program Authority: 20 U.S.C. 9602–9606.

Applicable Regulations: The Education Department General Administration Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Cooperative agreement.

Number of Awards: 1.

Estimated Available Funds: $1,243,322 for a start-up award of approximately 6 months. The actual level of funding, if any, depends on final congressional action on the Department's FY 2006 appropriations bill.

Estimated Size of Award: $1,243,322. Funding for the Regional Center for the Great Lakes West region was calculated by formula, based equally on shares of population and poor children, ages 5–17 in the States (including DC, Puerto Rico, and the Outlying Areas). The most recent Department estimates for awards to the comprehensive centers, including the Great Lakes West Regional Center, are provided at: *http://www.ed.gov/programs/newccp/index.html*

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 57 months.

Budget Period: The first budget period will be approximately six months. Budget periods 2 through 4 will be 12 months. Budget period 5 will be 15 months.

III. Eligibility Information

1. *Eligible Applicants*

Research organizations, institutions, agencies, institutions of higher education, or partnerships among such entities, or individuals, with the demonstrated ability or capacity to carry out the activities described in this notice. An application from a consortium of eligible entities must include a consortium agreement. Letters of support do not meet the requirement for a consortium agreement.

2. *Cost Sharing or Matching*

This competition does not involve cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package*

You may obtain an application package via the Internet or from the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. To obtain an application via the Internet, use the following address: *http://www.ed.gov/programs/newccp/index.html.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the application, together with the forms you must submit, are in the application package for this competition.

Page Limit: Applicants are strongly encouraged to limit their application to 150 pages.

3. *Submission Dates and Times:* Applications Available: October 13, 2005.

Deadline for Transmittal of Applications: November 28, 2005.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department's e-Grants system. For information (including dates and times) about how to submit your application electronically or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: December 27, 2005.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Comprehensive Centers—Great Lakes West Region Competition CFDA Number 84.283B must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this competition after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The regular hours of operation of the e-Grants Web site are 6 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the ED 424 to the Application Control Center after following these steps:

(1) Print ED 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and,

(2)(a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Department's e-Application system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E307, Washington, DC 20202. FAX: (202) 250–5870.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.283B, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.283B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.283B), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: We will use the following selection criteria to evaluate applications under this competition. The maximum score for each criterion is indicated in parentheses with the criterion. The maximum number of points an application may earn based on the selection criteria is 100 points.

a. Need for the Center (10 Points)

In determining the need for the proposed center, the Secretary considers the following:

(i) The extent to which the proposed plan of technical assistance presents strategies that address the priority technical assistance needs of States as evidenced by in-depth knowledge and understanding of—

(A) The specific educational goals and priorities of the States to be served by the center, including relevant major reform efforts underway;

(B) The status of States in meeting the requirements of NCLB, including the number and proportion of districts and schools in need of improvement within each State, the number and proportion of students not meeting State standards in reading and mathematics; and

(C) Applicable State and regional demographics and other contextual factors and their relevance for the purposes, goals, and challenges for implementing the provisions of NCLB.

(ii) The likelihood that activities of the proposed center will result in products and services that are of high quality, high relevance, and high usefulness to clients.

b. Significance (10 Points)

In determining the significance of the proposed center, the Secretary considers the following:

(i) The extent to which the proposed technical assistance plan presents an approach that will likely result in systems change or improvement at the State or district levels.

(ii) The potential contribution of the center proposal to increase knowledge or understanding of effective strategies.

(iii) The importance of outcomes likely to be attained by the proposed center, especially improvements in teaching and student achievement.

c. Quality of the Project Design (25 Points)

In determining the quality of the design of the proposed center, the Secretary will consider the following factors:

(i) The extent to which the application proposes an exceptional approach for carrying out the purposes and activities for the center for which the applicant is applying.

(ii) The extent to which the application proposes high-leverage approaches that focus assistance at the State level and on helping States build capacity to support district and school improvement and programs.

(iii) The extent to which the proposed technical assistance plan reflects in-depth knowledge and understanding of NCLB, as well as supporting regulations and guidance pertinent to carrying out the purposes and activities of the center for which the applicant is applying.

(iv) The extent to which the proposed technical assistance plan reflects in-depth knowledge and understanding of available scientifically valid, research-based and/or evidence-based practices to improve student achievement and close achievement gaps and demonstrates knowledge of and access to reliable sources for obtaining such knowledge on an ongoing basis.

(v) The extent to which the proposed technical assistance plan reflects in-depth knowledge and understanding of current scientifically valid, research-based and/or evidence-based technical assistance methods and practices.

d. Quality of Project Personnel and Adequacy of Grantee Resources (25 Points).

In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of

groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary will consider the following factors under this criterion:

(i) The extent to which the application presents evidence of professional preparation and successful prior experience of the center director and other key staff, including sub-grantees and key consultants and partners that would indicate that each has the knowledge, skills and ability to successfully carry out the responsibilities they are assigned. For example, the extent to which the application presents evidence of expertise and demonstrated successful experience assisting States with comprehensive planning, needs assessments and implementing school improvement programs and processes, with a particular focus on improving outcomes for students at risk of failure, including students from low-income families, disabled students, students with limited proficiency in English, and migrant students.

(ii) The extent to which proposed center staff have expertise using technology to deliver technical assistance and implementing school improvement reforms within urban and rural contexts.

(iii) The extent to which the applicant has demonstrated experience providing technical assistance and professional development in reading, mathematics, science and technology, especially in schools and districts identified as in need of improvement.

(iv) The extent to which the applicant has prior relevant experience operating a project of the scope required for the purposes of the center being proposed.

(v) The extent to which the application proposes an advisory board membership in accordance with the requirements of the TA Act and includes reasonable assurance of their commitment to serve on the board. The extent to which the resources and plans for the board's operation are reasonable and cost-efficient.

(vi) The adequacy of resources for the proposed project, including facilities and equipment, to successfully carry out the purposes and activities of the proposed project.

e. Quality of the Management Plan (20 Points)

In determining the quality of the management plan for the proposed project, the Secretary will consider the following factors:

(i) The extent to which resources are allocated within the region in a manner that reflects the need for assistance.

(ii) The adequacy of the management plan to achieve the objectives of the project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(iii) The extent to which the time commitments of the project director and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iv) The adequacy of procedures for ensuring feedback on performance measures and continuous improvement in the operation of the proposed project.

(v) The extent to which the application proposes exceptional, innovative and workable approaches and plans to—

(A) Communicate on an ongoing basis with other comprehensive centers, as appropriate, the Regional Educational Laboratories, the client State educational agencies and other technical assistance providers serving the region; and

(B) Coordinate the plans and activities funded by this grant with the plans and activities of the State and other agencies, in order to leverage resources, avoid duplications and otherwise maximize the effectiveness of services; and make effective use of available technologies to widely disseminate information about proven practices.

f. Quality of the Project Evaluation (10 Points)

In determining the quality of the evaluation plan, the Secretary will consider the following factors:

(i) The extent to which the performance goals and objectives for the project are clearly specified and measurable in terms of the project activities to be accomplished and their stated outcomes for clients.

(ii) The extent to which the methods for monitoring performance and evaluating the effectiveness of project strategies in terms of outcomes for clients are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(iii) The extent to which the methods of evaluation will provide continuous performance feedback and permit the continuous assessment of progress toward achieving intended outcomes.

(iv) The extent to which the applicant demonstrates a strong capacity to provide reliable data on performance measures.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* To evaluate the overall success of the Comprehensive Centers program, beginning in FY 2006, the Department will use three performance measures to assess the quality, relevance, and usefulness of center activities funded under this competition. These new measures, adapted from a set of common measures developed to help assess performance across the Department's technical assistance programs, are: (1) The percentage of technical assistance services that are deemed to be of high quality by an independent review panel of expert stakeholders; (2) the percentage of technical assistance services that are deemed to be of high relevance to educational policy or practice by an independent review panel of qualified practitioners; and (3) the percentage of technical assistance services that are deemed to be of high usefulness to educational policy or practice by target audiences.

All grantees, including the Great Lakes West Regional Center, will be expected to submit, as part of their performance report, quantitative data documenting their progress with regard to these performance measures. The Department will provide information to

grantees about the independent panels conducting the review, the review process, and the definitions and criteria that will be used to evaluate the quality, relevance and usefulness of technical assistance services.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Enid Simmons, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E307, Washington, DC 20202–6335. Telephone: (202) 401–0039 or by e-mail: *OESE.cc@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 7, 2005.

Henry Johnson,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 05–20566 Filed 10–12–05; 8:45 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, November 3, 2005, 9 a.m.–5 p.m. Friday, November 4, 2005, 8:30 a.m.–4 p.m.

ADDRESSES: University Tower Hotel, 4507 Brooklyn Avenue NE., Seattle, Washington 98105, Phone Number: (206) 634–2000, Fax Number: (206) 545–2103.

FOR FURTHER INFORMATION CONTACT: Yvonne Sherman, Public Involvement Program Manager, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA, 99352; Phone: (509) 376–6216; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Advice on Hanford's Bulk Vitrification Project.
- Government Accountability Office's report dealing with DOE's contracting issues.
- Hanford Advisory Board (HAB) public speaker availability process.
- Panel discussion with University of Washington faculty involved in Hanford research.
- HAB values for prioritization of cleanup work.
- Tank waste issues discussion.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Yvonne Sherman's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Erik Olds, Department of Energy Richland Operations Office, 825 Jadwin, MSIN A7–75, Richland, WA 99352, or by calling him at (509) 376–1563.

Issued at Washington, DC, on October 6, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 05–20507 Filed 10–12–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–703–000]

ANR Pipeline Company; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective on November 1, 2005:

Fifth Revised Sheet No. 162.01
First Revised Sheet No. 162.02

ANR states that the purpose of this filing is to extend the ROFR matching cap from 5 years to 10 years.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5631 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–694–000]

ANR Pipeline Company; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Eighth Revised Sheet No. 69, to become effective on November 1, 2005.

ANR states that the purpose of this filing is to provide FSS shippers who have elected to include the applicable language in their contracts with additional flexibility in adjusting their contracts when ANR makes annual changes to its Fuel Use Percentages.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5633 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–702–000]

ANR Pipeline Company; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 101C and Original Sheet No. 101C.01 to become effective November 1, 2005.

ANR states it has submitted these sheets to provide a mechanism for allocating capacity that becomes available as a result of a shipper's agreement to accept deliveries at pressures lower than those specified in its service agreement.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5640 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–702–000]

ANR Pipeline Company; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005 ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Revised Sheet No. 101C and Original Sheet No. 101C.01 to become effective November 1, 2005.

ANR states it has submitted these sheets to provide a mechanism for allocating capacity that becomes available as a result of a shipper's agreement to accept deliveries at pressures lower than those specified in its service agreement.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5641 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1326–000 and ER05–1326–001]

CornerStone Energy General Partners, LLC; Notice of Issuance of Order

October 5, 2005.

CornerStone Energy General Partners, LLC (CornerStone) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity and energy at market-based rates and the re-sale of firm transmission rights. CornerStone also requested waiver of various Commission regulations. In particular, CornerStone requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CornerStone.

On September 30, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CornerStone should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is October 31, 2005.

Absent a request to be heard in opposition by the deadline above, CornerStone is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CornerStone, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CornerStone's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5620 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–685–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Dominion Transmission Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2005:

Twenty-Seventh Revised Sheet No. 31
Third Revised Sheet No. 31A
Thirtieth Revised Sheet No. 32
Third Revised Sheet No. 32A
Seventeenth Revised Sheet No. 34
Second Revised Sheet No. 34A
Twenty-Third Revised Sheet No. 35
Third Revised Sheet No. 35A
Fifteenth Revised Sheet No. 39
Third Revised Sheet No. 39A

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 online 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5624 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–692–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective November 1, 2005:

Twenty-Sixth Revised Sheet No. 31,
Second Revised Sheet No. 31A,
Twenty-Ninth Revised Sheet No. 32,
Second Revised Sheet No. 32A,
Sixteenth Revised Sheet No. 34,
First Revised Sheet No. 34A,
Twenty-Second Revised Sheet No. 35,
Second Revised Sheet No. 35A,
Fourteenth Revised Sheet No. 39,
Second Revised Sheet No. 39A.

DTI states that the purpose of this filing is to update DTI's effective Electric Power Cost Adjustment (EPCA), through the mechanism described in section 17 of the general terms and conditions of DTI's tariff.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5642 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1122–000 and ER05–1122–001]

FirstEnergy Nuclear Generation; Notice of Issuance of Order

October 5, 2005.

FirstEnergy Nuclear Generation (Nuclear Genco) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of energy, capacity and the reassignment of transmission capacity. Nuclear Genco also requested waiver of various Commission regulations. In particular, Nuclear Genco requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Nuclear Genco.

On September 29, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Nuclear Genco should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is October 31, 2005.

Absent a request to be heard in opposition by the deadline above, Nuclear Genco is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Nuclear Genco, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Nuclear Genco's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5630 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–699–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Eighth Revised Sheet No. 4, to become effective November 1, 2005.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5638 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–697–000]

Iroquois Gas Transmission System, L.P.; Notice of Surcharge Adjustment

October 5, 2005.

Take notice that on September 30, 2005, Iroquois Gas Transmission System, L.P. (Iroquois) filed an update to the Iroquois Deferred Asset Surcharge Adjustment, pursuant to part 154 of the Commission's regulations and section 12.3 of the general terms and conditions of its FERC Gas Tariff. Iroquois states that because there is no change in the Deferred Asset Surcharge, as shown in the calculation on the attached work papers, no tariff sheet is being submitted.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time October 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5636 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–691–000]

Mississippi River Transmission Corporation; Notice of Annual Fuel Adjustment

October 5, 2005.

Take notice that on September 30, 2005, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) filed with the Commission its annual fuel adjustment filing pursuant to section 22 of the general terms and conditions of MRT's FERC Gas Tariff, Third Revised Volume No. 1, requesting an effective date of November 1, 2005, MRT filed the following sheets:

Fifty-Fourth Revised Sheet No. 5
Fifty-Fourth Revised Sheet No. 6
Fifty-First Revised Sheet No. 7
Twenty-Third Revised Sheet No. 8

MRT further states that a copy of this filing has been mailed to each of MRT's customers and to the state Commissions of Arkansas, Illinois, Louisiana, Missouri and Texas.

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 § 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 online 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5618 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–688–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on November 1, 2005 as follows:

1 Revised 72 Revised Sheet No. 50,
1 Revised 73 Revised Sheet No. 51,
1 Revised 36 Revised Sheet No. 52,
1 Revised 72 Revised Sheet No. 53,
1 Revised 20 Revised Sheet No. 56,
1 Revised 28 Revised Sheet No. 59,
1 Revised Twelfth Revised Sheet No. 59A,
1 Revised 31 Revised Sheet No. 60,
1 Revised Eleventh Revised Sheet No. 60A.

Northern states that the above tariff sheets are being filed to update and effectuate the November 1, 2005 tariff sheets containing the settlement rates approved in Docket Nos. RP03–398–000 and RP04–155–000 to reflect the interim rate changes for the electric compression charge, the Waterville storage point rate treatment and the ACA.

Northern further states that copies of the filing have been mailed to each of 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5627 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–700–000]

Panhandle Eastern Pipe Line Company, LP; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Panhandle Eastern Pipe Line Company, LP (Panhandle) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed on Appendix A attached to the filing to become effective November 1, 2005.

Panhandle states that the purpose of this filing, made in accordance with section 24 (Fuel Reimbursement Adjustment) of the general terms and conditions in Panhandle's FERC Gas Tariff, Third Revised Volume No. 1, is to update the fuel reimbursement percentages proposed to be effective November 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5639 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–682–000]

SCG Pipeline, Inc.; Notice of Penalty Revenue Report

October 5, 2005.

Take notice that on September 29, 2005, SCG Pipeline, Inc. (SCG) submitted for filing its Penalty Revenue Report covering the time period from the start of SCG's operations in November 2003 through July 31, 2004.

SCG states that it did not assess or collect any penalty revenues during that time period. SCG further requests that the Commission grant any waivers of its regulations that may be deemed necessary to accept this report beyond the time periods described in section 25 of the general terms and conditions of the SCG Tariff.

SCG 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 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 online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5621 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–684–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised sheets to become effective November 1, 2005:

Fourth Revised Sheet No. 26
Third Revised Sheet No. 27
Third Revised Sheet No. 28
Forty-Third Revised Sheet No. 29
Twenty-Fifth Sheet No. 30

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 online 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5623 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–686–000]

Southwest Gas Storage Company; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fifteenth Revised Sheet No. 5, to become effective November 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 § 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.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–5625 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–683–000]

Trans-Union Interstate Pipeline, L.P.; Notice of Proposed Change in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Trans-Union Interstate Pipeline, L.P. (Trans-Union) pursuant to section 4 of the Natural Gas Act (NGA) 15 U.S.C. 717c, § 154.313 of the regulations of the Commission, 18 CFR 154.313, and the Commission's order in Docket No. CP01–47–000 issued September 23, 2003, filed a rate decrease for its initial firm and interruptible transportation services, to become effective on September 1, 2005.

Trans-Union further states that it has served copies of its filing on all affected customers and all interested state regulatory 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.

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This filing is accessible online 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5622 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–690–000]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Surcharge Refund

October 5, 2005.

Take notice that on September 29, 2005, Transcontinental Gas Pipe Line Corporation (Transco) filed its report of Great Plains Surcharge refunds for the period November 1, 2003 through March 31, 2004.

Transco states that its filing complies with the Great Plains Refund Provisions in section 39 of the general terms and conditions of Transco's FERC Gas Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time October 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5629 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–693–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty-Third Revised Sheet No. 29, to become effective November 1, 2005.

Transco states that copies of the filing are being mailed to 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.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–5632 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–689–000]

Transwestern Pipeline Company, LLC; Notice of Balancing Agreement

October 5, 2005.

Take notice that on September 29, 2005, Transwestern Pipeline Company, LLC (Transwestern) submitted an Operator Balancing Agreement (OBA) for filing that contains a provision that is supplemental to the form of OBA set forth in Transwestern's tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time October 13, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5628 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–695–000]

Transwestern Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 5B.02, to become effective November 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5634 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–696–000]

Transwestern Pipeline Company, LLC; Notice of Tariff Filing

October 5, 2005.

Take notice that on September 30, 2005, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Revised Sheet No. 5B.03, to become effective November 1, 2005.

Transwestern states that the tariff sheet is being filed to set up new TCR II Reservation Surcharges that Transwestern proposes to put into effect on November 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.

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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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5635 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–687–000]

Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 2005:

Eighth Revised Sheet No. 10
Eighth Revised Sheet No. 11
Eighth Revised Sheet No. 12
Eighth Revised Sheet No. 13
Eighth Revised Sheet No. 14
Eighth Revised Sheet No. 15
Eighth Revised Sheet No. 16
Eighth Revised Sheet No. 17

Trunkline states that the purpose of this filing, made in accordance with section 22 (Fuel Reimbursement Adjustment) of Trunkline's FERC Gas Tariff, Third Revised Volume No. 1, is to update the fuel reimbursement percentages proposed to be effective November 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 § 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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5626 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1215–000, ER05–1215–001, and ER05–1215–002]

Wholesale Electric Trading LP; Notice of Issuance of Order

October 5, 2005.

Wholesale Electric Trading LP (WET) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed rate schedule provides for the sales of capacity and energy at market-based rates. WET also requested waiver of various Commission regulations. In particular, WET requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WET.

On September 30, 2005, pursuant to delegated authority, the Director,

Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WET should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protests is October 31, 2005.

Absent a request to be heard in opposition by the deadline above, WET is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of WET, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WET's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5619 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–698–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 5, 2005.

Take notice that on September 30, 2005, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 358I, to become effective September 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.

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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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5637 Filed 10–12–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2005–0116; FRL–7983–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Secondary Non-Ferrous Metals Processing Area Source Standard Development Questionnaire, EPA ICR Number 2200.01

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before November 14, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2005–0116, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Karen Rackley, Office of Air Quality Planning and Standards, Emission Standards Division, Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Mail Drop C404–04; Telephone number: (919) 541–0634; fax number: (919) 541–3207; e-mail address: *rackley.karen@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 25, 2005 (70 FR 43407) EPA

sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2005–0116, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, 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 and Information Center 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 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 and OMB within 30 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, confidential business information (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.*

Title: Secondary Non-Ferrous Metals Processing Area Source Standard Development Questionnaire.

Abstract: The proposed ICR will collect information and data from 110 existing secondary non-ferrous metal processing plants. Plants will be required to complete a simple paper questionnaire on production processes and equipment, air pollution control systems, pollution prevention management practices, applicable regulatory requirements, and emissions test data. The questionnaire may be completed from existing information; no additional monitoring or testing is required. The EPA will use the collected information and data to develop area source standards for hazardous air pollutants required under section 112(d) of the Clean Air Act.

EPA's authority to collect information is contained in section 114 of the Clean Air Act, (42 U.S.C 7414). All information submitted to EPA pursuant to this ICR for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

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 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 62 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; 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: Entities potentially affected by this action are secondary non-ferrous metals processing establishments, excluding plants that perform secondary processing of aluminum, copper, or lead. The standard industrial classification (SIC) code for this industry is primarily 3341, Secondary Smelting and Refining of Non-ferrous Metals; the North American Industry Classification System (NAICS) code is 331492, Secondary Smelting, Refining, and Alloying of Non-ferrous Metal (Except Copper and Aluminum).

Estimated Number of Respondents: The estimated number of respondents is 110.

Frequency of Response: This is a new collection requiring a one-time response.

Estimated Total Annual Hour Burden: The estimated total annual hour burden is 2,281 person-hours.

Estimated Total Annual Cost: $179,456, which includes $0 annualized capital/startup costs, $0 annual O&M costs, and $179,456 annual labor costs.

Changes in the Estimates: This section does not apply since this is a new collection.

Dated: September 27, 2005.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 05–20516 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7977–2]

Electronic Reporting to EPA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of EPA Systems Designated for Receipt of Electronic Submissions.

SUMMARY: This notice designates all EPA systems already receiving electronic reports as of the publication of this notice acceptable to continue receiving electronic reports for a period of up to two years.

FOR FURTHER INFORMATION CONTACT: David Schwarz, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov,* or Evi Huffer, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Stop 2823T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Action Is EPA Taking?

A. Background

Elsewhere in today's **Federal Register**, the EPA has published its Electronic Reporting Rule, the ''Cross-Media Electronic Reporting'' (''CROMERR''), located at 40 CFR part 3. CROMERR provides the performance standards applicable to electronic reporting under EPA's authorized state, tribe, and local programs. If reporting to EPA rather

than authorized programs, § 3.10 of CROMERR requires submission of an electronic document to EPA's Central Data Exchange, or ''to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions[.]'' This notice is intended to designate certain EPA electronic document receiving systems for receipt of submissions under CROMERR, as discussed below.

B. Today's Action

In accordance with 40 CFR 3.10, EPA hereby designates for the receipt of electronic submissions, all EPA electronic document receiving systems currently existing and receiving electronic reports as of the date of this notice. This designation is valid for a period of up to two years from the date of publication of this notice. During this two-year period, entities that report directly to EPA may continue to satisfy EPA reporting requirements by reporting to the same systems as they did prior to CROMERR's publication unless EPA publishes a notice that announces changes to, or migration from, that system.

Any existing systems continuing to receive electronic reports at the expiration of this two-year period must receive redesignation by the Administrator under § 3.10. Notice of such redesignation will be published in the **Federal Register**.

C. How Can I Get Copies of This Document and Other Related Information?

A copy of this notice has been placed in EPA's official public docket for CROMERR, Docket ID No. OEI–2003–0001. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, 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 Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.C. Once in the system select ''search,'' then key in the appropriate docket identification number.

Dated: September 22, 2005.

Stephen L. Johnson,

Administrator.

[FR Doc. 05–19602 Filed 10–12–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, October 18, 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.

* * * * *

Note: The open meeting has been changed to Wednesday, October 19, 2005.

DATE AND TIME: Wednesday, October 19, 2005, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Advisory Opinion 2005–13: EMILY's List, by counsel Robert F. Bauer and Judith L. Corley.

Advisory Opinion 2005–14: Association of Kentucky Fried Chicken Franchisees, Inc. (''AKFCF'') and AKFCF Political Action Committee, by counsel Andrew C. Selden and Neal T. Buethe.

Advisory Opinion 2005–15: Republican State Executive Committee of West Virginia, by its treasurer Scott D. Reed. Routine Administrative Matters.

DATE AND TIME: Thursday, October 20, 2005, at 9:30 a.m.

PLACE: 999 E Street, NW., Washington, DC (ninth floor)

STATUS: This hearing will be open to the public.

MATTER BEFORE THE COMMISSION: Electioneering Communications.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack; Press Officer; Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 05–20637 Filed 10–11–05; 3:14 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov).*

Agreement No.: 011426–037.

Title: West Coast of South America Discussion Agreement.

Parties: APL Co. Pte Ltd.; CMA CGM, S.A.; Compania Chilena de Navigacion Interoceanica, S.A.; Compania Sudamericana de Vapores, S.A.; Frontier Liner Services, Inc.; Hamburg-Süd KG; King Ocean Services Limited, Inc.; CP Ships USA LLC; Mediterranean Shipping Company, S.A.; Seaboard Marine Ltd.; South Pacific Shipping Company, Ltd. (d/b/a Ecuadorian Line); and Trinity Shipping Line.

Filing Party: Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW.; Suite 900; Washington, DC 20036.

Synopsis: The amendment makes changes in the manner in which the parties may confer and also clarifies the responsibilities for the payment of any civil penalties.

By order of the Federal Maritime Commission.

Dated: October 7, 2005.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 05–20522 Filed 10–12–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 05–07]

U.S. Lines, Limited v. Value Imports, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (''Commission'') by U.S.

Lines, Limited (''Complainant'') against Value Imports, Inc. (''Respondent''). Complainant is an ocean common carrier under the Shipping Act of 1984, as amended (''the Act''). Respondent, an importer, was the beneficial owner of cargo discharged at Total Terminals Inc. (''TTI'') a marine terminal operator at the Port of Long Beach, California. Complainant alleges that demurrage accrued on the cargo pursuant to its tariff resulting in a possessory maritime lien, permitting it to hold the cargo until all charges, including demurrage, were paid. Complainant contends that Respondent entered bank information and payment instructions at TTI's internet Web site and that TTI, as agent for Complainant, accepted the payment information and released the cargo to Respondent. Complainant asserts the bank designated by Respondent refused to pay because of insufficient funds on deposit. Complainant further contends that these alleged activities violate section 10(a)(1) of the Act in that Respondent knowingly and willfully obtained ocean transportation for property at less than the rates or charges that would otherwise be applicable. Complainant prays that Respondent be required to answer the charges herein; that after due hearing, an order be made commanding Respondent to cease and desist from the aforesaid violation of the Act; to pay to Complainant by way of reparations for the unlawful conduct described the sum of $75,140 with interest and attorney's fees, and any other sums and further orders as the Commission may determine to be proper.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 6, 2006, and the final decision of the Commission shall be issued by February 8, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 05–20481 Filed 10–12–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website 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 November 4, 2005.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Salem Five Bancorp, Salem, Massachussetts; to become a bank holding company by acquiring 100 percent of the voting shares of Salem Five Cents Savings Bank, Salem, Massachusetts, and Heritage Co-Operative Bank, Salem, Massachusetts.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. South Plains Financial, Inc., Employee Stock Ownership Plan, Lubbock, Texas; to become a bank holding company by acquiring 26 percent of the voting shares of South Plains Financial, Inc., Lubbock, Texas, and indirectly acquire South Plains Delaware Financial Corporation, Dover, Delaware; City Bank, Lubbock, Texas; Zia Financial Corporation, Ruidoso, New Mexico; and City Bank New Mexico, Ruidoso, New Mexico.

Board of Governors of the Federal Reserve System, October 6, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–5585 Filed 10–12–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service; Performance Review Board Members

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Title 5, U.S. Code, Section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that appointment of Performance Review Board members be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Andrea Burckman, Office of Human Resources, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201, telephone 202–690–6528.

SUPPLEMENTARY INFORMATION: The following persons may serve on a Performance Review Board, which oversees the evaluation of performance appraisals of Senior Executive Service members throughout the Department of Health and Human Services. (list attached)

Dated: October 5, 2005.

Joe Ellis,

Deputy Assistant Secretary for Administration and Management.

Department of Health and Human Services

Performance Review Board

Russell Abbott, Director, Office of Management
Ann Agnew, Executive Secretary to the Department
John Aguirre, Director, Administrative Operations Service
John Agwunobi, Senior Advisor to the Secretary

Kathleen Annette, Director, Bemidji Area
Carol Arbogast, Executive Leader (Human Resource Systems)
Gale Arden, Director, Disabled and Elderly Health Programs Group
Joseph Autry, Senior Associate for Medical Affairs
Jane Axelrad, Associate Director for Policy
Lawrence Bachorik, Senior Advisor for International Policy and Communications
Gary Bailey, Deputy Director for Plan Policy and Operations
Colleen Barros, Deputy Director for Management
Lisa Barsoomian, Deputy Associate General Counsel for Claims and Employment Law
Robert Baughman, Director, Division of Fundamental Neurosciences
Margaret Bean, Deputy Director, Office of Child Support Enforcement
Catherine Beck, Associate Director for Policy and Executive Programs
Larry Bedker, Director Financial Management Service
Carol Bennett, Deputy Associate General Counsel for Program Integrity
David Benor, Associate General Counsel, Public Health
Susan Bernard, Associate Director for Regulations
Joyce Berry, Director Division of State and Community Systems Development
Douglas Black, Associate Director for Tribal Activities
Robert Blitzer, Deputy Assistant Secretary for Planning and Emergency Response Coordination
Abby Block, Director, Center for Beneficiary Choices
Stephen Blount, Associate Director for Global Health
Eric Blumberg, Deputy Associate General Counsel for Litigation Food and Drug Division
Susan Bond, Director Scientific Policy Development
Julie Boughn, Director, Information Services Modernization Group
Sheldon Bradshaw, Associate General Counsel, Food and Drug Division
David Brailer, National Health Information Technology Coordinator
Marcia Brand, Director Office of Rural Health Policy
Kimberly Brandt, Director, Program Integrity Group
William Breithaupt, Associate Director for Management and Operations
Barbara Broman, Deputy to the Deputy Assistant Secretary for Planning and Evaluation (Human Services Policy)
Charlene Brown, Deputy Chief Operating Officer
Gary Buehler, Director Office of Generic Drugs
William Burel, Chief Management Officer
Maurice Burg, Chief, Laboratory of Kidney and Electrolyte Metabolism
Jamie Burke, White House Liaison for Political Personnel, Boards and Commissions
Francis Burns, Deputy Assistant Secretary for Wellness and Community-Based Services
Jeremy Burton, Deputy Assistant Secretary for Legislation (Planning and Budget)
David Cade, Deputy General Counsel
Richard Campanelli, Director Office for Civil Rights
Galen Carver, Chief Management Officer, Office of Terrorism Preparedness and Emergency Response
Lester Cash, Director, Division of Discretionary Programs
Glenn Chaney, Director, Accounting Management Group, Office of Financial Management
Robert Chatfield, Director, Human Resources Accountability and Technology Division
Laura Cheever, Deputy Associate Administrator, HIV/AIDS Bureau
Philip Chen Jr., Senior Advisor to Deputy Director for Intramural Research
Michaele Christian, Associate Director, Cancer Therapy Evaluation Program
Don Christoferson, Associate Director for Administrative Management
H. Westley Clark, Director, Center for Substance Abuse Treatment
James Cohen, Associate Director for Compliance and Biologic Quality
Lois Cohen, Associate Director for International Health
Janet Collins, Deputy Director, Center for Chronic Disease Prevention and Health Promotion
Timothy Condon, Deputy Director, National Institute on Drug Abuse
Cecil Conway Jr., Director, Billings Area
Jeffrey Cooper, Director, Office of Information Technology Shared Services
Milton Corn, Associate Director for Extramural Programs
Curtis Coy, Deputy Assistant Secretary for Administration
John Daugherty, Director, Oklahoma Area
Beverly Davis, Director, Center for Substance Abuse Prevention
Don Davis, Director, Phoenix Area Office
Jeffrey Davis, Associate General Counsel, General Law Division
Diann Dawson, Director, Regional Operations
Robert Delaney, Special Advisor for Policy
Avis Dickey, Chief Management Officer, Office of Workforce and Career Development
Gregory Doyle, Chief of Shared Services
Carl Draper, Director of Compliance
Yvonne DuBuy, Associate Director for Management
Elizabeth Duke, Administrator, Health Resources and Services Administration
Carlton Duncan, Deputy Chief Operating Officer
David Dwyer, Director, Office of Real Property Services
John Dyer, Chief Operating Officer
Gary Dykstra, Regional Food and Drug Director, Southeast Region
Phyllis Eddy, Deputy Director for Management Operations
Brenda Edwards, Associate Director, Surveillance Research Program
Robert Eiss, Senior Advisor for Strategic Initiatives
Joe Ellis, Assistant Secretary for Administration and Management
Joseph Ellis, Director, Office of Policy for Extramural Research
Leon Ellwein, Associate Director for Applications of Vision Research
James Farris Jr., Dallas Regional Administrator
Linda Fishman, Director, Office of Legislation
J. Fitzmaurice, Senior Science Advisor for Information Technology
William Fitzsimmons, Executive Officer, National Institute of Mental Health
Jeffrey Flick, San Francisco Regional Administrator
Catherine Flickinger, Director, Office of Information Technology and Chief Information Officer
Ashley Flory, Deputy Executive Secretary
Cecilia Ford, Chairperson, Departmental Appeals Board
Richard Foster, Director, Office of the Actuary
Leslye Fraser, Associate Director of Regulations
Diane Frasier, Director, Office of Contracts Management
Robinsue Frohboese, Principal Deputy Director
Frank Fuentes Jr., Deputy Commissioner, Administration for Children, Youth and Families
Sharon Fujii, Regional Hub Director
Gayla Fuller, Chief Counsel, Region VI
Wallace Fung, Deputy Director (Technology)
Jacqueline Garner, Chicago Regional Administrator
Kay Garvey, Director, Office of Communications
Edward Gendron, Director, Finance Systems and Budget Group
Denise Geolot, Director, Division of Nursing
Julie Gerberding, Director, Center for Disease Control and Prevention Administration

Margaret Giannini, Director, Office of Disability
Lillian Gill, Senior Associate Director Center for Devices and Radiological Health
William Gimson, Chief Operating Officer
Margaret Glavin, Associate Commissioner for Regulatory Affairs
Alma Golden, Deputy Assistant Secretary for Population Affairs
Naomi Goldstein, Director, Office of Planning, Research and Evaluation
Julie Goon, Director of Medicare Outreach and Special Advisor to the Secretary
Maureen Gormley, Chief Operating Officer
Scott Gottlieb, Deputy Commissioner for Policy
Bruce Granger, Chief Counsel, Region IV
Karen Groux, Director, Atlanta Human Resources Center
Thomas Gustafson, Deputy Director, Center for Medicare Management
William Hall, Director News Division
John Hallenbeck, Chief, Stroke Branch
Thomas Hamilton, Director, Survey and Certification Group
Nguyen VanHanh, Director, Office of Refugee Resettlement
Carrie Hanley, Assistant Commissioner for Management
Eric Hargan, Deputy General Counsel—Regulation
Carl Harper, Director, Resource Access and Partners
Kathleen Harrington, Director, Office of External Affairs
Barbara Harris, Chief Financial Officer
John Hartinger, Associate Director for Budget and Financial Management
Florence Haseltine, Director, Center for Population Research
Steven Hausman, Deputy Director, National Institute of Arthritis and Musculoskeletal and Skin Diseases
Charles Havekost, Deputy Assistant Secretary for Information Resources Management and Chief Information Officer
Dana Haza, Director, Commission on Systemic Interoperability
Lynn Hellinger, Director of Management
Deborah Henderson, Senior Advisor
Rosemarie Henson Steele, Director
Kathleen Heuer, Associate Commissioner for Management
Mary Ann Higgins, Regional Hub Director
Timothy Hill, Director, Office of Financial Management
John Hoff, Health Attaché—Paris
Thomas Hooven, Associate Director for Administration
Helen Horn, Senior Advisor for Strategic Planning
Mary Horner, Director, Office Minority Health
David Horowitz, Director Office of Compliance
Robert Hosenfeld, Deputy Assistant Secretary for Human Resources
Sharon Hrynkow, Deputy Director, Fogarty International Center
John Hubbard Jr., Director, Navajo Area
Betsy Humphreys, Deputy Director, National Library of Medicine
Edward Hunter, Associate Director for Planning, Budget and Legislation
Clarence Huntley, Director Information Technology Service Center
Terry Hurst, Director, Program Management Office
Hugh Hurwitz, Director, Office of Acquisitions and Grants Services
Karen Jackson, Director, Medicare Contractor Management Group
Richard Jackson, Senior Advisor to the Director at the Centers for Disease Control and Prevention
David Jacobowitz, Chief, Section on Histopharmacology
John Jarman, Executive Officer
Sharon Jenkins, Executive Officer
Walter Jones, Deputy Director for Management and Operations
Wanda Jones Deputy Assistant Secretary (Women's Health) and Director, Women's Health
Maria Joyce, Director, Division of Financial Operations
Daryl Kade, Associate Administrator for Policy and Programs Coordinator
Linda Kahan, Deputy Director, Center for Devices and Radiological Health
John Kalavritinos, Director of Intergovernmental Affairs
Ruth Katz, Deputy to Deputy Assistant Secretary for Planning and Evaluation (Disability, Aging and Long Term Care Policy)
Gary Kavanagh, Director, Business Standards and Systems Operations Group
Robert Keith, Associate General Counsel Children, Family and Aging Division
Miriam Kelty, Director, Office of Extramural Affairs
Kathleen Kendrick, Deputy Director
Judith Kenny, Director, Information Technology Services
James Kerr, New York Regional Administrator
Roxane Kerr, Associate Director for Management
William Kerr, Associate Director for Administration
Margo Kerrigan, Director, California Area
Thomas Kickham, Director of Beneficiary Services and Partnership Group
Terris King, Deputy Director, Office of Clinical Standards and Quality
Ruth Kirschstein, Senior Advisor to the Director, National Institutes of Health
Andrew Knapp, Senior Advisor to the Administrator
Paula Kocher, Deputy Associate General Counsel for Public Health
Diana Kolaitis, Regional Food and Drug Director, Northeast Region
Richard Kopanda, Deputy Director, Center for Substance Abuse Treatment
Jack Kress, Executive Director of Advisory Committee
Herbert Kuhn, Director Center for Medicare Management
Lisa Lacasse, Chief Financial Officer
Michael Landa, Deputy Director for Regulatory Affairs
Crayton Lankford Jr., Chief Management Officer, Office of Global Health
Mary Laureno, Director, Beneficiary Information Services Group
Laura Lawlor, Counselor for Public Health and Science
Donald Lee, Director, Aberdeen Area
Thomas Lenz, Kansas City Regional Administrator
Caroline Lewis, Deputy Associate Administrator
Michel Lincoln, Executive Advisor to the Director
Simon Liu, Director, Information Systems
Stephen Long, Associate Director for Administration
Keith Longie, Director, Office of Information Technology
Timothy Love, Director, Office of Research, Development, and Information
Daryl Lucas, Acting Director, Rockville Human Resources Center
Ernest Lunsford Jr., Director, White Oak Consolidation Program
George Lyon, Senior Advisor to the General Counsel
Stacie Maass, Executive Director of Medicaid Commission
Patricia Mackey, Director, Office of Equal Opportunity and Civil Rights
James Macrae, Director, Office of Performance Review
Mary Anne Malarkey, Director, Office of Compliance
Diane Maloney, Associate Director for Policy
Christophe Mandregan Jr., Director, Alaska Area
Teri Manolio, Director, Epidemiology and Biometry Program
Kathleen Marconi, Director, Office of Science and Epidemiology
Michael Marron, Associate Director for Biomedical Technology
Anna Marsh, Executive Officer
Michael Martin, Director, Division of Physiological Systems
Ruth Martin, Chief Management Officer
John Marzilli, Deputy Associate Commissioner for Regulatory Affairs
Leon McCowan, Regional Hub Director
Barbara McGarey, Deputy Associate General Counsel for Public Health (National Institutes of Health)

Patrick McGarey, Director, Office of Budget Formulation and Presentation
Kathleen McGuan, Associate General Counsel
Richard McKeown, Chief of Staff
Michael McMullan, Deputy Director for Beneficiary Services
Sidney McNairy Jr., Associate Director for Research Infrastructure
Lore Anne McNicol, Director, Division of Extramural Research
Merle McPherson, Director, Division of Services for Children with Special Health Needs
Regina McPhillips, Director, Beneficiary Education and Analysis Group
Robert McSwain, Deputy Director, Indian Health Service
Reginald Mebane, Chief Management Officer
Barbara Merchant, Associate Director for Management
David Mesterharm, Director, Office of Information Services (Chief Information Officer)
Richard Millstein, Senior Advisor and Counselor for Special Initiatives
Allan Mirsky, Chief, Section on Clinical and Experimental Neuropsychology
Madeline Mocko, Director, Office of Legislative Affairs and Budget
Jess Montes, Senior Advisor for Special Initiatives
Douglas Morgan, Director, Division of Service Systems
Charles Morris, Director, Center for Faith Based and Community Initiatives
Willis Morris, Senior Advisor to the Assistant Secretary of Health
Marcelle Morrison-Bogorad, Director of Neuroscience and Neuropsychology of Aging Program
Patricia Morrissey, Commissioner, Administration on Developmental Disabilities
Theresa Mullin, Assistant Commissioner for Planning
Solomon Mussey, Supervisory Actuary
David Naimon, Deputy Associate General Counsel for Public Health
Jon Nelson, Deputy Associate Administrator
William Nichols, Director, Procurement and Grants Office
Geraldine Nicholson, Director, Provider Communications
Stuart Nightingale, Director, Office of Medical, Science and Public Health
Marshall Nirenberg, Chief, Laboratory of Biochemical Genetics
Robert Noonan, Director, Office of Competitive Sourcing
Leslie Norwalk, Deputy Administrator
Scott Nystrom, Executive Director
Nancy O'Connor, Philadelphia Regional Administrator
Susan Orr, Associate Commissioner, Children's Bureau
Brent Orrell, Deputy Assistant Secretary for Policy and External Affairs
Karen O'Steen, Director, Office of Operations Management and Chief Administrative Officer
Laura Ott, Deputy Assistant Secretary for Legislation (Human Services)
Gerald Parker, Deputy Assistant Secretary for Management
Delores Parron, Scientific Advisor for Capacity Development
Elaine Parry, Director of Special Initiatives
Roger Parvin, Chief Management Officer
Christophe Pascal, Director, Office of Research Initiatives
Dalton Paxman, Regional Health Administrator
Christina Pearson, Deputy Assistant Secretary Public Affairs (Media)
Patricia Pearson, Director, Baltimore Human Resources Center
Steven Pelovitz, Deputy Associate Administrator, Maternal and Child Health Bureau
Audrey Penn, Deputy Director, National Institute of Neurological Disorders and Stroke
Wesley Perich, Director, Budget Analysis Group
Martha Pine, Associate Director for Administration and Operations
Vivian Pinn, Associate Director, Research on Women's Health
Melinda Plaisier, Assistant Commissioner for International Programs
Diane Porter, Deputy Director for Management
William Porter, Chief Security Officer
Robert Post, Chief Biological Psychiatry Branch
Elliot Postow, Director, Division of Biologic Basis of Disease
A. Kathryn Power, Director, Center for Mental Health Services
Douglas Pruett, Director of Security/ Drug Testing
Alan Rabson, Deputy Director, National Cancer Institute
Deborah Ralston, Director, Office of Regional Operations
Louise Ramm, Deputy Director, National Center for Research Resources
William Raub, Principal Deputy Assistant Secretary for Public Health Emergency Preparedness
Thomas Reilly, Principal Deputy Assistant Secretary (Budget, Technology and Finance)
Elizabeth Richter, Director, Hospital and Ambulatory Policy Group
Josephine Robinson, Director, Office of Community Services
Patrick Ronan, Associate Commissioner for Legislation
Laura Rosenthal, Associate Director for Management and Operations
Roy Ruff, Seattle Regional Admin
Neil Sampson, Deputy Associate Administrator
Taylor Satala, Director, Tucson Area
Mark Scally, Associate Director for Management and Operations
James Scanlon, Deputy Assistant Secretary
Daniel Schneider, Principal Deputy Assistant Secretary
Donald Schneider, Director, Division of Molecular and Cellular Mechanisms
Edward Searle, Deputy Director
Lawrence Self, Director, Office of Equal Opportunity
James Seligman, Chief Information Officer
Susan Setterberg, Regional Food and Drug Director, Central Region
Karen Shebesh, Chief Management Officer
Jean Sheil, Director, Family and Children's Health Programs Group
Donald Shriber, Associate Director, Washington
Elliot Siegel, Associate Director for Health Information Programs Development
Stewart Simonson, Assistant Secretary for Public Health Emergency Preparedness
Jean Slutsky, Director, Center for Outcomes and Evidence
Dennis Smith, Director, Center for Medicaid State Operations
Patricia Smith, Director, Medicare Advantage Group
Stephen Smith, Special Assistant to the Administrator
Marc Smolonsky, Associate Director for Legislative Policy Analysis
Anna Snyder, Director, Office of Special Programs
Edward Sontag, Policy Program Management Officer
Anita Miller Sostek, Director, Division of Clinical and Population-Based Studies
Philip Spiller, Director, Office of Seafood
Sidonie Squier, Director, Office of Family Assistance
William Stamper, Deputy Assistant Secretary for Facilities Management and Policy
Paula Stannard, Deputy General Counsel—Program Review
Mary Stanton, Deputy Director for Indian Health
Edward Stehmeyer Jr., Director, Facility Planning and Management Office
William Steiger, Director, Office of Global Health
Kenneth Stith, Director, Office of Financial Management
James Stone, Deputy Administrator, Substance and Mental Health Services Administration
Ellen Stover, Director, Division of Mental Disorders, Behavioral

Research and Acquired Immunodeficiency Syndrome
James Strachan, Director, Office of Resource Management
George Strader Jr., Deputy Assistant Secretary for Finance
Stewart Streimer, Director, Provider Billing Group
Richard Suzman, Director of Behavioral and Social Research Program
Edgar Swindell, Associate General Counsel
Sheila Taube, Associate Director, Cancer Diagnosis Program
Deborah Taylor, Deputy Director, Office of Financial Management
John Teeter, Information Technology Enterprise Architect
Dianne Thomas, Deputy Director, Office of Human Resources
Joyce Thomas, Regional Hub Director
Nancy Thompson, Director, Medicare Hearings and Appeals Transition
John Tibbs, Financial Manager
James Toya, Director, Albuquerque Area
Brenda Tranchida, Deputy Director Employer Policy and Operations Group
Anthony Trenkle, Director, Office of E-Health Standards and Services
Alexander Trujillo, Denver Regional Administrator
Richard Turman, Deputy Assistant Secretary for Budget
Timothy Ulatowski, Director, Office of Compliance
Mary Lou Valdez, Deputy Director for Policy, Office of Global Health Affairs
Ronald Valdiserri, Deputy Director
Peter Van Dyck, Associate Administrator for Maternal and Child Health Bureau
Joseph Vanlandingham, Deputy Assistant Secretary for Program Support
Martha Vaughan, Chief Metabolic Regulation Section
Terrell Vermillion, Director Office Criminal Investigations
Francis Vocci Jr., Director, Medication Development
Linda Vogel, Senior Public Health Advisor
Sheila Walcoff, Associate Commissioner for External Relations
Edwin Walker, Deputy Assistant Secretary for Policy and Programs
Frederick Walker, Associate Director for Management
Sondra Wallace, Associate General Counsel
Gerald Walters, Director, Financial Services Group
Kenneth Warren, Director, Office of Scientific Affairs
Rueben Warren, Associate Administration for Urban Affairs
Richard Waterman, Chief Counsel
Mark Weber, Associate Administration for Communications
Kerry Weems, Deputy Chief of Staff
Michael Weinrich, Director, National Center for Medical Rehabilitation Research
Donna Weinstein, Chief Counsel
Marc Weisman, Director, Office of Acquisition Management
Jacquelyn White, Director, Office of Strategic Operations and Regulatory Affairs
Donalda Wilder, Director Portland Area
Carlis Williams, Regional Hub Director
Dennis Williams, Deputy Administrator, Health Resources and Services Administration
Paula Williams, Director, Tribal Self-Governance
Harry Wilson, Associate Commissioner, Family and Youth Services Bureau
Laurence Wilson, Director, Chronic Care Policy Group
Helen Winkle, Director, Office of Pharmaceutical Science
Ann Wion, Deputy Chief Counsel, Program Review
Edwin Woo, Associate General Counsel
Charlotte Yeh, Boston Regional Administrator
David Young, Deputy Director for Management Operations
Donald Young, Principal Deputy Assistant Secretary
Samir Zakhari, Director, Division of Basic Research
Howard Zucker, Deputy Assistant Secretary for Health (Science, Technology, and Medicine)
Phyllis Zucker, Director, Policy Coordination, Executive Secretariat and Departmental Liaison

[FR Doc. 05–20475 Filed 10–12–05; 8:45 am]
BILLING CODE 5150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of a New System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new SOR titled, ''Fluoro-Deoxy Glucose (FDG) Positron Emission Tomography (PET) for Dementia and Neurodegenerative Diseases (DND) (PET DND), HHS/CMS/OCSQ, System No. 09–70–0561.'' National Coverage Determinations are determinations by the Secretary (HHS) with respect to whether or not a particular item or service is covered nationally under Title XVIII of the Social Security Act (the Act) section 1869(f)(1)(B). In order to be covered by Medicare, an item or service must fall within one or more benefit categories contained in Part A or Part B, and must not be otherwise excluded from coverage.

In our review of DND indications, we found sufficient evidence to determine that PET scans are no longer experimental. However, the evidence was insufficient to reach a conclusion that FDG PET is reasonable and necessary in all instances. A sufficient inference of benefit, however, can be drawn to support limited coverage if certain safeguards for patients are provided. This inference is based on both the physiological basis for FDG PET usefulness in a differential diagnosis of fronto-temporal dementia (FTD) and Alzheimer's disease (AD), as well as, evidence of a positive benefit of PET for patients with several other dementing neurodegenerative diseases for which there is evidence of sufficient quality to warrant coverage.

The purpose of this system is to collect and maintain information on Medicare beneficiaries receiving FDG PET scans for indications for DND when there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study. Information retrieved from this system will be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs. We have provided background information about the new system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that CMS provide an opportunity for interested persons to comment on the proposed routine uses, CMS invites comments on

all portions of this notice. See **EFFECTIVE DATE** section for comment period.

EFFECTIVE DATE: CMS has filed a new SOR report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 5, 2005. We will not disclose any information under a routine use until 30 days after publication. We may defer implementation of this system or one or more of the routine use statements listed below if we receive comments that persuade us to defer implementation.

ADDRESS: The public should address comments to the CMS Privacy Officer, Mail Stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Rosemarie Hakim, Epidemiologist, Division of Operations and Committee Management, Coverage and Analysis Group, Office of Clinical Standards and Quality, CMS, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1849. Her telephone number is (410) 786–3934, or she can be reached via e-mail at *Rosemarie.Hakim@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: Medicare covers FDG–PET scans for either the differential diagnosis of FTD and AD under specific requirements; or, its use in a CMS approved practical clinical trial focused on the utility of FDG–PET in the diagnosis or treatment of dementing neurodegenerative diseases. Specific requirements for each indication are clarified as follows: an FDG–PET scan is considered reasonable and necessary in patients with a recent diagnosis of dementia and documented cognitive decline of at least 6 months, who meet diagnostic criteria for both AD and FTD. These patients have been evaluated for specific alternate neurodegenerative diseases or other causative factors, but the cause of the clinical symptoms remains uncertain.

The following additional conditions must be met before an FDG–PET scan will be covered: (1) The patient's onset, clinical presentation, or course of cognitive impairment is such that FTD is suspected as an alternative neurodegenerative cause of the cognitive decline. Specifically, symptoms such as social disinhibition, awkwardness, difficulties with language, or loss of executive function are more prominent early in the course of FTD than the memory loss typical of AD;

(2) The patient has had a comprehensive clinical evaluation (as defined by the American Academy of Neurology) encompassing a medical history from the patient and a well-acquainted informant (including assessment of activities of daily living), physical and mental status examination (including formal documentation of cognitive decline occurring over at least 6 months) aided by cognitive scales or neuropsychological testing, laboratory tests, and structural imaging such as magnetic resonance imaging (MRI) or computed tomography (CT);

(3) The evaluation of the patient has been conducted by a physician experienced in the diagnosis and assessment of dementia;

(4) The evaluation of the patient did not clearly determine a specific neurodegenerative disease or other cause for the clinical symptoms, and information available through FDG–PET is reasonably expected to help clarify the diagnosis between FTD and AD and help guide future treatment;

(5) The FDG–PET scan is performed in a facility that has all the accreditation necessary to operate nuclear medicine equipment. The reading of the scan should be done by an expert in nuclear medicine, radiology, neurology, or psychiatry, with experience interpreting such scans in the presence of dementia and;

(6) A brain single photon emission computed tomography (SPECT) or FDG–PET scan has not been obtained for the same indication. (The indication can be considered to be different in patients who exhibit important changes in scope or severity of cognitive decline, and meet all other qualifying criteria listed above and below (including the judgment that the likely diagnosis remains uncertain.) The results of a prior SPECT or FDG–PET scan must have been inconclusive or, in the case of SPECT, difficult to interpret due to immature or inadequate technology. In these instances, an FDG–PET scan may be covered after one year has passed from the time the first SPECT or FDG–PET scan was performed.)

The referring and billing provider(s) have documented the appropriate evaluation of the Medicare beneficiary. Providers should establish the medical necessity of an FDG–PET scan by ensuring that the following information has been collected and is maintained in the beneficiary medical record: Date of onset of symptoms; diagnosis of clinical syndrome (normal aging; mild cognitive impairment; mild, moderate or severe dementia); mini mental status exam or similar test score; presumptive cause (possible, probable, uncertain AD); any neuropsychological testing performed; results of any structural imaging (MRI or CT) performed; relevant laboratory tests (B12, thyroid hormone); and, number and name of prescribed medications.

The billing provider must furnish a copy of the FDG–PET scan result for use by CMS and its contractors upon request. These verification requirements are consistent with Federal requirements set forth in 42 Code of Federal Regulations (CFR) Section 410.32 generally for diagnostic x-ray tests, diagnostic laboratory tests, and other tests. In summary, section 410.32 requires the billing physician and the referring physician to maintain information in the medical record of each patient to demonstrate medical necessity [410.32(d)(2)] and submit the information demonstrating medical necessity to CMS and/or its agents upon request [410.32(d)(3)(I)] (OMB number 0938–0685).

A FDG–PET scan is considered reasonable and necessary in patients with mild cognitive impairment or only in the context of an approved clinical trial that contains patient safeguards and protections to ensure proper administration, use and evaluation of the FDG–PET scan.

The clinical trial must compare patients who do and do not receive an FDG–PET scan and have as its goal to monitor, evaluate, and improve clinical outcomes. In addition, it must meet the following basic criteria: written protocol on file; Institutional Review Board review and approval; scientific review and approval by two or more qualified individuals who are not part of the research team; and, certification that investigators have not been disqualified.

All other uses of FDG–PET for patients with a presumptive diagnosis of dementia-causing neurodegenerative disease (e.g., possible or probable AD, clinically typical FTD, dementia of Lewy bodies, or Creutzfeld-Jacob disease) for which CMS has not specifically indicated coverage continue to be noncovered.

CMS will consider prospective data collection systems to be qualified if they provide assurance that the specific hypotheses are addressed and they collect appropriate data elements. The data collection shall include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; differential diagnosis; and stage; long term patient

outcomes; disease management changes; and treatment received. The clinical data collection must ensure that specific hypotheses are identified prospectively; hospitals and providers are qualified to provide FDG PET and interpret the results; and participating hospitals and providers collect prospective data at the time of payment on all enrolled patients undergoing FDG PETs for DND indications. Data elements will be transmitted to CMS for evaluation of the short and long term benefits of the FDG PET for its beneficiaries and inform future clinical decision making. CMS shall be assured that all applicable patient confidentiality, privacy, and other Federal laws are complied with, including the Standards for Privacy of Individually Identifiable Health Information.

I. Description of the Proposed System of Records

A. Statutory and Regulatory Basis for SOR

The statutory authority for linking coverage decisions to the collection of additional data is derived from Sec. 1862(a)(1)(A) of the Act, which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provision of the service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

B. Collection and Maintenance of Data in the System

The data collection shall include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; differential diagnosis; long term patient outcomes; disease management changes; and DND treatment received. The collected information will contain name, address, telephone number, Health Insurance Claim Number (HICN), geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

II. Agency Policies, Procedures, and Restrictions on the Routine Use

A. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a ''routine use.'' The government will only release PET DND information that can be associated with an individual as provided for under ''Section III. Proposed Routine Use Disclosures of Data in the System.'' Both identifiable and non-identifiable data may be disclosed under a routine use.

We will only collect the minimum personal data necessary to achieve the purpose of PET DND. CMS has the following policies and procedures concerning disclosures of information that will be maintained in the system. Disclosure of information from the system will be approved only to the extent necessary to accomplish the purpose of the disclosure and only after CMS:

1. Determines that the use or disclosure is consistent with the reason that the data is being collected, e.g., to collect and maintain information on Medicare beneficiaries receiving FDG PET scans for indications for which there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study.

2. Determines that:

a. The purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

b. The purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

c. There is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

3. Requires the information recipient to:

a. Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

b. Remove or destroy at the earliest time all patient-identifiable information; and

c. Agree to not use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

4. Determines that the data are valid and reliable.

III. Proposed Routine Use Disclosures of Data in the System

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual or similar agreement with a third party to assist in accomplishing CMS function relating to purposes for this system.

CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or consultant whatever information is necessary for the contractor or consultant to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or consultant from using or disclosing the information for any purpose other than that described in the contract and requires the contractor or consultant to return or destroy all information at the completion of the contract.

2. To another Federal or State agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/state Medicaid programs within the state.

Other Federal or state agencies in their administration of a Federal health program may require PET DND information in order to collect information on Medicare beneficiaries receiving FDG PET scans for sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary.

3. To an individual or organization for a research project or in support of an evaluation project related to the

prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

The PET DND data will provide for research or in support of evaluation projects, a broader, longitudinal, national perspective of the status of Medicare beneficiaries. CMS anticipates that many researchers will have legitimate requests to use this data in projects that could ultimately improve the care provided to Medicare beneficiaries and the policy that governs the care.

4. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

Beneficiaries sometimes request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved.

6. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contractual relationship or grant with a third party to assist in accomplishing CMS functions relating to the purpose of combating fraud and abuse.

CMS occasionally contracts out certain of its functions and makes grants when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor or grantee whatever information is necessary for the contractor or grantee to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor or grantee from using or disclosing the information for any purpose other than that described in the contract and requiring the contractor or grantee to return or destroy all information.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies may require PET DND information for the purpose of combating fraud and abuse in such Federally-funded programs.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by HHS regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 CFR Parts 160 and 164, 65 FR 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

IV. Safeguards

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002, the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records.

CMS will take precautionary measures (see item IV above) to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of patients whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions. In addition, CMS will make disclosure from the proposed system only with consent of the subject

individual, or his/her legal representative, or in accordance with an applicable exception provision of the Privacy Act. CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of information relating to individuals.

Dated: October 3, 2005.

Lori Davis,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

SYSTEM NO. 09–70–0561.

SYSTEM NAME

Fluoro-Deoxy Glucose (FDG) Positron Emission Tomography (PET) for Dementia and Neurodegenerative Diseases (DND) (PET DND) HHS/CMS/OCSQ.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

Centers for Medicare & Medicaid Services (CMS) Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850; and at various co-locations of CMS contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Providers participating in and patients enrolled in one of the following types of prospective clinical studies: a clinical trial of FDG PET that meets the Food and Drug Administration category B investigational device exemption or an FDG PET clinical study that is designed to prospectively collect information at the time of the scan to assist in patient management.

CATEGORIES OF RECORDS IN THE SYSTEM:

The data collection should include baseline patient characteristics: Indications for the PET scan; PET scan type and characteristics; FDG PET results; results of all other imaging studies; facility and provider characteristics; differential diagnosis; long term patient outcomes; disease management changes; and DND treatment received. The collected information will contain name, address, telephone number, Health Insurance Claim Number (HICN) number, geographic location, race/ethnicity, gender, and date of birth, as well as, background information relating to Medicare or Medicaid issues.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The statutory authority for linking coverage decisions to the collection of additional data is derived from Sec. 1862(a)(1)(A) of the Social Security Act, which states that Medicare may not provide payment for items and services unless they are ''reasonable and necessary'' for the treatment of illness or injury. In some cases, CMS will determine that an item or service is only reasonable and necessary when specific data collections accompany the provisions of the service. In these cases, the collection of data is required to ensure that the care provided to individual patients will improve health outcomes.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to collect and maintain information on Medicare beneficiaries receiving FDG PET scans for indications for DND when there is not sufficient evidence to reach a firm conclusion that the scan is reasonable and necessary unless they are enrolled in an approved study. Information retrieved from this system will be disclosed to: (1) Support regulatory, reimbursement, and policy functions performed within the agency or by a contractor or consultant; (2) assist another Federal or state agency with information to enable such agency to administer a Federal health benefits program, or to enable such agency to fulfill a requirement of Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds; (3) support an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects; (4) support constituent requests made to a Congressional representative; (5) support litigation involving the agency; and (6) combat fraud and abuse in certain health benefits programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

A. The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. Any such compatible use of data is known as a ''routine use.'' The proposed routine uses in this system meet the compatibility requirement of the Privacy Act. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To agency contractors or consultants who have been engaged by the agency to assist in the performance of a service related to this system and who need to have access to the records in order to perform the activity.

2. To another Federal or state agency to:

a. Contribute to the accuracy of CMS's proper payment of Medicare benefits,

b. Enable such agency to administer a Federal health benefits program, or as necessary to enable such agency to fulfill a requirement of a Federal statute or regulation that implements a health benefits program funded in whole or in part with Federal funds, and/or

c. Assist Federal/State Medicaid programs within the State.

3. To an individual or organization for a research project or in support of an evaluation project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

4. To a member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

5. To the Department of Justice (DOJ), court or adjudicatory body when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where the DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and that the use of such records by the DOJ, court or adjudicatory body is compatible with the purpose for which the agency collected the records.

6. To a CMS contractor (including, but not necessarily limited to Medicare administrative contractors, fiscal intermediaries and carriers) that assists in the administration of a CMS-administered health benefits program, or to a grantee of a CMS-administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

7. To another Federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in,

a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

B. Additional Provisions Affecting Routine Use Disclosures. This system contains Protected Health Information (PHI) as defined by Department of Health and Human Services (HHS) regulation ''Standards for Privacy of Individually Identifiable Health Information'' (45 Code of Federal Regulations (CFR) Parts 160 and 164, 65 Fed. Reg. 82462 (12–28–00), Subparts A and E. Disclosures of PHI authorized by these routine uses may only be made if, and as, permitted or required by the ''Standards for Privacy of Individually Identifiable Health Information.''

In addition, our policy will be to prohibit release even if not directly identifiable information, except pursuant to one of the routine uses or if required by law, if we determine there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored electronically.

RETRIEVABILITY:

The data are retrieved by an individual identifier *i.e.*, name of beneficiary or provider.

SAFEGUARDS:

CMS has safeguards in place for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements. Employees who maintain records in this system are instructed not to release data until the intended recipient agrees to implement appropriate management, operational and technical safeguards sufficient to protect the confidentiality, integrity and availability of the information and information systems and to prevent unauthorized access.

This system will conform to all applicable Federal laws and regulations and Federal, HHS, and CMS policies and standards as they relate to information security and data privacy. These laws and regulations include but are not limited to: The Privacy Act of 1974; the Federal Information Security Management Act of 2002; the Computer Fraud and Abuse Act of 1986; the Health Insurance Portability and Accountability Act of 1996; the E-Government Act of 2002; the Clinger-Cohen Act of 1996; the Medicare Modernization Act of 2003, and the corresponding implementing regulations. OMB Circular A–130, Management of Federal Resources, Appendix III, Security of Federal Automated Information Resources also applies. Federal, HHS, and CMS policies and standards include but are not limited to: All pertinent National Institute of Standards and Technology publications; HHS Information Systems Program Handbook and the CMS Information Security Handbook.

RETENTION AND DISPOSAL:

CMS will retain information for a total period of 10 years. All claims-related records are encompassed by the document preservation order and will be retained until notification from DOJ.

SYSTEM MANAGER AND ADDRESS:

Director, Coverage and Analysis Group, Office of Clinical Standards and Quality, CMS, Mail Stop C1–09–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For the purpose of access, the subject individual should write to the system manager who will require the system name, address, age, gender, and for verification purposes, the subject individual's name (woman's maiden name, if applicable).

RECORD ACCESS PROCEDURE:

For the purpose of access, use the same procedures outlines in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5.)

CONTESTING RECORDS PROCEDURES:

The subject individual should contact the system manager named above and reasonably identify the records and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7.)

RECORD SOURCE CATEGORIES:

Records maintained in this system are derived from Carrier and Fiscal Intermediary Systems of Records, Common Working File System of Records, clinics, institutions, hospitals and group practices performing the procedures, and outside registries and professional interest groups.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 05–20370 Filed 10–12–05; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Children, Youth and Families; Award Announcement

AGENCY: Administration on Children, Youth and Families, ACF, HHS.

ACTION: Award announcement.

SUMMARY: The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), herein announces the awarding of twenty-eight urgent grant awards in order to enable seventeen Mentoring Children of Prisoner Programs and eleven Training and Technical Assistance providers to respond immediately to hurricane disaster evacuee needs in their States and local communities. The effects of Hurricane Katrina have disrupted the ability of the children whose parents are incarcerated to receive mentoring services due to their forced relocation throughout the nation. As a result, FYSB's network of mentoring grantees and training and technical assistance providers are uniquely positioned to respond to the increase in the numbers of children of incarcerated parents arriving in their new communities. The following agencies are receiving grant funds for a twelve month project period: Big Brothers Big Sisters of Heart, Macon, Georgia, in the amount of $95,000; State of Alabama Child Abuse and Neglect Prevention Board, Montgomery, Alabama, in the amount of $50,000; YMCA of Greater Louisville, Louisville, Kentucky, in the amount of $50,000; Big Brothers Big Sisters of Mississippi, Jackson, Mississippi, in the amount of $95,000; Family and Children's Agency, Inc., Norwalk, Connecticut, in the amount of $21,350; America on Track of Santa Ana, California in the amount of $95,000; Volunteers in Prevention, Probation and Prisons, Detroit,

Michigan, in the amount of $95,000; Centerforce, Inc. of San Rafael, California in the amount of $63,170; Big Brothers Big sisters of Boone County, Columbia, Missouri, in the amount of $95,000; Big Brothers Big Sisters of Kentucky, Louisville, Kentucky, in the amount of $95,000; Rhode Islanders Sponsoring Education, Providence, Rhode Island, in the amount of $13,900; Mississippi Gulf Coast YMCA, Ocean Springs, Mississippi, in the amount of $99,553; Families Under Urban and Social Attacks, Houston, Texas, in the amount of $56,250; Big Buddy Program, Baton Rouge, Louisiana, in the amount of $90,000; Big Brothers Big Sisters of Nevada, Reno, Nevada, in the amount of $95,000; Big Brothers Big Sisters of Eastern Missouri, St. Louis, Missouri, in the amount of $95,000; Pima Prevention Partnership, Tucson, Arizona, in the amount of $33,936; The University of Oklahoma National Resource Center for Youth Services, Tulsa, Oklahoma, in the amount of $700,000; Mid-Atlantic Network of Youth and Family Services, Pittsburgh, Pennsylvania, in the amount of $100,000; Youth Network Council, Chicago, Illinois, in the amount of $100,000; Southeastern Network of Youth and Family Services, Bonita Springs, Florida, in the amount of $100,000; Empire State Coalition of Youth and Family Services, New York, New York, in the amount of $100,000; Northwest Network of Runaway and Youth Services, Seattle, Washington, in the amount of $100,000; Western States Youth Services Network, Petaluma, California, in the amount of $100,000; New England Network for Child, Youth and Family Services, Burlington, Vermont, in the amount of $100,000; Southwest Network of Youth Services, Austin, Texas, in the amount of $100,000; Mountain Plains Network for Youth, Bismarck, North Dakota, in the amount of $100,000; MINK Network of Runaway and Homeless Youth Services, Lenexa, Kansas, in the amount of $65,000.

The seventeen Mentoring Children of Prisoners Programs will be responsible for reconnecting or establishing new mentoring relationships with evacuated children of incarcerated persons in their new communities. In addition to the seventeen Mentoring Children of Prisoners Programs being funded, the Family and Youth Services Bureau is funding eleven Training and Technical Assistance providers that will provide specialized technical assistance to the Mentoring Children of Prisoners Program grantees in their respective regions. The eleven Training and Technical Assistance Providers are well positioned to assist the seventeen Mentoring Children of Prisoners Programs in identifying children of incarcerated persons who are new to a community, developing a plan to provide them with mentoring support and coordinating services with other programs, Federal staff and their contractors.

FOR FURTHER INFORMATION CONTACT: Curtis O. Porter, Director, Youth Development Division, Family and Youth Services Bureau, 330 C Street, SW., Washington, DC 20447, Phone: 202–205–8102.

Dated: October 6, 2005.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 05–20532 Filed 10–12–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Bureau; Unsolicited Proposal on Gubernatorial Leadership for Early Care and Education

AGENCY: Head Start Bureau, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Award Announcement, 3 Year Unsolicited Application Project.

CFDA#: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.600. The title is Unsolicited Proposal on Gubernatorial Leadership for Early Care and Education.

Legislative Authority: Grants to enhance collaboration efforts between Head Start and other early childhood providers are authorized by The Head Start Action (Pub. L. 05–285).

Amount of Award: $600,000.

Project Period: 11/1/05–10/31/08.

Summary and Purpose: Notice is hereby given that the Head Start Bureau will award grant funds without competition to the National Governor's Association Center for Best Practices. The grant is an unsolicited service grant award that is within legislative authorities and that proposes activities that may be lawfully supported through grant mechanisms. This application is of merit, and the project will have significant impact on State efforts to design, implement, and improve early childhood systems of care and education.

The National Governor's Association Center for Best Practices proposes to work with Governors to develop and implement new strategic early childhood plans in order to improve quality and coordination of early childhood care and education. The NGA Center will conduct an independent and confidential audit of existing early childhood efforts in four states, provide implementation recommendations to early childhood stakeholders, and publish and disseminate findings and recommendations to the broader policy community. The NGA Center has a history of work with Governors on special early childhood initiatives and has the capacity to take state coordination efforts to the highest level of policy and funding decision making. This unique approach will provide valuable information on effective strategies and improvements in quality and service delivery, yielding valuable information on early childhood investments for States and Federal programs.

Contact for Further Information: Administration for Children and Families, Head Start Bureau, 330 C Street, SW., Washington, DC 20447, Kiersten Beigel—(202) 260–4869, *kbeigel@acf.hhs.gov.*

Dated: October 5, 2005.

Joan Ohl,

Commissioner, Head Start Bureau.

[FR Doc. 05–20555 Filed 10–12–05; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Reimbursement of Travel and Subsistence Expenses Incurred Toward Living Organ Donations

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Request for public comment.

SUMMARY: Congress has provided specific authority under section 377 of the Public Health Service (PHS) Act, 42 U.S.C. § 274f, as amended by Public Law 108–216 for providing reimbursement of travel and subsistence expenses for certain individuals donating their organs. Additionally, Congress has provided the Secretary the authority to provide reimbursement for other incidental non-medical expenses as the Secretary determines by regulation to be appropriate. The Health Resources and Services Administration is developing a demonstration program to fulfill this authority. In the first cycle,

the program will focus exclusively on providing reimbursement of travel and subsistence expenses for certain individuals donating their organs. In the future, the program may provide reimbursement for other incidental non-medical expense. The purpose of this solicitation of comments is to assist HRSA in establishing an effective program which addresses the concerns and the needs of the community. In addition, the Division of Transplantation, Healthcare Systems Bureau plans two conference calls to discuss the program.

DATES: The conference calls will be held on October 19, 2005, at 1 p.m. to 3 p.m. e.s.t. and October 25, 2005, at 10 a.m. to 12 p.m. e.s.t. Participants are asked to register for the conference calls by contacting Mesmin German at (301) 443–0053 or e-mail *mgerman@hrsa.gov.* The registration deadline is October 12, 2005, for the October 19, 2005, conference call and October 20, 2005, for the October 25, 2005, conference call. Since similar information will be discussed on both calls, it is not necessary to register for both. Registration is not guaranteed; it is on a first come basis. To be considered, written comments should be postmarked no later than November 4, 2005.

ADDRESSES: Please send all written comments to James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: James F. Burdick, M.D., Director, DOT, HSB, HRSA, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Solicitation of Comments

The Health Resources and Services Administration's (HRSA) Healthcare Systems Bureau (HSB), Division of Transplantation (DoT), is soliciting input from the community on the following: (1) The general structure and processes of the proposed program to account for geographic variations; (2) criteria for the Secretary to use in determining individuals who are more likely to be otherwise unable to meet such expenses; and (3) the reasonableness of the level of reimbursement to be made available per living donor and accompanying persons. HRSA is also soliciting input on what other incidental non-medal expenses may be covered under this program. Moreover, HRSA is seeking input on what the Secretary should consider when drafting regulations for reimbursement for other non-medical expenses.

Background

The number of patients waiting for transplants exceeds 89,000. In 2004, fewer than 26,000 Americans received transplants and 6,271 died waiting. The dire shortage of organs for transplantation has been the impetus for the development of protocols intended to expand the donor pool, including the use of more than 7,000 organs from living donors in 2004. Living donors have provided life-saving treatment for many individuals with conditions leading to life-threatening end-stage organ failure. In addition, in 2003 the number of living donors in the United States exceeded the number of deceased donors for the first time.

Potential living donors, recipients, and family alike face many challenges. Even though surgical costs are covered by recipient insurance, other costs associated with being a living organ donor can represent a substantial financial burden on the parties involved. Medically appropriate living donor transplantations can be impossible for some individuals because of prohibitive related subsistence expenses. Individuals wishing to donate an organ may not be able to afford travel, subsistence, and other incidental non-medical costs associated with the donation.

Congress has given the Department of Health and Human Services (HHS) the authority to provide limited financial assistance for reimbursement of travel and subsistence expenses incurred by the donating individuals when appropriate. HRSA, therefore, plans to initiate the demonstration program discussed herein. Congress also provided the Secretary the authority to provide reimbursement for other incidental non-medical expenses as the Secretary determines by regulations to be appropriate. Therefore, the type of expenses considered under this program may expand in the future.

The primary goal of this demonstration program is to assist one eligible entity in the implementation of an equitable, effective, and efficient national program to provide financial assistance to individuals who are serving as living organ donors but are unable to meet such expenses. Secondary goals of this demonstration program include: identifying the medical and non-medical benefits and risks of reimbursement for such expenses to donating individuals and recipients alike; assessing the impact of this program on the number of living donors; and assessing the impact on access to living donation by recipients of lower socio-economic status.

Funding

HRSA expects to award $2 million under this program to support the first year of a 3-year demonstration program. Subsequent years of funding depend on the availability of appropriations, program priorities, and awardees performance.

Program Authority

Below is the program authority pursuant to Public Law 108–216, the Organ Donation and Recovery Improvement Act:

Sec. 3. Reimbursement of Travel and Subsistence Expenses Incurred Toward Living Organ Donation

Section 377 of the Public Health Service Act (42 U.S.C. 274f) is amended to read as follows:

Sec. 377. Reimbursement of Travel and Subsistence Expenses Incurred Toward Living Organ Donation

(a) In General—The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 371, or other public or private entities for the purpose of—

(1) Providing for reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as ''donating individuals''); and

(2) Providing for the reimbursement of such incidental non-medical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

(b) Preference—The Secretary shall, in carrying out subsection (a), give preference to those individuals that the Secretary determines are more likely to be otherwise unable to meet such expenses.

(c) Certain Circumstances—The Secretary may, in carrying out subsection (a), consider—

(1) The term ''donating individuals'' as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

(2) The term ''qualifying expenses'' as including the expenses of having relatives or other individuals, not to exceed 2, who accompany or assist the donating individual for purposes of subsection (a) (subject to making payment for only those types of expenses that are paid for a donating individual).

(d) Relationship to Payments Under Other Programs—An award may be made under subsection (a) only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual to the extent that payment has been made, or can reasonably be expected to be made, with respect to such expenses—

(1) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

(2) By an entity that provides health services on a prepaid basis; or

(3) By the recipient of the organ.

(e) Definitions—For purposes of this section:

(1) The term ''donating individuals'' has the meaning indicated for such term in subsection (a)(1), subject to subsection (c)(1).

(2) The term ''qualifying expenses'' means the expenses authorized for purposes of subsection (a), subject to subsection (c)(2).

(f) Authorization of Appropriations—For the purpose of carrying out this section, there is authorized to be appropriated $5,000,000 for each of the fiscal years 2005 through 2009.

Dated: October 5, 2005.

Elizabeth M. Duke,

Administrator.

[FR Doc. 05–20456 Filed 10–12–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2005–22656]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees on Outreach and Hazardous Cargo Transportation Security (HCTS) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. These meetings will be open to the public.

DATES: CTAC will meet on Tuesday, November 8, 2005, from 9 a.m. to 3:30 p.m. The Outreach Subcommittee will meet on Monday, November 7, 2005, from 9 a.m. to 11 a.m. and the HCTS Subcommittee will meet on Monday, November 7, 2005, from 12 noon to 3:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before October 31, 2005. Requests to have a copy of your material distributed to each member of the Committee should reach the Coast Guard on or before October 31, 2005.

ADDRESSES: CTAC and its Outreach and HCTS Subcommittees will meet at the Moody Gardens Hotel and Convention Center, 7 Hope Blvd., Galveston, TX. Send written material and requests to make oral presentations to Commander Robert J. Hennessy, Executive Director of CTAC, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 or E-mail: *CTAC@comdt.uscg.mil.* This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or Ms. Sara Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Outreach Subcommittee Meeting on Monday, November 7, 2005

(1) Introduce Subcommittee members and attendees.

(2) Review Task Statement.

(3) Discuss future outreach initiatives.

Agenda of HCTS Subcommittee Meeting on Monday, November 7, 2005

(1) Introduce Subcommittee members and attendees.

(2) Review video on Sensitive Security Information.

(3) Discuss on-line security training.

(4) Review Policy Advisory Council Decision No. 56–05.

(5) Brief on Certain Dangerous Cargo (CDC) list consolidation.

(6) Discuss status of CDC residue regulations.

(7) Brief on Houston Galveston Navigation Safety Advisory Committee (HOGANSAC) Declaration of Inspection Working Group.

Agenda of CTAC Meeting on Tuesday, November 8, 2005

(1) Introduce Committee members and attendees.

(2) Status report presentation from the CTAC National Fire Protection Association (NFPA) 472 Subcommittee.

(3) Status report presentation from the CTAC HCTS Subcommittee.

(4) Status report presentation from the CTAC Outreach Subcommittee.

(5) Discussion on the CTAC Membership Working Group.

(6) Presentation by the Louisiana Department of Environmental Quality Marine Response.

(7) Presentation on Acrylonitrile Antidotes.

(8) Presentation on Good Manufacturing Practices.

(9) Presentation on the role of the International Tanker Owners Pollution Federation in marine oil and chemical response.

(10) Update on Coast Guard Regulatory Projects.

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished. At the discretion of the Chair, members of the public may make oral presentations during the meetings generally limited to 5 minutes. If you would like to make an oral presentation at a meeting, please notify the Executive Director and submit written material on or before October 31, 2005. If you would like a copy of your material distributed to each member of the Committee in advance of a meeting, please submit 25 copies to the Executive Director (see **ADDRESSES**) no later than October 31, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Executive Director as soon as possible.

Dated: October 4, 2005.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 05–20469 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Information Collection

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request of comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of the Interior, Office of the Secretary is announcing its intention to request re-approval for the collection of information for the DI-Form 381, Claim for Relocation Payments-Residential and DI-Form 382, Claim for Relocation Payments—Nonresidential.

DATES: Comments on the proposed information collection must be received by December 12, 2005, to be assured of consideration.

ADDRESSES: Comments may be mailed to Mary Heying, Department of the Interior, Office of Acquisition and Property Management, 1849 C Street NW., Mail Stop 2607–MIB, Washington, DC 20240. Comments may also be submitted electronically to *mary_heying@ios.doi.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Mary Heying at (202) 208–4080.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implements the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of the Secretary will be submitting to OMB for extension or re-approval.

Form DI–381 and Form DI–382 were created because of the amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100–17. We are planning to revise these forms to more closely reflect the changes made by the Uniform Relocation Assistance and Real Property Acquisition Act final rule published January 4, 2005, by the Federal Highway Administration. The revisions will clarify the allowable and nonallowable moving expenses sections; revise the sections relating to certification of occupancy status (citizen or national of the United States or an alien lawfully present in the United States); incorporate citations; and make the forms more user-friendly. The Office of the Secretary will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the function of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collections; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the Office of the Secretary's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Claim For Relocation Payments—Residential. Claim For Relocation Payments—Nonresidential.

OMB Control Number: 1084–0010.

Summary: The information required is obtained through application made by displaced person(s) or business(es) to the funding agency for determination as to the specific amount of monies due under the law.

Bureau Form Number: DI–381, DI–382.

Frequency of Collection: On occasion.

Description of Respondents: Individuals and businesses who are displaced because of Federal acquisitions of their real property.

Total Annual Response: 200.

Total Annual Burden Hours: 88 hours.

Dated: October 4, 2005.

Debra E. Sonderman,

Director, Office of Acquisition and Property Management.

[FR Doc. 05–20510 Filed 10–12–05; 8:45am]

BILLING CODE 4310–RF–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan (CCP) and Associated Environmental Assessment (EA) for Hagerman National Wildlife Refuge (Refuge), Sherman, TX

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Comprehensive Conservation Plan and Environmental Assessment is available for the Hagerman National Wildlife Refuge, Sherman, Texas. We prepared this CCP pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997(16 U.S.C. 668dd *et seq.*), and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d), and we describe how the Service intends to manage this Refuge over the next 15 years.

DATES: The Service will be open to written comments through November 28, 2005.

ADDRESSES: A copy of the CCP is available on compact disk or hard copy, and you may obtain a copy by writing: Yvette Truitt-Ortiz, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103–1306. Requests may also be made via electronic mail to: *yvette_truittortiz.fws.gov.*

FOR FURTHER INFORMATION AND TO SEND COMMENTS CONTACT: Yvette Truitt-Ortiz, Biologist/Natural Resource Planner, 505–248–6452, or Johnny Beall, Refuge Manager, 903–786–2826.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Background: The Hagerman National Wildlife Refuge is an overlay project of the U.S. Army Corps of Engineers, and was established by Public Land Order 314 on February 9, 1946 ''* * * for refuge and breeding ground purposes for migratory birds and other wildlife * * * reservation as a wildlife refuge * * *

shall not interfere with any existing or future uses * * * in the operation and maintenance of the Denison Dam and Reservoir Project * * *.'' Located in north-central Texas on the Big Mineral Arm of Lake Texoma, the 11,320 acre Refuge is comprised of uplands, farmland, marshland, and open water habitats. Management efforts focus on enhancing uplands and wetlands for migratory birds and other wildlife species.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, land acquisition, invasive species control, administration and staffing for the Refuge. The key Refuge issues and how they are addressed in the plan alternatives are summarized below.

Alternative A is the current management, or what is currently offered at the Refuge. Alternative B is the proposed action. Alternative C would call for no active management on the Refuge.

Public Use Activities: Alternative A: The public use program would remain at current levels and no new facilities would be developed on the Refuge. Alternative B: The public use program would increase and/or enhance educational and outreach activities, recreational opportunities, community involvement, and improve public use facilities. Alternative C: The public use program would be discontinued.

Habitat Management: Alternative A: The Refuge would continue to maintain current level of wetland management activities. Alternative B: The Refuge will increase/expand habitat management activities for the benefit of wildlife species and for the enjoyment of the visiting public. Alternative C: Wetland areas would be allowed to dry up, forcing wildlife species to leave.

Refuge Land and Boundary Protection: Alternative A: The Refuge would maintain limited outreach to private landowners. Alternative B: The Refuge will seek partnerships with landowners and organizations to enhance or protect desirable habitat through easements, agreements, etc. Alternative C: The Refuge would not seek easement or agreements with interested individuals.

Comment Period: Please submit comments by November 28, 2005.

Dated: October 6, 2005.

H. Dale Hall,

Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 05–20489 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Theodore Roosevelt National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for the Theodore Roosevelt National Wildlife Refuge Complex, which consists of five national wildlife refuges—Yazoo, Panther Swamp, Hillside, Morgan Brake, and Mathews Brake—as well as a number of smaller fee title properties and floodplain and conservation easements in the Mississippi Delta.

SUMMARY: This notice announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for the Theodore Roosevelt National Wildlife Refuge Complex are available for review and comment. The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, requires the Service to develop a comprehensive conservation plan for each national wildlife refuge. The purpose in developing a comprehensive conservation plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the plan identifies wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

DATES: A meeting will be held to present the plan to the public. Mailings, newspaper articles, and posters will be the avenues to inform the public of the date and time for the meting. Individuals wishing to comment on the Draft Comprehensive Conservation Plan and Environmental Assessment for the Theodore Roosevelt National Wildlife Refuge Complex should do so within 45 days following the date of this notice.

ADDRESSES: Request for copies of the Draft Comprehensive Conservation Plan and Environmental Assessment should be addressed to the Theodore Roosevelt National Wildlife Refuge Complex, 728 Yazoo Refuge Road, Hollandale, Mississippi 38748; Telephone 662/839–2638. The plan and environmental assessment may also be accessed and downloaded from the Service's Internet Web site *http://southeast.fws.gov/planning/*. Comments on the draft plan may be submitted to the above address or via electronic mail to *mike_dawson@fws.gov.* Please include your name and return address in your Internet message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law.

SUPPLEMENTARY INFORMATION: Significant issues addressed in the draft plan include: threatened and endangered species, waterfowl management, neotropical migratory birds, bottomland hardwood restoration, agriculture, visitor services, funding and staffing, cultural resources, land acquisition, and forest fragmentation.

The Service developed four alternatives for managing the refuge complex and chose Alternative B as the preferred alternative.

Alternatives

Alternative A. No Action (Current Situation)

Existing Complex management and public outreach practices would be favored under this alternative. All refuge management actions would be directed toward achieving the Complex's primary purposes including (1) preserving wintering waterfowl habitat; (2) providing production habitat for wood ducks; and (3) meeting the habitat conservation goals of the North American Waterfowl Management Plan, all the while contributing to other national, regional, and state goals to protect and restore shorebirds, neotropical migratory breeding birds, woodcocks, and threatened and endangered species. Refuge management programs would continue to be developed and implemented with little baseline biological information. Active habitat management would be implemented through water level manipulations, moist-soil and cropland management, and reforestation designed to provide a diverse complex of habitats that meet the foraging, resting, and breeding requirements for a variety of species. Complex staff would continue to restore and maintain existing wetlands, open waters, grasslands, and bottomland hardwood forest habitats.

Land would be acquired from willing sellers within the current acquisition boundaries totaling 113,060 acres.

Hunting and fishing would continue to be the major focuses of the Complex public use program, with no expansion of current opportunities. Current restrictions or prohibitions would remain. All-terrain vehicle use would continue at its current level, with little maintenance to existing trails. Environmental education and wildlife observation and photography would be accommodated on a case-by-case basis. Funding requests would continue in order to construct a Complex headquarters office/visitor contact area on Yazoo National Wildlife Refuge and to rehabilitate other existing facilities.

Alternative B. Balanced Habitat and Public Use Emphasis (Preferred Alternative)

The Service planning team has identified Alternative B as the preferred alternative. This alternative was developed based on public input and the best judgement of the planning team. The strategies presented in the draft comprehensive conservation plan were developed as a direct result of the selection of Alternative B.

This alternative would promote a greater understanding of, and protection for, the fish, wildlife, and habitats of the Complex. It would promote quality and more evenly balanced recreational and educational programs for visitors. Hunting and fishing would continue with greater emphasis on the quality of the experience with more diverse opportunities, including those for youth and disabled hunters/anglers. Education and interpretation would be promoted through regular programs and partnerships with local schools. Wildlife observation and photography opportunities would be expanded, including trails, auto tours, photo blinds, and observation towers, highlighting refuge management programs and unique wildlife and habitats. All-terrain vehicle use for wildlife-dependent creation (e.g., hunting and fishing) would continue to provide access to remote portions of certain refuges. Trails to accommodate these vehicles would be evaluated for retention based on impacts to refuge resources, access, duplication, and other means of access. If possible, trails removed for these reasons would be rerouted if needed for hunter dispersal. A user fee and permit would be required for all-terrain vehicles to provide additional funds needed for the trail maintenance program.

A visitor center and headquarters office would be constructed at Yazoo National Wildlife Refuge. Two new subheadquarters and visitor contact stations would be constructed at Panther Swamp and Morgan Brake National Wildlife Refuges. The new subheadquarters at Panther Swamp Refuge would be relocated off either Highway 49 or River Road, to provide greater visibility and access to the public.

Reforestation efforts would focus on creating buffers along field edges to protect waterfowl and other waterbirds from disturbance, and define boundaries along adjacent private lands. As lands are acquired, they would be evaluated for their ability to contribute to step-down habitat objectives (*e.g.,* moist soil) and to interior forest habitat.

Research studies on bottomland hardwood forest restorations would be fostered and partnerships developed with universities and other agencies, providing needed resources and experiment sites while meeting the needs of the complex's reforestation programs. Research would also benefit efforts throughout the Lower Mississippi River Alluvial Valley to reforest large tracts of lands to meet the objectives set by the Lower Mississippi Joint Venture office to address the fulfillment of the Partners-in-Flight Plan.

Additional staff and facilities would be added to accomplish objectives for establishing baseline data on refuge resources, managing habitats, providing opportunities and facilities for wildlife observation and photography, and providing educational programs that promote a greater understanding of the Complex's purposes, issues, and resources, as well as the unique value of the Lower Mississippi River Alluvial Valley.

Under this alternative, 125,511 acres of Complex lands (including refuges and Farmers Home Administration properties) would be protected, maintained, restored, and enhanced for resident wildlife, waterfowl, migratory nongame birds, and threatened and endangered species. A ''Conservation Partners Focus Area'' would be established to not only concentrate off-refuge resources, but for partnership opportunities and future boundary expansion studies to meet regional and national objectives. Extensive wildlife and plant censuses and inventory activities would be initiated to obtain the biological information needed to implement and monitor management programs on the Complex. All management actions would be directed toward achieving each refuge's primary purposes, while contributing to other national, regional, and state goals. Active habitat management programs would include water level manipulations, moist-soil and cropland management, reforestation, and existing forest management, all designed to meet the foraging, resting, and breeding requirements for a variety of species, particularly migratory birds. An extensive system of levees, water control structures, and wells would be maintained and developed in an effort to mimic historic flooding regimes.

As funding becomes available to either contract or conduct farming operations with Complex equipment and staff, acres in agricultural production would be reduced by at least half, depending upon the level of funding and yield. The majority of the acres would be converted to moist soil to meet habitat objectives and needs of wintering waterfowl and other waterbirds, and scrub/shrub and grassland habitats for neotropical migratory birds, woodcock, and upland game birds. Additional lands would be reforested, but due to the size and distribution of sites, would not be sufficient to meet any interior forest objectives. An assortment of step-down management plans would be created or updated to provide the specifics for the individual refuge programs.

Under this alternative, the Complex would continue to seek, from willing sellers, acquisition of all inholdings within the present acquisition boundaries. Top priority would be lands which, if acquired, would address some critical issues related to habitat protection, access, and off-refuge impacts. Lands acquired as part of the Complex would be made available for compatible wildlife-dependent public recreation and environmental education opportunities. Equally important options to be used include: Corps of Engineers' mitigation program; outreach and partnerships with adjacent landowners; hunt clubs; and the Natural Resources Conservation Service to use conservation easements, cooperative agreements, and federal programs, such as the Wetland Reserve Program, to link bottomland hardwood forest tracts and contribute to overall wildlife, soil, and water conservation benefits within the Lower Mississippi River Alluvial Valley.

Alternative C. Public Use Emphasis

This approach would place less emphasis on managing habitats, while allowing for significantly more public recreational uses. Any additional staff and resources would be directed towards allowing for more compatible public activities in all areas of the Complex. Additional moist soil, scrub/

shrub, forested lands, and grasslands would not be restored and managed. Moist-soil impoundments, currently managed for waterfowl and shorebirds, would be converted to fishing ponds for public use. Hunting seasons would be aligned with state regulations to allow for maximum use. All-terrain vehicle use would continue to disperse hunters, with additional funding used to maintain the maximum number of trails and roads for access.

Auto tours, canoe trails, foot trails, and observation towers would be added for environmental education and watchable wildlife programs. Additional staff would be used for developing and presenting both on- and off-site outreach and interpretation programs.

A visitor center and headquarters office would be constructed at Yazoo National Wildlife Refuge. Two new subheadquarters and visitor contact stations would be constructed at Panther Swamp and Morgan Brake Refuges. The new subheadquarters at Panther Swamp Refuge would be relocated off either Highway 49 or River Road, to provide greater visibility and access to the public.

Land acquisition within the current acquisition boundary would continue with emphasis on those lands that could provide additional public use opportunities and greater access to current refuge lands by the public.

Alternative D. Interior Forest Habitat Emphasis

Under this alternative, all suitable Complex lands would be reforested in support of migratory birds and other wildlife dependent on interior forest habitats. Most refuge management actions would be directed toward creating and managing the largest amount of interior and corridor forest habitat (for Louisiana black bear, neotropical migratory songbirds, and other interior forest wildlife) and reducing forest fragmentation, while supporting the overall primary purposes for the Complex of preserving wintering habitat for mallards, pintails, and wood ducks, and providing production habitat for wood ducks and other migratory birds dependent on forested habitats. Other national, regional, and state goals to protect and restore shorebird, grassland, and scrub/shrub bird populations would be supported secondarily in habitats that were not suitable for reforestation. Step-down waterfowl objectives, established by the Lower Mississippi Joint Venture, in support of the North American Waterfowl Management Plan, for unharvested crops and moist soil would not be met. However, wintering waterfowl would potentially benefit from additional flooded timber habitat, including mast and invertebrate production.

Open habitat for geese would not be maintained on Yazoo National Wildlife Refuge and farming would be eliminated throughout the Complex. Eliminating farming would eliminate goose use, maximize the amount of forests and forested corridor habitats, and minimize forest fragmentation. A forest management plan, designed to address this alternative's primary goals by creating spatially and specifically diverse woodlands, would be developed and implemented. Quality wildlife-dependent recreation activities (e.g., hunting, fishing, wildlife observation, and environmental education and interpretation) would be provided. An environmental education plan, incorporating aggressive and proactive promotion of on- and off-site programs, would be developed and implemented. Improvements would be made to interior and exterior roads to provide all-weather vehicular access to a broad segment of the public; however, existing and proposed roads and trails would be evaluated for their impacts on forest fragmentation. Wildlife observation sites/platforms; interpretive trails, boardwalks, and kiosks; and restrooms would be provided at specific sites to allow for fully accessible interpretation and environmental education programs. Fishing would be provided on Panther Swamp, Hillside, Morgan Brake, and Mathews Brake National Wildlife Refuges.

Under this alternative, the complex would continue to seek, from willing sellers, acquisition of all inholdings within the present acquisition boundary. Highest priority would be given to those lands that may be reforested to contribute to the interior forest objectives. Lands would be made available for compatible wildlife-dependent public recreation and environmental education opportunities. Additionally, the Complex would concentrate on all future off-refuge programs and partnerships within the ''Conservation Partners Focus Area,'' with an emphasis on contributing to interior forest habitat.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: April 7, 2005.

Jacquelyn B. Parrish,

Acting Regional Director.

[FR Doc. 05–20491 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of an Application for an Incidental Take Permit for Sand Skinks and Bluetail Mole Skinks Resulting From the Proposed Construction of a Planned Unit Development in Polk County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Oakmont Grove Venture, L.L.C. (Applicant) requests an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The requested term of the ITP is nine years. The Applicant anticipates take of the threatened sand skink (*Neoseps reynoldsi*) and bluetail mole skink (*Eumeces egregius lividus*) incidental to the development of approximately 18.59 acres of sand skink habitat and the restoration, enhancement, and management of 71.14 acres of sand skink habitat on-site associated with the construction of a planned unit development (project). Bluetail mole skinks have not been observed on the Oakmont project site, but they are known to share habitats occupied by sand skinks. Therefore, incidental take of the bluetail mole skink could occur in the same areas that are occupied by the sand skink. The proposed project would occur in Sections 3, 9, 10, and 15, Township 26 South, Range 27 East, Polk County, Florida.

The Applicant's Habitat Conservation Plan (HCP) describes the mitigation and minimization measures proposed to address the effects of the project on the sand skink and bluetail mole skink. These measures are also outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP application, HCP, and Environmental Assessment (EA). Copies of the application, HCP, and EA may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, EA, and HCP should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before December 12, 2005.

ADDRESSES: Persons wishing to review the ITP application, EA, and HCP may

obtain a copy by writing the Service's Southeast Regional Office, at the address below. Please reference permit application number TE098035–0 in such requests. Documents will also be available for public inspection by appointment during normal business hours either at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the South Florida Ecological Services Office, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, Florida 32960–3559 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), at 404–679–7313, facsimile: 404–679–7081; or Mr. Spencer Simon, Fish and Wildlife Biologist, South Florida Ecological Services Office (see **ADDRESSES** above), at 772–562–3909, extension 345.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit application number TE098035–0 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov.* Please submit comments over the internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the Service that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The sand skink is endemic to the sandy ridges of central Florida, occurring in Highlands, Lake, Marion, Orange, Osceola, Polk, and Putnam counties. Principal populations occur on the Lake Wales and Winter Haven Ridges in Highlands, Lake, and Polk counties. The sand skink is widespread in xeric uplands with sandy substrates, but appears to be most abundant in ecotonal areas, typically between high pine and scrub. These areas are exposed to frequent lightning strikes which resulted in the evolution of plant and animal species that became dependent on frequent fires to persist. Due to the effects of urbanization and agricultural development, historic skink habitat has been reduced in size and has become fragmented. As a consequence of habitat fragmentation, much of the remaining habitat for skinks is poor quality due to the lack of periodic fires; fire exclusion has been practiced since settlement of the area.

Except for a few locations where intensive research has been conducted, there is very little information about the presence or abundance of sand skinks, as well as the status and trends of this species in South Florida. Current research indicates that densities of sand skinks per acre range from 371 to 419 in habitats consisting of sand live oak with open groundcover, from 145 to 194 in habitats consisting of improved pasture with a mosaic of open sandy patches, and 81 in habitats consisting of sand live oak with moderate ground cover.

Sand skink occupation of all suitable habitats within the project site was determined by observation of sign (tracks and disturbance of the sand surface) during site evaluations conducted in April 2003. Unsuitable areas were also surveyed for sign, and were considered habitat for minimization and mitigation purposes if sign was observed. Based upon estimates of sand skink densities in various habitats as described in scientific literature, the theoretical sand skink population on the Oakmont project site is between 17,615 and 20,507 skinks. The theoretical population loss due to direct impacts of the Oakmont project would be between 2,756 and 3,141 skinks.

The bluetail mole skink occupies xeric upland habitats of the Central Ridge in peninsular Florida. It requires open, sandy patches interspersed with scrub vegetation. Much of the bluetail mole skink's habitat has been destroyed or degraded due to residential, commercial, and agricultural development. Very little information is known about the dispersal, population densities, and life history characteristics of bluetail mole skinks.

Bluetail mole skinks have not been observed on the Oakmont project site, but they are known to share habitats occupied by sand skinks. Therefore, it is considered likely that the proposed development, restoration, and management activities could result in incidental take of the bluetail mole skink. Since the proposed preservation, restoration, and management plan for the scrub communities on the Oakmont project site supports the recovery goals established by the Service for the bluetail mole skink, the project would be anticipated to maintain or improve available suitable habitat for this species on-site.

The project site is bounded on the north by County Road 54 and on the south by Bowen Road, and is west of State Road 547 in Polk County. The scrub habitat present on the Oakmont project site consists of small, remnants of scrub habitat that have been isolated and fragmented by adjacent development and agricultural uses of the site, larger tracts of relatively undisturbed and unmanaged habitat (some of which have transitioned into closed canopied systems), as well as areas that have been incorporated into improved pasture areas for cattle grazing.

Land clearing in preparation for a planned unit development would destroy scrub habitat and would likely result in take of sand skinks and bluetail mole skinks, incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with the proposed planned unit development would reduce the availability of feeding, breeding, and sheltering habitat for these species.

The Applicant's HCP describe the following minimization and mitigation strategy that would be employed by the Applicant to offset the impacts of the project to the sand skink and bluetail mole skink:

(1) The Applicant would enhance and manage 32.50 acres of occupied oak scrub sand skink habitat.

(2) The Applicant would restore and manage 38.64 acres of occupied, low quality sand skink habitat.

(3) The Applicant would monitor the project site for five years to evaluate both the vegetative composition and structure, and the presence of sand skinks within the preserved and restored scrub habitats.

The EA considers the environmental consequences of the no action

alternative (not to issue the ITP) and two action alternatives that would require issuance of an ITP. The no action alternative would ultimately result in loss of sand skink and bluetail mole skink habitat within the project vicinity due to habitat degradation. The no action alternative could also expose the Applicant to violations under section 9 of the Act.

An action alternative considered in the EA would be the issuance of the ITP for the development as approved by local government authorities, with off-site mitigation for project impacts to occupied sand skink habitat. Under this alternative, the acquisition of up to 201.0 acres of suitable skink habitat would be required. This alternative would also result in the loss of 89.7 acres of occupied sand skink habitat at the development site.

The second action alternative (proposed project) would be issuance of the ITP according to the HCP as submitted and described above. This alternative, which includes a modification of the Applicant's currently approved development plan, would affect about 18.59 acres of occupied sand skink habitat in Polk County, Florida. The mitigation measures for the proposed action alternative include enhancement and management of 32.50 acres of suitable habitat, and restoration and management of 38.64 acres of low quality habitat in Polk County, Florida.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, the ITP will be issued for incidental take of the sand skink and bluetail mole skink. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 27, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–20498 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of a Revised Application for an Incidental Take Permit for the Florida Scrub-Jay Resulting From Construction of a Multi-Home Subdivision in Marion County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Southern Multicapital Corporation (Applicant) requests an incidental take permit (ITP) for a duration of ten years, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended (U.S.C. 1531 *et seq.*). The Applicant anticipates destroying about 93 acres of occupied Florida scrub-jay (*Aphelocoma coerulescens*) (scrub-jay) habitat in Section 21, Township 16 South, Range 21 East, Marion County, Florida. Habitat destruction would be expected due to vegetation clearing and the subsequent construction of infrastructure and single-family homes. Up to four scrub-jay families could be taken as a result of the Applicant's proposed actions.

This ITP application was previously announced in the **Federal Register** on June 14, 2005. On July 29, 2005, the Applicant withdrew the Habitat Conservation Plan (HCP) that was part of the application, in order to make modifications. The Service suspended processing the application pending receipt of a modified HCP. The Applicant submitted the current HCP on August 1, 2005.

The Applicant's HCP describes the mitigation and minimization measures proposed to address the effects of the proposed project on the scrub-jay. These measures are outlined in the **SUPPLEMENTARY INFORMATION** section below. We announce the availability of the ITP application, HCP, and an environmental assessment. Copies of the application, HCP, and environmental assessment may be obtained by making a request to the Southeast Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act (NEPA) regulations (40 CFR 1506.6).

DATES: Written comments on the ITP application, HCP, and environmental assessment should be sent to the Service's Southeast Regional Office (see **ADDRESSES**) and should be received on or before December 12, 2005.

ADDRESSES: Persons wishing to review the application, HCP, and environmental assessment may obtain a copy by writing the Service's Southeast Regional Office at the address below. Please reference permit application number TE098004–1 in such requests. Documents will also be available for public inspection by appointment during normal business hours either at the Southeast Regional Office, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216–0912 (Attn: Field Supervisor).

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, Southeast Regional Office (see **ADDRESSES** above), at (404) 679–7313, facsimile: (404) 679–7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES** above), at (904) 232–2580.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. Please reference permit application number TE098004–1 in such comments. You may mail comments to the Service's Southeast Regional Office (see **ADDRESSES**). You may also comment via the Internet to *david_dell@fws.gov*. Please submit comments over the Internet as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at either telephone number listed above (see **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand-deliver comments to either Service office listed above (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by

law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not, however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The Florida scrub-jay (scrub-jay) is geographically isolated from other species of scrub-jays found in Mexico and the western United States. The scrub-jay is found exclusively in peninsular Florida and is restricted to xeric uplands (well-drained, sandy soil habitats supporting a growth of oak-dominated scrub). Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which has adversely affected the distribution and numbers of scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

The decline in the number and distribution of scrub-jays in central Florida has been exacerbated by agricultural land conversions and urban growth in the past 50 years. Much of the historic commercial and residential development has occurred on the dry soils that previously supported scrub-jay habitat. Based on existing soils data, much of the current scrub-jay habitat of central Florida occurs in what was once the coastal sand dunes created over the millennia due to rising and falling oceans. These ancient dunes are most prevalent from southern Highlands County north to Marion County. Much of this area of Florida was settled early because few wetlands restricted urban and agricultural development. Due to the effects of urban and agricultural development over the past 100 years, much of the remaining scrub-jay habitat is now relatively small and isolated. What remains is largely degraded, due to interruption of the natural fire regime that is needed to maintain xeric uplands in conditions suitable for scrub-jays.

Residential construction would take place within Section 21, Township 16 South, Range 21 East, Marion County, Florida. Surveys conducted by the Applicant indicated that scrub-jays occupied 93 of the 137 acres proposed to be developed as a residential community. The clearing of vegetation for infrastructure and home construction would destroy feeding, breeding, and sheltering habitat of the scrub-jay.

The Applicant has not proposed to minimize impacts to scrub-jays at the proposed construction site because small, on-site scrub-jay preserves may actually harm scrub-jays by concentrating birds into an area where predators may attack them, increasing their susceptibility to collisions with automobiles, and increasing the incidence of competition with other more urban-adapted bird species. Instead of protecting habitat within the future residential community, the Applicant is proposing to acquire 158 acres, of which 102 acres is considered suitable for scrub-jays. The U.S. Forest Service has tentatively agreed to accept fee title and management responsibilities for the 158 acres which would be acquired by the Applicant. Although the Forest Service must work through processes and procedures prior to accepting the land donation and agreeing to restoration and management of the tract, it does not anticipate any issues to arise that would prevent this from happening. In addition, the acquisition and subsequent transfer of fee title would allow the U.S. Forest Service access to an additional 87 acres it currently owns but has been unable to manage due to restricted access.

In combination with the acquisition of the 158 acres described above, the Applicant proposes to contribute $366,758 to the Florida Scrub-jay Conservation Fund (Fund), administered by the National Fish and Wildlife Foundation (NFWF). Through an agreement between the Service and NFWF, scrub-jay mitigation funds deposited into the Fund are available for the conservation of Florida scrub-jays. Conservation efforts may include habitat acquisition, habitat restoration and habitat management.

The Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the environmental assessment and HCP.

The Service will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(B) of the Act. If it is determined that those requirements are met, the ITP will be issued for incidental take of the Florida scrub-jay. The Service will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of this consultation, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: September 27, 2005.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 05–20500 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: History of restoration efforts on the Trinity River; Introduction to the Trinity River Restoration Program (TRRP); TAMWG priorities, procedures, organization, operations and interaction with other TRRP entities; and status of wildlife in TRRP policy and budget. Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 8:30 a.m. to 4 p.m. on Friday, November 4, 2005.

ADDRESSES: The meeting will be held at the Weaverville Victorian Inn, 1709 Main Street, Weaverville, CA 96093. Telephone: (530) 623–4432.

FOR FURTHER INFORMATION CONTACT: Mike Long of the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, California 95521, (707) 822–7201. Mike Long is the working group's Designated Federal Official.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: October 6, 2005.

John Engbring,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 05–20492 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs announces that the Advisory Board for Exceptional Children will hold its next meeting in Albuquerque, New Mexico. The purpose of the meeting is to discuss the impact of the Individuals with Disabilities Education Improvement Act Amendments of 2004 on Indian children with disabilities.

DATES: The Board will meet Tuesday, November 8, 2005, from 8 a.m. to 4:30 p.m., Wednesday, November 9, 2005, from 8 a.m. to 4:30 p.m. and Thursday, November 10, 2005, from 8 a.m. to 12 noon (MST).

ADDRESSES: The meetings will be held at the Center for School Improvement, 500 Gold Avenue SW., 7th Floor, Albuquerque, New Mexico.

Written statements may be submitted to Mr. Edward F. Parisian, Director, Office of Indian Education Programs, Bureau of Indian Affairs, 1849 C Street, NW., MS–3512, Washington, DC 20240; Telephone (202) 208–6123; Fax (202) 208–3312.

FOR FURTHER INFORMATION CONTACT: Gloria Yepa, Supervisory Education Specialist, Special Education, Bureau of Indian Affairs, Office of Indian Education Programs, Center for School Improvement, PO Box 1088, Albuquerque, New Mexico 87103; Telephone (505) 248–7541.

SUPPLEMENTARY INFORMATION: The Advisory Board for Exceptional Children was established to advise the Secretary of the Interior, through the Assistant Secretary–Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Improvement Act Amendments of 2004, Public Law 108–446.

The agenda for this meeting will cover public comments, new appointees, and new business: (1) Annual report including Office of Special Education Programs feedback, (2) comprehensive system of personnel development, (3) new organizational information, (4) procedures for complaint investigations, and (5) Elementary and Secondary Education Act. Meetings are open to the public.

Dated: October 6, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 05–20523 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on September 26, 2005, a proposed Consent Decree in *United States* v. *FTR, LP, et al.,* Civil Action No. 04–CV–930 was lodged with the United States District Court for the District of South Carolina, Rock Hill Division.

In this action, brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''the Act''), 42 U.S.C. 9607, the United States sought reimbursement for response costs incurred by EPA at the Carolina Steel Drum Superfund Site (''Site'') located in Rock Hill, York County, South Carolina against twenty Defendants who, the United States alleges, arranged for disposal of hazardous substances at this Site. Under the decree, the five remaining Defendants in this action—ABB, Inc.; Bullington Family Partnership; Crown Metro Chemicals, Inc.; Eastman Chemical Company; and FTR, LP will make a collective payment of $1,450,000 to resolve their liability for EPA costs incurred to clean up 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 proposed 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. *FTR, LP et al.,* D.J. REF. 90–11–2–07733.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of South Carolina, 1441 Main Street, Suite 500, Columbia, South Carolina, 29201, and at U.S. EPA Region IV, Atlanta Federal Building, 61 Forsyth Street, Atlanta, Georgia 30303. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20536 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to the Comprehensive Environmental Response Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on September 27, 2005, a proposed Settlement Agreement in *In re FV Steel and Wire,* No. 04–22421, was lodged with the United States Bankruptcy Court for the Eastern District of Wisconsin.

On August 19, 2004, the United States, on behalf of the Environmental Protection Agency (''EPA''), filed a Proof of Claim under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Recovery Act, as amended (''CERCLA''), 42 U.S.C. 9607(a), against the Debtor seeking recovery of $2,441,702 in past costs incurred by EPA in responding to the release or threat of release of hazardous substances at the Pascale Property Site (''Site'') in Washington Township, New Jersey. The Settlement Agreement provides that the United States will have an allowed general unsecured claim against the Debtor in the amount of $732,000, and that the United States Army will pay $1,098,765 in reimbursement of EPA's response costs at 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 *In re FV Steel and Wire,* No. 04–22421, D.J. Ref. 90–7–1–1/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Wisconsin, 517 East Wisconsin Ave., Room 530, Milwaukee, WI, 53202, (contact Assistant United States Attorney Susan Knepel) and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Assistant Regional Counsel Clay Monroe). During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20539 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Oil Pollution Act

Notice is hereby given that on October 6, 2005, a proposed consent decree in *United States* v. *General Electric Company*, Civil Action No. 05–cv–1270, was lodged with the United States District Court for the Northern District of New York.

The proposed consent decree will settle the United States' claims under the Comprehensive Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, relating to the release of polychlorinated biphenyls into the Hudson River. Pursuant to the proposed consent decree, General Electric Company will, *inter alia*, dredge approximately 265,000 cubic yards of contaminated sediment from certain portions of the Upper Hudson River and pay approximately $43,000,000 toward past and future costs of the United States in responding to the contamination. In addition, General Electric Company may dredge an additional 2.39 million cubic yards of contaminated sediments under the Consent Decree and pay up to an additional $32.5 million to reimburse costs of the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *General Electric Company*, Civil Action No. 05–cv–1270, D.J. Ref. 90–11–2–529.

The proposed consent decree may be examined at the Office of the United States Attorney, Northern District of New York, 445 Broadway, Albany, New York 12207–2924. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy of the proposed consent decree only, please so note and enclose a check in the amount of $19.75 (25 cents per page reproduction cost for the 79 page proposed consent decree) payable to the U.S. Treasury. If you would also like a copy of the attachments to the consent decree, please so note and include an additional $607.75 (25 cents per page for the 2431 pages of attachments). The consent decree, and attachments, will also be available on the DOJ Web site during the public comment period at *http://www.doj.gov/enrd/open/html.*

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20533 Filed 10–12–05; 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

Notice is hereby given that on September 30, 2005, a proposed Consent Decree in *United States* v. *Grand Truck Western Railroad Incorporated, et al.,* Civil Action No. 1:05–cv–00672, was lodged with the United States District Court for the Western District of Michigan.

In this action the United States sought, under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Recovery Act (''CERCLA''), 42 U.S.C. 9606 and 9607, to recover costs incurred by the United States in connection with the Verona Well Field Superfund Site (the ''Site'') in Battle Creek, Michigan. Under the proposed settlement, the Settling Defendants, who have been conducting the remedy at the Site pursuant to two Unilateral Administrative Orders issued by the U.S. Environmental Protection Agency (''U.S. EPA''), will continue to perform the selected remedy (estimated by U.S. EPA to cost an additional $8.2 million), pay $40,000 of the U.S EPA's past costs incurred at the Site, and pay future oversight costs incurred by the U.S. EPA at the Site from the date of lodging of the Consent Decree. In return, the Settling Defendants will receive contribution protection and a covenant not to sue from the United States for the work at the Site as well as for past and future response costs.

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. *Grand Trunk Western Railroad Incorporated, et al.*, D.J. Ref. 90–11–2–739.

The Consent Decree may be examined at the Office of the United States Attorney, 330 Ionia Ave., Suite 501, Grand Rapids, MI 49503, and at U.S. EPA Region V, 77 West Jackson Blvd., Chicago, IL 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC

20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $71.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 05–20537 Filed 10–12–05; 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

Under 28 CFR 50.7, notice is hereby given that on September 28, 2005, a proposed consent decree in *United States* v. *Key Investment Company et al.,* Civil Action No. 98–5162, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States is seeking response costs pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the North Penn Area Six Superfund Site (''Site''), which consists of a contaminated groundwater plume and a number of separate parcels of property within and adjacent to the Borough of Lansdale, Montgomery County, Pennsylvania. The proposed consent decree will resolve the United States' claims against Westside Industries L.P., Westside Industries Group LLC, Peter Borgman, Byron Lavan, and Peter Lowenthal (''Settling Defendants'') in connection with the Site. Under the terms of the proposed consent decree, Settling Defendants will make a cash payment to the United States of $83,000.00 to address their liability for past response costs incurred by the United States at Settling Defendants' property and will receive a covenant not to sue by the United States with regard to 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 proposed 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. *Key Investment Company et al.,* D.J. Ref. 90–11–2–06024/2.

The proposed consent decree may be examined at the Office of the United States Attorney, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (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. 05–20535 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Moniteau County,* No. 03–4094–CV–C–SOW was lodged with the United States District Court for the Western District of Missouri on October 3, 2005.

This proposed Consent Decree concerns a complaint filed by the United States against Moniteau County, Missouri and the Commissioners of Moniteau County, pursuant to Sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, to obtain injunctive relief from the defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by enjoining Moniteau County from further violations, requiring it to take certain affirmative measures to avoid future violations, requiring restoration and mitigation with regard to an impacted area, and requiring an environmental project.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Charles M. Thomas, Office of the United States Attorney for the Western District of Missouri, 400 East 9th Street, Room 5510, Kansas City, Missouri 64106 and refer to *United States* v. *Moniteau County.*

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Missouri, United States Courthouse, 400 East 9th Street, Kansas City, Missouri 64016 or the Clerk's Office, 310 U.S. Courthouse, 131 W. High Street, Jefferson City, Missouri 65101. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/open.html.*

Mary Edgar,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 05–20540 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Pursuant to The Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Pursuant to Section 122(d) of CERCLA, 42 U.S.C. 9622(d), and 28 CFR 50.7, notice is hereby given that on September 26, 2005, a proposed Settlement Agreement with Mossberg Industries, Inc. (''Mossberg'') was lodged with the United States Bankruptcy Court for the Northern District of Indiana in Mossberg's bankruptcy case, *In re: Mossberg Industries, Inc.,* No. 03–12993.

Mossberg is a potentially responsible party at the Second Operable Unit at the Peterson/Puritan, Inc. Superfund Site located in Cumberland and Lincoln, Rhode Island (''Peterson/Puritan OU2''), a landfill that operated from the 1950's to the 1980's. The Settlement Agreement provides that the United States will have an allowed general unsecured claim in the amount of $768,000 in connection with Peterson/Puritan OU2. The United States, on behalf of the Environmental Protection Agency, has provided Mossberg with a covenant not to sue, pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, with respect to Peterson/Puritan OU2.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Settlement Agreement. Comments should be addressed to the

Assistant Attorney General, Environment and Natural Resources Division, Post Office Box 7611, United States Department of Justice, Washington, DC 20044–7611, and should refer to *In re Mossberg Industries, Inc.,* DOJ Ref. # 90–11–3–1233/4. A copy of the comments should be sent to Donald G. Frankel, Trial Attorney, Department of Justice, Suite 616, One Gateway Center, Newton, MA, 02458.

The proposed Settlement Agreement may be examined at the Office of the United States Attorney for the Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320 (contact Wayne Ault), and at the United States Environmental Protection Agency, Region 1, 1 Congress Street, Suite 1100, Boston, Massachusetts, 02114–2023 (contact Michelle Lauterback). During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood at *tonia.fleetwood@usdoj.gov* or fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of the Settlement Agreement from the Consent Decree Library, please enclose a check in the amount of $3.00 (25 cents per page reproduction costs) payable to the United States Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 05–20538 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

Department of Justice

Notice of Lodging of Consent Decree; Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

Pursuant to 28 CFR 50.7, notice is hereby given that on September 13, 2005, a Consent Decree in the case of *United States of America* v. *Raymond and Donnis Holbrook Trust,* Civil Action No. CV05–6723 (GHK)(VBKx) was lodged in the United States District Court for the Central District of California.

In this action, under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, the United States sought injunctive relief and recovery of response costs to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Waste Disposal, Inc. Superfund Site in Santa Fe Springs, California (hereinafter referred to as the ''WDI Site'').

The defendant in this action owns a portion of the WDI Site, and the purpose of the settlement is to provide to the United States the access and institutional controls which are required to perform the remedial action at the Site. In return, the United States has given the defendant covenants not to sue and contribution protection.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611; and refer to *United States of America* v. *Raymond and Donnis Holbrook Trust,* DOJ #90–11–2–1000/2. The proposed settlement agreement may be examined at the United States Environmental Protection Agency, EPA Region IX, 75 Hawthrone Street, San Francisco, CA 94107, ATTN: Sarah Mueller. During the comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.*

A copy of the proposed 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 of the Decree from the Consent Decree Library, please enclose a check in the amount of $56.00 (25 cents per page reproduction cost for 224 pages) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 05–20534 Filed 10–12–05; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for Labor Provisions of U.S. Free-trade Agreements; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open meeting November 14, 2005.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Office of Trade Agreement Implementation (OTAI) gives notice of a meeting of the National Advisory Committee for Labor Provisions of U.S. Free-trade Agreements, which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the North American Agreement on Labor Cooperation (NAALC), the labor side accord to the North American Free Trade Agreement (NAFTA), and the labor chapters of free-trade agreements. The Committee is authorized under NAALC and the free-trade agreements.

The Committee consists of twelve independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on November 14, 2005 from 9 a.m. to 1 p.m.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue, NW., Executive Conference Room at 4 C–5521 (Center Conference Rooms C 5515), Washington, DC 20210. The meeting is open to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Dr. Peter Accolla, designated Federal Officer, Office of Trade Agreement Implementation, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210. Telephone 202–693–4900 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 23, 2004 (69 FR 77128) for supplementary information.

Signed at Washington, DC, on October 6, 2005.

Dr. Peter Accolla,

Acting Director, U.S. National Administrative Office.

[FR Doc. 05–20511 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,603]

Cordis Corporation, Miami Lakes, FL; Notice of Revised Determination on Reconsideration

By letter dated September 28, 2005, the subject company requested administrative reconsideration regarding the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm. Workers produce medical devices used for surgical procedures.

A negative determination regarding the subject facility was signed on August 25, 2005. The Department's notice will soon be published in the **Federal Register**. The negative determination was based on the findings that there was neither a significant decline in employment at the subject facility nor a threat of employment decline at the subject facility since the previous certification for the subject company (TA–W–52,275) expired on August 7, 2005.

During the reconsideration investigation, the Department was informed by the subject company that a significant proportion of workers have been/will be separated from the subject due to an ongoing shift of medical device production to Mexico.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that a shift of production to Mexico of medical devices used in surgical procedures like or directly competitive with those produced at Cordis Corporation, Miami Lakes, Florida, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Cordis Corporation, Miami Lakes, Florida who became totally or partially separated from employment on or after August 8, 2005 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 4th day of October 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5609 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 23, 2005.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 23, 2005.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of October 2005.

Terrance Clark,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 9/19/05 and 9/23/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57979	Eaton Corp. (Wkrs)	Marshall, MI	09/19/05	09/16/05
57980	Collins Supply and Equipment Co., Inc. (Comp)	Scranton, PA	09/19/05	09/15/05
57981	Arvin Merritor, Inc. (Comp)	Chickasha, OK	09/19/05	09/16/05
57982	Powder Processing and Technology, LLC (Comp)	Valparaiso, IN	09/19/05	09/16/05
57983	SKF Sealing Solutions (Comp)	Springfield, SD	09/20/05	09/16/05
57984	Sipex Corporation (Comp)	Milpitas, CA	09/20/05	09/19/05
57985	Carroll Leather (Comp)	El Paso, TX	09/20/05	09/19/05
57986	Bravo Sports (State)	Cypress, CA	09/20/05	09/19/05
57987	Sun Chemical (Wkrs)	Cincinnati, OH	09/20/05	09/12/05
57988	Express Point Tech (State)	Golden Valley, MN	09/20/05	09/19/05
57989	Wasley Products, Inc. (Comp)	Plainville, CT	09/20/05	09/16/05
57990	Sun Look Garment, Inc. (Wkrs)	San Francisco, CA	09/21/05	09/20/05

APPENDIX—Continued

[TAA petitions instituted between 9/19/05 and 9/23/05]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
57991	Med-Data (Wkrs)	Salem, OR	09/21/05	09/12/05
57992	Radicispandex (Wkrs)	Gastonia, NC	09/21/05	09/19/05
57993	Solectron (Comp)	Hillsboro, OR	09/21/05	09/19/05
57994	Johnnie Overstreet (Comp)	Marrero, LA	09/21/05	09/16/05
57995	Hostman-Steinberg (Comp)	Pittsburgh, PA	09/21/05	09/19/05
57996	Beverage-Air (Comp)	Spartanburg, SC	09/21/05	09/20/05
57997	Unifi, Inc. (Comp)	Mayodan, NC	09/21/05	09/15/05
57998	Allied Industries Co. (Comp)	Beulaville, NC	09/21/05	09/12/05
57999	Culp, Inc. (Wkrs)	Graham, NC	09/21/05	09/15/05
58000	Drexel Heritage Furniture (Wkrs)	Morganton, NC	09/21/05	09/14/05
58001	Lea Industries (Comp)	Morristown, TN	09/22/05	09/16/05
58002	Mid Continent Nail (State)	Springdale, AR	09/22/05	09/21/05
58003	Alyeska Pipeline Service Company (Comp)	Anchorage, AK	09/22/05	09/20/05
58004	Pebb Mfg. Co., Inc. (Wkrs)	Mifflintown, PA	09/22/05	09/15/05
58005	Fairfield Textile Corp. (State)	Paterson, NJ	09/22/05	09/21/05
58006	Baldwin Hardware (Wkrs)	Reading, PA	09/22/05	09/09/05
58007	West Coast Quartz (State)	Union City, CA	09/22/05	09/14/05
58008	Inman Mills (Wkrs)	Enoree, SC	09/22/05	09/21/05
58009	Schuessler Knitting Mills, Inc. (Comp)	Chicago, IL	09/22/05	09/01/05
58010	Holland American Wafer Co. (Wkrs)	Grand Rapids, MI	09/23/05	09/22/05
58011	Cherry Corporation (Wkrs)	Pleasant Prairie, WI	09/23/05	09/22/05
58012	Grover Industries, Inc. (Comp)	Grover, NC	09/23/05	09/22/05
58012A	Grover Industries, Inc. (Comp)	Lynn, NC	09/23/05	09/22/05
58013	Spectrum Yarns, Inc. (Comp)	Kings Mountain, NC	09/23/05	09/19/05
58014	Kern Manufacturing (Wkrs)	Enfield, IL	09/23/05	09/22/05
58015	Techneglas, Inc. (Comp)	Pittston, PA	09/23/05	09/23/05
58016	Child Craft Industries, Inc. (Comp)	New Salisbury, IN	09/23/05	09/12/05
58017	GE Financial Assurance (Wkrs)	Schaumburg, IL	09/23/05	09/19/05
58018	Miralba, Inc. (Comp)	New York City, NY	09/23/05	09/13/05
58019	Aradian Corporation (Comp)	San Diego, CA	09/23/05	09/09/05
58020	Southwest Cupid (Comp)	Blackwell, OK	09/23/05	09/01/05
58021	Victaulic Apex Facility (Wkrs)	New Village, NJ	09/23/05	09/16/05

[FR Doc. E5–5616 Filed 10–12–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,707]

Guardian Manufacturing Company, a Subsidiary of J.P. Industries, Willard, OH; Notice of Revised Determination on Reconsideration

By letter dated September 23, 2005, a worker requested administrative reconsideration regarding the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

A negative determination regarding the subject facility was signed on September 6, 2005. The Department's notice will soon be published in the **Federal Register**. The negative determination was based on the findings that, during the relevant period, there were no imports of butyl rubber gloves by the subject company or its customers and no shift of production to a foreign country. The determination also stated that the subject company did not lose a contract to a Canadian company and that the gloves made by the subject company are not like or directly competitive with the gloves made by the Canadian company who won the contract.

To support the request for reconsideration, the petitioner supplied additional information regarding the federal contract won by the Canadian company.

During the reconsideration investigation, the Department contacted the federal contracting entity and the subject company. The contracting entity and a subject company official stated that the subject company had placed a bid for the contract but lost to a Canadian company. The subject company official also stated that butyl rubber gloves of the same thickness perform the same function regardless of the production process.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with the butyl rubber gloves produced at the subject firm, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Guardian Manufacturing Company, A Subsidiary of J.P. Industries, Willard, Ohio who became totally or partially separated from employment on or after July 28, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 4th day of October 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5611 Filed 10–12–05; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[Ta–W–57,909]

K Force Incorporated; Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at K Force Incorporated, Grand Rapids, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5613 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,910]

Manpower; Greenville, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at Manpower, Greenville, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5614 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,575]

Milford Stitching Company, Inc., a Division of GLK, Inc., Milford, DE; Notice of Revised Determination on Reconsideration

By letter dated September 13, 2005 a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on August 18, 2005 was based on the finding that imports of tablecloths, napkins, bedspreads and fabric shower curtains did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice was published in the **Federal Register** on September 8, 2005 (70 FR 53389).

To support the request for reconsideration, the company official supplied additional information. Upon further review and contact with the subject firm's major declining customer, it was revealed that the customer increased its reliance on imported fabric shower curtains during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production. The investigation further revealed that production and employment at the subject firm declined during the relevant time period.

In accordance with Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Milford Stitching Company, Inc., a division of GLK, Inc., Milford, Delaware, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Milford Stitching Company, Inc., a division of GLK, Inc., Milford, Delaware who became totally or partially separated from employment on or after July 18, 2004 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of September 2005.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5608 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,600]

Philips Consumer Electronics, Philips Service Organization, Service Contracts, Claims, Credit and Special Projects Departments, Knoxville, TN; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Philips Consumer Electronics, Philips Service Organization, Service Contracts, Claims, Credit and Special Projects Departments, Knoxville, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,600; Philips Consumer Electronics Philips Service Organization, Service Contracts, Claims, Credit, and Special Projects Departments, Knoxville, Tennessee (October 5, 2005)

Signed at Washington, DC this 6th day of October 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5610 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,812]

Sanford North America; Point Making Department Santa Monica, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Sanford North America, Point Making Department, Santa Monica, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–57,812; Sanford North America, Point Making Department, Santa Monica, California (September 26, 2005).

Signed at Washington, DC this 6th day of October 2005.

Terrance Clark,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E5–5612 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,912]

Securitas Services; Grand Rapids, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at Securitas Services, Grand Rapids, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5615 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,911]

Select Resources; Grandville, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2005 in response to a worker petition filed by a company official on behalf of workers at Select Resources, Grandville, Michigan.

An active certification covering the petitioning group of workers is already in effect (TA–W–57,399, as amended). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 15th day of September 2005.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E5–5617 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Part 46—Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the 30 CFR 46.3, 46.5, 46.6, 46.7, 46.8, 46.9, and 46.11; Training Plans, New Miner Training; Newly-Hired Experienced Miner Training; New Task Training; Annual Refresher Training; Records of Training; and Site-Specific Hazard Awareness Training.

DATES: Submit comments on or before December 12, 2005.

ADDRESSES: Send comments to U.S. Department of Labor, Mine Safety and Health Administration, John Rowlett, Director, Management Services Division, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on a computer disk, or via e-mail to *Rowlett.John@dol.gov,* along with an original printed copy. Mr. Rowlett can be reached at (202) 693–9827 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: The employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph (a) of § 46.3 requires mine operators to develop and implement a written training plan approved by MSHA that contains effective programs for training new miners and experienced miners, training miners for new tasks, annual refresher training, and hazard training.

Paragraph (b) requires the following information, at a minimum, to be included in a training plan:

(1) The company name, mine name, and MSHA mine identification number;

(2) The name and position of the person designated by the operator who is responsible for the health and safety training at the mine. This person may be the operator;

(3) A general description of the teaching methods and the course materials that are to be used in providing the training, including the subject areas to be covered and the approximate time to be spent on each subject area;

(4) A list of the persons who will provide the training, and the subject areas in which each person is competent to instruct; and

(5) The evaluation procedures used to determine the effectiveness of training.

Paragraph (c) requires a plan that does not include the minimum information specified in paragraph (b) to be approved by MSHA. For each size category, the Agency estimates that 20 percent of mine operators will choose to write a plan and send it to MSHA for approval.

Paragraph (d) requires mine operators to provide miners' representatives with a copy of the training plan. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (e) provides that within 2 weeks following receipt or posting of the training plan, miners or their representatives may submit written comments on the plan to mine operators, or to the Regional Manager, as appropriate. The burden hours and costs of this provision are not borne by mine operators, but by miners and their representatives.

Paragraph (g) requires that the miners' representative with a copy of the approved plan within one week after approval. At mines where no miners' representative has been designated, a copy of the plan must be posted at the mine or a copy must be provided to each miner.

Paragraph (h) allows mine operators, miners, and miners' representatives to appeal a decision of the Regional Manager in writing to the Director for Education Policy and Development. The Director would issue a decision on the appeal within 30 days after receipt of the appeal.

Paragraph (i) requires mine operators to make available at the mine site a copy of the current training plan for inspection by MSHA and for examination by miners and their representatives. If the training plan is not maintained at the mine site, mine operators must have the capability to provide the plan upon request by MSHA, miners, or their representatives.

Paragraph (a) of § 46.5 requires mine operators to provide each new miner with no less than 24 hours of training. Miners who have not received the full 24 hours of new miner training must work where an experienced miner can observe that the new miner is working in a safe manner.

Paragraph (a) of § 46.6 requires mine operators to provide each newly hired experienced miner with certain training before the miner begins work.

Paragraph (a) of § 46.7 requires, before a miner performs a task for which he or she has no experience, that the mine operator train the miner in the safety and health aspects and safe work procedures specific to that task. If changes have occurred in a miner's regularly assigned task, the mine operator must provide the miner with training that addresses the changes.

Paragraph (a) of § 46.8 requires, at least every 12 months, that the mine operator provide each miner with no less than 8 hours of refresher training.

Paragraph (a) of § 46.9 requires the mine operators upon completion of each training program, to record and certify on MSHA Form 5000–23, or on a form that contains the required information, that the miner has completed the training. False certification that training was completed is punishable under § 110(a) and (f) of the Act.

Paragraph (a) of § 46.11 requires the mine operator to provide site-specific hazard training to non-miners, including the following persons: scientific workers; delivery workers and customers; occasional, short-term maintenance or service workers, or manufacturers' representatives; and outside vendors, visitors, office or staff personnel who do not work at the mine site on a continuing basis.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines. MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Rules and Regs'' and ''**Federal Register** Documents.''

III. Current Actions

USGS data show that domestic production of sand and gravel and crushed stone increased every year between 1991 and 1999, an indication of the continuing strong demand for construction aggregates in the United Sates. The number of hours worked at sand and gravel and crushed stone operations has been increasing steadily since 1991.

MSHA's objective in these requirements is to ensure that all miners receive the required training, which would result in a decrease in accidents, injuries, and fatalities. Therefore, MSHA is continuing this requirement under 30 CFR 46.3, .5, .6, .7, .8, .9, and .11.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0131.

Title: Part 46—Training and Retraining of Miners Engaged in Shell Dredging or Employed at Sand, Gravel, Surface Stone, Surface Clay, Colloidal Phosphate, or Surface Limestone Mines.

Affected Public: Business or other for-profit.

Cite/Reference: 30 CFR 46.3, .5, .6, .7, .8, .9, .11.

Total Respondents: 5,477.

Frequency: On occasion.

Total Responses: 1,035,636.

Estimated Total Burden Hours: 296,038 hours.

Estimated Total Burden Cost: $488,995.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated in Arlington, Virginia, this fifth day of October 2005.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 05–20512 Filed 10–12–05; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Notice of Workshop

Agency Holding Workshop: National Science Board.

Date and Time: October 20, 2005 8:25 a.m.–5 p.m. (e.t.).

Place: Massachusetts Institute of Technology, Faculty Club, Alfred P. Sloan Building, 6th Floor, Dining 5 and

6, Memorial Drive and Wadsworth Street, Cambridge, MA.

Status: This workshop will be open to the public.

Engineering Workforce Issues and Engineering Education: What Are the Linkages?

8:25 a.m. Welcome
Warren M. Washington,* Chairman, National Science Board
8:30 a.m. Panel 1: Aspirations for Engineering Education
Opening Remarks—Daniel Hastings,* National Science Board
National Academy of Engineering—The Engineer of 2020, Phases I & II G. Wayne Clough,* National Science Board
Data, trends, and outlooks—John A. Brighton,* Iowa State University
NSF activities in engineering—Arden L. Bement,* National Science Foundation
9:10 a.m. Group Discussion among Workshop Participants
9:20 a.m. Questions and Comments from the Audience
9:30 a.m. Panel 2: Engineering Education—Present and Future
Moderator: Daniel Hastings, National Science Board
Alice Agogino,* University of California, Berkeley; Richard Miller,* Olin College of Engineering; Linda Katehi,* Purdue University; Eli Fromm,* Drexel University; and Tom Magnanti,* MIT.
10:30 a.m. Group Discussion among Workshop Participants
11:15 a.m. Questions and Comments from the Audience
11:30 a.m. Break
1 p.m. Panel 3: Engineering Employment—Present and Future
Moderator: Louis L. Lanzerotti, National Science Board
Peter Pao;* Raytheon Company; Ronil Hira,* IEEE–USA; Jim Miller,* Cisco Systems, Inc.; and Gloria Jeff,* Michigan Department of Transportation.
2 p.m. Group Discussion among Workshop Participants
2:45 p.m. Questions and Comments from the Audience
3 p.m. Breakout Sessions to Address the Question: How do we ensure that the best and the brightest students pursue engineering studies and careers, and that their education quality, content, and teaching are of the highest caliber?
Location: Dining 3, Dining 5, and Dining 6
Session Chairs: G. Wayne Clough, Louis L. Lanzerotti, Daniel Hastings
4:30 p.m. Report Out and Wrap-Up
Moderator: Daniel Hastings*

*Confirmed speaker

For Further Information Contact: Dr. Michael P. Crosby, Executive Officer and NSB Office Director, (703) 292–7000, *http://www.nsf.gov/nsb.*

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 05–20554 Filed 10–12–05; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Sunshine Act; President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

NAME: President's Committee on the National Medal of Science (1182).

DATE AND TIME: Tuesday, October 25, 2005, 8:30 a.m.–1:30 p.m.

PLACE: Room 555–II, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

TYPE OF MEETING: Closed.

CONTACT PERSON: Ms. Ann Noonan, Honorary Awards Specialist, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703–292–8096.

PURPOSE OF MEETING: To provide advice and recommendations to the President in the selection of the 2005 National Medal of Science recipients.

AGENDA: To review and evaluate nominations as part of the selection process for awards.

REASON FOR CLOSING: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: October 11, 2005.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 05–20648 Filed 10–11–05; 3:47 pm]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–35882]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Purdue Pharma, L.P.'s Facility in Cranbury, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Betsy Ullrich, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5040, fax (610) 337–5269; or by e-mail: *exu@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering issuing a license amendment to Purdue Pharma, L.P. for Materials License No. 29–30698–01, to authorize release of its facility in Edgewater, New Jersey, for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to authorize the release of two sections of the licensee's Cranbury, New Jersey, facility for unrestricted use. Purdue Pharma, L.P. was authorized by NRC from 2002 to use radioactive materials for research and development purposes at the site. On April 21, 2005, Purdue Pharma, L.P. requested that NRC release two sections of the facility for unrestricted use. Purdue Pharma, L.P. has conducted surveys of the two sections of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted use.

The NRC staff has prepared an EA in support of the license amendment. The two sections of the facility were remediated and surveyed prior to the licensee requesting the license amendment. The NRC staff has reviewed the information and final status survey submitted by Purdue Pharma, L.P. Based on its review, the staff has determined that there are no additional remediation activities

necessary to complete the proposed action. Therefore, the staff considered the impact of the residual radioactivity at the facility and concluded that since the residual radioactivity meets the requirements in subpart E of 10 CFR part 20, a Finding of No Significant Impact is appropriate.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Purdue Pharma, L.P.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in Subpart E of 10 CFR part 20. The staff has found that the radiological environmental impacts from the action are bounded by the impacts evaluated by NUREG–1496, Volumes 1–3, ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (ML042310492, ML042320379, and ML042330385). Additionally, no non-radiological or cumulative impacts were identified. On the basis of the EA, the NRC has concluded that the environmental impacts from the action are expected to be insignificant and has determined not to prepare an environmental impact statement for the action.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this Notice are: Environmental Assessment Related to an Amendment of U.S. Nuclear Regulatory Commission Materials License No. 29–30698–01, Issued to Purdue Pharma, L.P. (ML052780150), the Purdue Pharma, L.P. letter dated April 21, 2005 (ML052590192) and the Purdue Pharma, L.P. letter dated June 30, 2005 (ML052590186). 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 (800) 397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Documents related to operations conducted under this license not specifically referenced in this Notice may not be electronically available and/or may not be publicly available. Persons who have an interest in reviewing these documents should submit a request to NRC under the Freedom of Information Act (FOIA). Instructions for submitting a FOIA request can be found on the NRC's Web site at *http://www.nrc.gov/reading-rm/foia/foia-privacy.html.*

Dated at King of Prussia, Pennsylvania, this 5th of October, 2005.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E5–5597 Filed 10–12–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold a Planning and Procedures meeting on October 20, 2005, in the Fairway Room at the Inn at Holiday Valley, 6081 Route 219, Holiday Valley Road, Ellicottville, New York. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, October 20, 2005, 8 a.m.–9:30 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Sharon A. Steele (Telephone: (301) 415–6805) between 8:30 a.m. and 5:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8:30 a.m. and 5:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: October 6, 2005.

Michael L. Scott,

Branch Chief, ACRS/ACNW.

[FR Doc. E5–5595 Filed 10–12–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 164th meeting on October 19–20, 2005, in the Fairway Room at the Inn at Holiday Valley, 6081 Route 219, Holiday Valley Road, Ellicottville, New York.

The schedule for this meeting is as follows:

Wednesday, October 19, 2005

The ACNW will hold a working group meeting to discuss the application of the Commission's Final Policy Statement on Decommissioning Criteria for the West Valley Demonstration Project (WVDP) a complex decommissioning site. Participants will include the Nuclear Regulatory Commission (NRC) staff, the Department of Energy (DOE), the New York State Energy Research and Development Authority (NYSERDA), as well as other federal and state organizations and local stakeholders.

8:30 a.m.–8:45 a.m.: Introduction, Purpose and Goals (Open)—The Committee's Chairman and Working Group Chairman will discuss the purpose and goals of this working group meeting.

8:45 a.m.–9:15 a.m.: Roles and Responsibilities (Open)—The Committee will hear presentations by and hold discussions with representatives of involved agencies (NRC, DOE, NYSERDA and others) regarding their roles and responsibilities in the WVDP. Additionally, the NRC staff will discuss the WVDP Act and NRC's Final Policy Statement on the Decommissioning Criteria for the WVDP.

9:15 a.m.–10:30 a.m.: NRC's Performance Assessment Methodology (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff on models and methodology used in their

performance assessment for the WVDP site.

10:45 a.m.–11:45 a.m.: DOE's Performance Assessment Methodology (Open)—The Committee will hear presentations by and hold discussions with representatives of the DOE on models and methodology used in their performance assessment for the WVDP site.

11:45 a.m.–12:15 p.m: General Roundtable Discussion of Performance Assessment Methodologies (Open)—The Committee will discuss the two performance assessments presented earlier by the NRC and DOE.

12:15 p.m.–12:30 p.m.: Comments From Meeting Attendees on the Morning Session (Open)—The Committee will hear comments from the audience/public.

2 p.m.–3:30 p.m.: Current WVDP Site Status and Ongoing Dismantlement and Decommissioning Activities (Open)—The Committee will hear presentations by and hold discussions with representatives of the DOE on the current WVDP site status.

3:30 p.m.–4 p.m.: General Roundtable Discussion of Site Status (Open)—The Committee and its invited experts will discuss current WVDP site status.

4:15 p.m.–4:45 p.m.: Opportunity for Comments from the Audience/Public (Open)—The Committee will hear comments from the audience/public.

4:45 p.m.–5:15 p.m.: General Discussion of Presentations (Open)—The Committee will have a general discussion on the path forward on the WVDP. The Committee will consider writing a report on the day's session and future ACNW meetings on the WVDP.

Thursday, October 20, 2005

The ACNW will discuss proposed letter reports and other miscellaneous matters.

10 a.m.–11:30 a.m.: Consideration of Proposed ACNW Reports (Open)—The Committee will discuss proposed reports based on reviews from this and previous meetings.

11:30 a.m.–12 Noon: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of ACNW activities and specific issues that were not completed during previous meetings, as time and availability of information permit. Discussions may include future Committee meetings.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 18, 2004 (69 FR 61416). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Ms. Sharon A. Steele, (Telephone (301) 415–6805), between 8:30 a.m. and 5:15 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Ms. Steele as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted, therefore can be obtained by contacting Ms. Steele.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room (PDR) at *pdr@nrc.gov,* or by calling the PDR at 1–800-397–4209, or from the Publicly Available Records System component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Dated: October 6, 2005.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. E5–5596 Filed 10–12–05; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Executive Office of the President; Acquisition Advisory Panel; Notification of Upcoming Meetings of the Acquisition Advisory Panel

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meetings.

SUMMARY: The Office of Management and Budget announces two meetings of the Acquisition Advisory Panel (AAP or ''Panel'') established in accordance with the Services Acquisition Reform Act of 2003.

DATES: There are two meetings announced in this **Federal Register** Notice. Public meetings of the Panel will be held on October 27, 2005 and November 18, 2005, beginning at 9 a.m. Eastern Time and ending no later than 5 p.m.

ADDRESSES: Both meetings will be held at the Federal Deposit Insurance Corporation (FDIC), Basement auditorium, 801 17th Street NW., Washington DC 20434. The public is asked to pre-register one week in advance for both meetings due to security and/or seating limitations (see below for information on pre-registration).

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information concerning these meetings or the Acquisition Advisory Panel itself, or to pre-register for either meeting, should contact Ms. Laura Auletta, Designated Federal Officer (DFO), at: *laura.auletta@gsa.gov*, phone/voice mail (202) 208–7279, or mail at: General Services Administration, 1800 F Street, NW., Room 4006, Washington, DC, 20405. Members of the public wishing to reserve speaking time must contact Ms. Anne Terry, AAP Staff Analyst, *in writing* at: *anne.terry@gsa.gov*, by FAX at 202–501–3341, or mail at the address given above for the DFO, no later than one week prior to the meeting at which they wish to speak.

SUPPLEMENTARY INFORMATION:

(a) *Background:* The purpose of the Panel is to provide independent advice and recommendations to the Office of Federal Procurement Policy and Congress pursuant to Section 1423 of the Services Acquisition Reform Act of 2003. The Panel's statutory charter is to review Federal contracting laws, regulations, and governmentwide policies, including the use of commercial practices, performance-based contracting, performance of acquisition functions across agency lines of responsibility, and governmentwide contracts. Interested parties are invited to attend the meetings. Opportunity for public comments will be provided at both meetings. Additional time for oral public comments is expected at future public meetings to be announced in the **Federal Register**.

October 27, 2005 Meeting—Selected working groups, established at the February 28, 2005 public meeting of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will report their draft findings during this meeting.

The Panel also expects to hear from additional invited speakers from the public and private sectors who will address issues related to the Panel's statutory charter. In addition to working group reports and invited speakers, the Panel is also welcoming oral public comments at this meeting and has reserved one hour for this purpose. Members of the public wishing to address the Panel during the meeting must contact Ms. Anne Terry, *in writing*, as soon as possible to reserve time (see contact information above).

November 18, 2005 Meeting—Selected working groups, established at the February 28, 2005 public meeting of the AAP (see *http://www.acqnet.gov/aap* for a list of working groups), will continue to report their draft findings. The Panel also expects to hear from additional invited speakers from the public and private sectors who will address issues related to the Panel's statutory charter. In addition to working group reports and invited speakers, the Panel is also welcoming oral public comments at this meeting and has reserved one hour for this purpose. Members of the public wishing to address the Panel during the meeting must contact Ms. Anne Terry, *in writing*, as soon as possible to reserve time (see contact information above).

(b) *Availability of Materials for the Meetings:* Please see the Acquisition Advisory Panel Web site for any available materials, including draft agendas, for these meetings (*http://www.acqnet.gov/aap*). Questions/issues of particular interest to the Panel are also available to the public on this Web site on its front page, including ''Questions for Government Buying Agencies,'' ''Questions for Contractors that Sell Commercial Goods or Services to the Government,'' ''Questions for Commercial Organizations,'' and an issue raised by one Panel member regarding the rules of interpretation and performance of contracts and liabilities of the parties entitled ''Proposal for Public Comment.'' The Panel encourages the public to address any of these questions/issues when presenting either oral public comments or written statements to the Panel. The public may also obtain copies of Initial Working Group Reports presented at the March 30, 2005 public meeting and the follow-up scope reports presented at the June 14, 2005 public meeting at the Panel's Web site under ''Meeting Materials'' at this Web site. Minutes for each meeting are also posted.

(c) *Procedures for Providing Public Comments:* It is the policy of the Acquisition Advisory Panel to accept written public comments of any length, and to accommodate oral public comments whenever possible. To facilitate Panel discussions at its meetings, the Panel may not accept oral comments at all meetings. The Panel Staff expects that public statements presented at Panel meetings will be focused on the Panel's statutory charter and working group topics, and not be repetitive of previously submitted oral or written statements, and that comments will be relevant to the issues under discussion.

Oral Comments: Speaking times will be confirmed by Panel staff on a ''first-come/first-served'' basis. To accommodate as many speakers as possible, oral public comments must be no longer than 10 minutes. Because Panel members may ask questions, reserved times will be approximate. Interested parties must contact Ms. Anne Terry, in writing (via mail, e-mail, or fax identified above for Ms. Terry) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Oral requests for speaking time will not be taken. Speakers are requested to bring extra copies of their comments and presentation slides for distribution to the Panel at the meeting. Speakers wishing to use a Power Point presentation must e-mail the presentation to Ms. Terry one week in advance of the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received by the Panel Staff at least one week prior to the meeting date so that the comments may be made available to the Panel for their consideration prior to the meeting. Written comments should be supplied to the DFO at the address/contact information given in this FR Notice in one of the following formats (Adobe Acrobat, WordPerfect, Word, or Rich Text files, in IBM–PC/Windows 98/2000/XP format). *Please note:* Since the Panel operates under the provisions of the Federal Advisory Committee Act, as amended, all public presentations will be treated as public documents and will be made available for public inspection, up to and including being posted on the Panel's Web site.

(d) *Meeting Accommodations:* Individuals requiring special accommodation to access the public meetings listed above should contact Ms. Auletta at least five business days prior to the meeting so that appropriate arrangements can be made.

Laura Auletta,

Designated Federal Officer (Executive Director), Acquisition Advisory Panel.

[FR Doc. 05–20598 Filed 10–12–05; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

SES Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Teresa Floyd, Center for Human Capital Management Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–2309.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Linda M. Springer,

Director.

The following have been designated as regular members of the Performance Review Board of the Office of Personnel Management:

Dan G. Blair, Deputy Director—Chair.
Patricia L. Hollis, Chief of Staff and Director of External Affairs.
Clarence Crawford, Chief Financial Officer.
Robert F. Danbeck, Associate Director for Human Resources Products and Services.
Nancy H. Kichak, Associate Director for Strategic Human Resources Policy.
Marta B. Perez, Associate Director for Human Capital Leadership and Merit System Accountability.
Mark A. Robbins, General Counsel.
William A. Jackson Jr., Deputy Associate Director for Human Capital Management Services—Executive Secretariat.

[FR Doc. 05–20484 Filed 10–12–05; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27112; File No. 812–13229]

New York Life Insurance and Annuity Corporation, et al.; Notice of Application

October 5, 2005.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice of Application for an order pursuant to Section 26(c) of the Investment Company Act of 1940, as amended, approving certain substitutions of securities.

Applicants: New York Life Insurance and Annuity Corporation (''NYLIAC'') and its NYLIAC Variable Annuity Separate Account—III (''SA–III,'' together, the ''Applicants'').

Summary of Application: Applicants request an order of the SEC, pursuant to Section 26(c) of the Act, approving the substitutions (the ''Substitutions'') by SA–III of its subaccounts' shares of the AmSouth Enhanced Market Fund, AmSouth International Equity Fund, AmSouth Large Cap Fund, and AmSouth Mid Cap Fund (the ''Replaced Funds''), each separate portfolios of the Variable Insurance Funds, with shares of certain series of the MainStay VP S&P 500 Index Portfolio, MainStay VP International Equity Portfolio, MainStay VP Value Portfolio (''MainStay Replacing Funds''), and Fidelity® VIP Mid Cap Portfolio (''VIP Fund,'' together with the MainStay Replacing Funds, the ''Replacing Funds''). The MainStay Replacing Funds are separate portfolios of the MainStay VP Series Fund, Inc. (the ''MainStay VP Fund''). The Fidelity® VIP Mid Cap Portfolio is a portfolio of the Variable Insurance Products Fund.

Filing Date: The Application was filed on August 12, 2005 and amended and restated on October 3, 2005 (''Application'').

Hearing or Notification of Hearing: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on October 28, 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 requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 100 F Street, NE., Washington, DC 20549. Applicants, c/o New York Life Insurance and Annuity Corporation, 1 Rockwood Road, Sleepy Hollow, NY 10591, Attn: Judy Bartlett, Esq. Copy to Foley & Lardner, LLP, 3000 K Street, NW., Suite 500, Washington, DC 20007, Attn: Richard T. Choi and Chip Lunde.

FOR FURTHER INFORMATION CONTACT: Patrick F. Scott, Esq., Senior Counsel, or Zandra Y. Bailes, Esq., Branch Chief, Office of Insurance Products, Division of Investment Management (tel. (202) 551–6795).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application may be obtained for a fee from the SEC's Public Reference Branch, 100 F Street, NE., Room 1580, Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. NYLIAC is a Delaware stock life insurance company that is wholly-owned by New York Life Insurance Company, a New York mutual life insurance company. NYLIAC is licensed to sell life, accident and health insurance and annuities in the District of Columbia and all States.

2. SA–III is a segregated asset account of NYLIAC established pursuant to a resolution of its Board of Directors on November 30, 1994 under Delaware law to fund variable annuity policies issued by NYLIAC. SA–III is registered under the Act as a unit investment trust. The variable annuity policies funded by SA–III that are affected by the Application are the AmSouth Premium Plus Variable Annuity and the AmSouth Premium Plus II Variable Annuity (each, a ''Policy''; together, the ''Policies''), interests under which are registered on Form N–4 under the 1933 Act (File No. 333–30706).

3. Purchase payments under the Policies are allocated to one or more subaccounts (''Subaccounts'') of SA–III. Income, gains, and losses, whether or not realized, from assets allocated to SA–III are, as provided in the Policies, credited to or charged against the Separate Account without regard to other income, gains or losses of NYLIAC. The assets maintained in SA–III will not be charged with any liabilities arising out of any other business conducted by NYLIAC. Nevertheless, all of the obligations of NYLIAC arising under the Policies, including its commitment to make cash value payments, annuity payments, or death benefit payments, are general corporate obligations of NYLIAC. Accordingly, all of the assets of NYLIAC are available to meet its obligations under its Policies. SA–III meets the definition of ''separate account'' contained in Section 2(a)(37) of the Act.

4. Each Policy permits its owner to allocate the Policy's accumulated value among numerous available Subaccounts, each of which invests in a different investment portfolio of an underlying mutual fund. Each Policy has 20 different Subaccounts (and corresponding investment portfolios) that are currently available for this purpose.

5. Each Policy permits its owner to transfer the Policy's accumulated value from one Subaccount to another Subaccount of SA–III at any time, subject to certain potential restrictions. NYLIAC reserves the right to charge up to $30 per transfer for each transfer in excess of 12 in any one policy year.

6. NYLIAC reserves the right to make certain changes, including the right to substitute, for the shares held in any Subaccount, the shares of another underlying mutual fund, as stated in the prospectus for the Policies contained in the registration statement.

7. Each of the Replaced Funds is managed by AmSouth Asset Management, Inc. (''AAMI''). AAMI is a separate, wholly-owned subsidiary of AmSouth Bank (''AmSouth Bank''), which is owned by AmSouth Bancorporation. As discussed below, AmSouth Bancorporation recently informed NYLIAC that it has agreed to sell its mutual fund management business to Pioneer Investment Management, Inc., and that it plans to liquidate the Replaced Funds no later than October 31, 2005. OakBrook Investments, LLC (''OakBrook'') serves as the investment sub-adviser of the AmSouth Enhanced Market Fund and the AmSouth Mid Cap Fund. OakBrook is 49% owned by AmSouth Bank. Dimensional Fund Advisors (''Dimensional'') serves as the investment sub-adviser of the AmSouth International Equity Fund.

8. Each of the MainStay Replacing Funds is managed by New York Life Investment Management LLC (''NYLIM''). NYLIM is a subsidiary of New York Life Insurance Company (''New York Life''). MacKay Shields LLC (''MacKay Shields'') serves as the investment sub-adviser of the MainStay VP Value and MainStay VP International Equity Portfolios. MacKay Shields is a wholly-owned but autonomously managed subsidiary of New York Life. MacKay Shields became a Delaware limited liability company in 1999. As of December 31, 2004, MacKay

Shields managed approximately $39,208 million in assets. The Fidelity® VIP Mid Cap Portfolio is managed by Fidelity Management and Research Company (''FMR''). FMR Co. Inc. (''FMRC'') serves as sub-adviser to the Fidelity VIP Mid Cap Portfolio. FMRC has day-to-day responsibility for choosing investments for the Portfolio. The following affiliates of FMR and FMRC assist with foreign investments of the Fidelity® VIP Mid Cap Portfolio: Fidelity Management & Research (U.K.) Inc., Fidelity Management & Research (Far East) Inc., Fidelity Investments Japan Limited, Fidelity International Investment Advisors, Fidelity International Investment Advisors (U.K.) Limited. Neither FMR nor any of the Fidelity® VIP Mid Cap Portfolio's sub-advisers is affiliated with NYLIAC. No Replaced Fund or Replacing Fund is operated by its investment manager or adviser under a ''manager of managers'' exemption from certain requirements of Section 15 of the Act.

9. AmSouth Bancorporation recently informed NYLIAC that it is selling its mutual fund management business to Pioneer Investment Management, Inc., and intends to liquidate the Replaced Funds and terminate their operations, and that the Board of Directors of the Variable Insurance Funds has approved a plan of liquidation.

10. In addition, Applicants contend, the Replaced Funds have not achieved the success in NYLIAC's products that has been hoped for. Since NYLIAC first made the Replaced Funds available with its products, they have together garnered only approximately $36,981,551 of accumulated value under the Policies as of July 31, 2005. The Policies are the only variable contracts that offer the Replaced Funds as underlying investment options. Partly as a result of the Replaced Funds' small asset size, the Replaced Funds have experienced higher operating expenses relative to the Replacing Funds.

11. Against the foregoing background, Applicants state, NYLIAC has determined that its resources would be better spent, and the interests of Policy owners better served, if it terminates its relationship with the Replaced Funds, via the Substitutions described herein. In selecting Replacing Funds for the affected Policy owners, Applicants concluded that the assets in question could be most efficiently and effectively managed as part of the Replacing Funds. Applicants evaluated the investment options available in other variable contracts issued by SA–III and believe that the Replacing Funds are the best choices based on their investment programs and their expense levels.

12. In addition, in view of the foregoing considerations, NYLIAC ceased offering new Policies effective September 16, 2005.

13. Applicants submit that the investment characteristics of each Replacing Fund are substantially similar to those of the corresponding Replaced Fund. The investment objectives of each Replacing Fund and corresponding Replaced Fund, as described in their prospectuses, are as follows:

AmSouth Large Cap	MainStay VP Value
Long term capital appreciation by investing in equity securities of large-cap U.S. companies.	Maximum long-term total return from a combination of capital growth and income.
AmSouth Enhanced Market	MainStay VP S&P 500 Index
Long-term capital growth by investing primarily in a diversified portfolio of common stocks that are representative of the U.S. stock market.	Investment results that correspond to the total return performance (and reflect reinvestment of dividends) of publicly traded common stocks represented by the S&P 500® Index.
AmSouth Mid Cap	Fidelity® VIP Mid Cap
Capital appreciation by investing in equity securities of mid-cap companies.	Long-term growth of capital.
AmSouth International Equity	MainStay VP International Equity
Capital appreciation by investing in equity securities of large foreign companies.	Long-term growth of capital by investing in a portfolio consisting primarily of non-U.S. equity securities. Current income is a secondary objective.

14. Applicants represents in the Application that the principal investment strategies of each Replacing Fund and corresponding Replaced Fund are as follows:

AmSouth Large Cap	MainStay VP Value
Under normal market conditions, the Fund will invest at least 80% of its assets in equity securities of U.S. companies having $1 billion or more in market capitalization, and will primarily invest in companies that AAMI believes have the potential to provide capital appreciation. AAMI seeks to diversify the Fund's portfolio within industries that AAMI believes to be among the fastest growing segments of the U.S. economy. A portion of the Fund's assets may be invested in preferred stocks or bonds convertible into common stocks.	The Portfolio normally invests at least 65% of its total assets in common stocks that MacKay Shields believes were ''undervalued'' (selling below their value) when purchased; typically pay dividends, although there may be non-dividend paying stocks if they meet the ''undervalued'' criteria; and are listed on a national securities exchange or are traded in the over-the-counter market. The Portfolio normally invests in U.S. common stocks that: • MacKay Shields believes are ''undervalued'' (selling below their value) when purchased, • Typically pay dividends, although there may be non-dividend paying stocks if they meet the ''undervalued'' criterion, and • Are listed on a national securities exchange or are traded in the over-the-counter market.

AmSouth Enhanced Market	MainStay VP S&P 500 Index
Under normal market conditions, the Fund will invest primarily in a broadly diversified portfolio of securities represented in the S&P 500® Index, overweighting relative to their index weights those that OakBrook believes to be undervalued compared to others in the S&P 500® Index. The Fund seeks to maintain risk characteristics similar to those of the S&P 500® Index. OakBrook's stock selection process utilizes computer-aided quantitative analysis. OakBrook's computer models use many types of data, but emphasize technical data such as price and volume information. Applying these models to stocks within the S&P 500® Index, OakBrook attempts to generate more capital growth than that of the S&P 500® Index.	The Portfolio normally invests at least 80% of its total assets in stocks in the S&P 500® Index in the same proportion, to the extent feasible, as they are represented in the S&P 500® Index. NYLIM uses statistical techniques to determine which stocks are to be purchased or sold to replicate the S&P 500® Index to the extent feasible. From time to time, adjustments may be made in the Portfolio's holdings because of changes in the composition of the S&P 500® Index. The correlation between the performance of the Portfolio and the S&P 500® Index is expected to be at least 0.95, before fees and expenses, on an annual basis. A correlation of 1.00 would indicate perfect correlation, which would be achieved when the net asset value of the Portfolio, including the value of its dividend and capital gains distributions, increases or decreases in exact proportion to changes in the S&P 500® Index. The Portfolio's investments also include S&P 500® Index futures that are used for cash management purposes.
AmSouth Mid Cap Fund	Fidelity® VIP Mid Cap
Under normal market conditions, the Fund will invest at least 80% of its assets in a broadly diversified portfolio of securities issued by medium capitalization companies drawn from the Standard & Poor's Mid Cap 400® Index (''S&P Mid Cap 400® Index''), overweighting relative to their index weights those that OakBrook believes to be undervalued compared to others in the S&P Mid Cap 400® Index. The Fund seeks to maintain risk characteristics similar to those of the S&P Mid Cap 400® Index.	The Portfolio's principal investment strategies include: • Normally investing primarily in common stocks. • Normally investing at least 80% of assets in securities of companies with medium market capitalizations (which, for purposes of this fund, are those companies with market capitalizations similar to companies in the Russell Midcap® Index or the Standard & Poor's® MidCap 400 Index (S&P® MidCap 400)). • Potentially investing in companies with smaller or larger market capitalizations. • Investing in domestic and foreign issuers. • Investing in either ''growth'' stocks or ''value'' stocks or both. • Using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.
OakBrook's stock selection process utilizes computer-aided quantitative analysis. Stringent risk controls at the style, industry and individual stock levels help ensure the Fund maintains risk characteristics similar to those of the S&P Mid Cap 400® Index. OakBrook's computer models use many types of data, but emphasize technical data such as price and volume information. Applying these models to securities comprising the S&P Mid Cap 400® Index, OakBrook hopes to generate more capital growth than that of the S&P Mid Cap 400® Index.	
AmSouth International Equity Fund	MainStay VP International Equity
Under normal market conditions, the Fund will invest at least 80% of its assets in equity securities of large foreign companies. The Fund intends to invest primarily in companies in economically developed countries whose stocks Dimensional believes are undervalued at the time of investment. While Dimensional may consider other factors, Dimensional generally determines that a stock is undervalued if it has a high book value in relation to its market value.	The Portfolio normally invests at least 80% of its assets in equity securities, and invests primarily in a diversified portfolio of equity securities of issuers, wherever organized, who do business mainly outside the United States. Investments will be made in a variety of countries, with a minimum of five countries other than the United States. This includes countries with established economies as well as emerging market countries that MacKay Shields believes present favorable opportunities. The Portfolio's subadvisor seeks to identify investment opportunities by pursuing a bottom up, stock selection investment discipline. Proprietary, quantitative and qualitative tools are used to identify attractive companies. In-depth, original, fundamental research is performed on identified companies to assess their business and investment prospects. In conducting the research, particular attention is paid to the generation and utilization of cash flows, the returns on invested capital and the overall track record of management in creating shareholder value. Portfolios are constructed by combining securities with low correlation. Quantitative tools are used for risk control at the portfolio level. Country allocations in the Portfolio are a result of the bottom up, stock selection process. To reduce risk, an attempt is made at the portfolio level to stay within a reasonable range of the key constituents of the benchmark, unless the stock selection process strongly argues against it.

	The Portfolio may buy and sell currency on a spot basis and enter into foreign currency forward contracts for hedging purposes. In addition, the Portfolio may buy or sell foreign currency options, securities and securities index options and enter into swap agreements and futures contracts and related options. These techniques may be used for any legally permissible purpose, including to increase the Portfolio's return. The subadvisor may sell a security if it no longer believes the security will contribute to meeting the objective of the Portfolio. In considering whether to sell a security, the subadvisor may evaluate, among other things, the condition of foreign economies and meaningful changes in the issuer's financial condition and competitiveness.

15. With respect to the principal investment risks of each Replacing Fund compared to each and corresponding Replaced Fund, Applicants submit that they are substantially similar, and that they are as follows:

AmSouth Large Cap	MainStay VP Value
Investment risk, market risk (including those particular to large cap growth stocks), interest rate risk, credit risk, and active trading risk.	Changing economic, stock market, industry and company conditions, the risks inherent in management's ability to anticipate such changes that can adversely affect the value of the Portfolio's holdings, and the risks associated with value stocks. The Portfolio also may experience high portfolio turnover.
AmSouth Enhanced Market	MainStay VP S&P 500 Index
Investment risk, market risk (including those particular to large capitalization companies represented in the S&P 500 Index, growth stocks and value stocks), interest rate risk, credit risk, derivatives risk and active trading risk.	Changing economic, stock market, industry and company conditions which can adversely affect the value of the Portfolio's holdings, risks associated with the value of the S&P 500® Index, and the potential inability to mirror the S&P 500® Index. In addition, the Portfolio is subject to the risks associated with derivatives instruments.
AmSouth Mid Cap	Fidelity® VIP Mid Cap
Investment risk, market risk (including those particular to growth stocks, value stocks and mid cap companies), interest rate risk credit risk, derivatives risk and active trading risk.	Stock market volatility, foreign exposure, issuer-specific changes, and mid cap investing.
AmSouth International Equity	MainStay VP International Equity
Investment risk, market risk, credit risk, derivatives risk and active trading risk. The Fund also is subject to foreign securities risk.	Changing economic, stock market, industry and company conditions and the risks inherent in management's ability to anticipate such changes that can adversely affect the value of the Portfolio's holdings. The Portfolio also is subject to foreign securities risk and emerging markets risk. In addition, the Portfolio is subject to the risks associated with derivatives instruments. The Portfolio also may experience high portfolio turnover.

16. The table below compares fees and expenses of each Replaced Fund and each corresponding Replacing Fund as of December 31, 2004. As the table shows, the total expenses of each Replaced Fund are higher than the total expenses of the corresponding Replacing Fund.

	Replaced funds AmSouth Large Cap (percent)	Replacing funds MainStay VP Value (percent)	
		Initial Class	Service Class
Management Fee	0.70	0.36	0.36
Shareholder Service Fee	0.25	None	None
Rule 12b–1 Fee	None	None	0.25
Other Expenses	0.70	0.29	0.29
Gross Operating Expenses	1.65	0.65	0.90
Net (After Waiver) Expenses	1.05	0.65	0.90
	AmSouth Enhanced Market	MainStay VP S&P 500 Index	
		Initial Class	Service Class
Management Fee	0.45	0.10	0.10
Shareholder Service Fee	0.25	None	None
Rule 12b–1 Fee	None	None	0.25
Other Expenses	0.93	0.29	0.29
Gross Operating Expenses	1.63	0.39	0.64
Net (After Waiver) Expenses	1.01	0.39	0.64
	AmSouth Mid Cap	Fidelity® VIP Mid Cap Service Class 2	

	Replaced funds AmSouth Large Cap (percent)	Replacing funds MainStay VP Value (percent)	
		Initial Class	Service Class
Management Fee	0.90	0.57	
Shareholder Service Fee	0.25	None	
Rule 12b–1 Fee	None	0.25	
Other Expenses	1.08	0.14	
Gross Operating Expenses	2.23	0.96	
Net (After Waiver) Expenses	1.25	0.96	
	AmSouth International Equity	MainStay VP International Equity	
		Initial Class	Service Class
Management Fee	1.00	0.60	0.60
Shareholder Service Fee	0.25	None	None
Rule 12b–1 Fee	None	None	0.25
Other Expenses	0.79	0.39	0.39
Gross Operating Expenses	2.04	0.99	1.24
Net (After Waiver) Expenses	1.43	0.99	1.24

In each case, the class of Replaced Funds available under the Policies impose an asset-based shareholder service fee equal to 0.25% per annum of the Fund's average daily net assets. In each case, the service class of the MainStay Replacing Funds that will be available under the Policies issued on or after June 2, 2003, and the service class 2 of the Fidelity® VIP Mid Cap Portfolio, impose an asset-based sales charge pursuant to Rule 12b–1 under the Act (''Rule 12b–1 fee'') equal to 0.25% per annum of the Fund's average daily net assets. In each case, the initial class of the MainStay Replacing Funds that will be available under Policies issued prior to June 2, 2003, do not impose any Rule 12b–1 fee.

17. The Application indicates that, the net assets of each Fund as of July 31, 2005 were as follows (in thousands):

Replaced fund	Replacing fund
AmSouth Enhanced Market Fund—$7,744	MainStay VP S&P 500 Index Portfolio—$1,457,870
AmSouth International Equity Fund—$13,546	MainStay VP International Equity Portfolio—$282,428
AmSouth Large Cap Fund—$8,852	MainStay VP Value Portfolio—$630,226
AmSouth Mid Cap Fund—$6,839	Fidelity® VIP Mid Cap Portfolio—$4,964,945

Applicants state that, the table above demonstrates that each Replacing Fund has a significantly greater asset size than the Replaced Fund to which it corresponds, and that the principal potential advantages of size in the circumstances presented here would be economies of scale and ease of diversification.

18. Each Substitution will take place at the applicable Funds' relative per share net asset values determined on the date of the Substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder. Accordingly, Applicants state, the Substitutions will have no financial impact on any Policy owner. Each Substitution will be effected by having each Subaccount that invests in a Replaced Fund redeem its shares of the Replaced Fund at the net asset value calculated on the date of the Substitution and purchase shares of the appropriate class of the appropriate Replacing Fund at the net asset value calculated on the same date. Proceeds of AmSouth Large Cap Fund, AmSouth Enhanced Market Fund and AmSouth International Equity Fund shares applicable to Policies purchased prior to June 2, 2003 will be used to purchase initial class shares of the MainStay VP S&P 500 Index Portfolio, MainStay VP International Equity Portfolio and MainStay VP Value Portfolio, respectively. Proceeds of AmSouth Large Cap Fund, AmSouth Enhanced Market Fund and AmSouth International Equity Fund shares applicable to Policies purchased on or after June 2, 2003 will be used to purchase service class shares of the MainStay VP S&P 500 Index Portfolio, MainStay VP International Equity Portfolio and MainStay VP Value Portfolio, respectively. Proceeds of AmSouth Mid Cap Fund shares will be used to purchase service class 2 shares of the Fidelity® VIP Mid Cap Portfolio.

19. To the extent that NYLIAC imposes any limit on the number of subaccounts that may be used over the life of a Policy, no Substitution will be counted as giving rise to use of a new Subaccount for such purpose.

20. The Applicants state that, NYLIAC will pay all expenses and transaction costs of the Substitutions, including all legal, accounting, and brokerage expenses relating to the Substitutions, the below described disclosure documents, and the Application. No costs will be borne directly or indirectly by Policy owners. Affected Policy owners will not incur any fees or charges as a result of the Substitutions. Nor will their rights or the obligations of NYLIAC under the Policies be altered in any way. The Substitutions will not cause the fees and charges under the Policies currently being paid by Policy owners to be greater after the Substitutions than before the Substitutions.

21. The prospectuses for all of the Policies have disclosed that the issuing insurance company has the right to substitute any other mutual fund shares for the shares in which a Subaccount is investing at any time.

22. Applicants state that, the Substitutions requested in the Application were described in supplements to the applicable prospectuses for the Policies filed with the Commission or in other supplemental disclosure documents (collectively, ''Supplements'') and mailed to all affected Policy owners. Each Supplement gave the relevant Policy owners notice of the Substitution that would affect their Policies and described the reasons for engaging in that Substitution. The Supplements also informed existing Policy owners with values allocated to a Subaccount

investing in a Replaced Fund that no additional amounts may be allocated to the Subaccounts that invest in that Fund on or after the date of Substitution. In addition, the Supplements informed these affected Policy owners that they will have an opportunity to reallocate their accumulated value:

- Prior to a Substitution, from the Subaccount investing in the Replaced Fund to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account without the imposition of any transfer charge or limitation (except potentially harmful transfers) [1] and without diminishing the number of free transfers that otherwise may be made in a given Policy year, or
- For 30 days after a Substitution, from a Subaccount investing in the Replacing Fund to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account without the imposition of any transfer charge or limitation (except potentially harmful transfers) and without diminishing the number of free transfers that otherwise may be made in a given Policy year.

23. Applicants aver that each affected Policy owner was provided with a prospectus for each relevant Replacing Fund, which accompanied the Supplement discussed above. Within five days after a Substitution, NYLIAC will send to its affected Policy owners written confirmation that the Substitutions have occurred. The confirmations will also identify the shares of the Replaced Funds that have been eliminated and the shares of the Replacing Funds that have been substituted. That confirmation will reiterate the free transfer rights disclosed in the Supplements that such owners will have previously received.

Applicants' Legal Analysis

1. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. Section 26(c) of the Act provides the Commission will issue an order approving such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 26(c) of the Act (then denominated as Section 26(b)) was enacted as part of the Investment Company Act Amendments of 1970. Section 26(a)(4)(B) of the Act had theretofore required only that the trust instrument of a unit investment trust require that the sponsor or trustee notify the trust's shareholders within five days after a substitution of underlying securities. The legislative history of Section 26(c) describes its underlying purpose as follows:

> The proposed amendment recognizes that in the case of a unit investment trust holding the securities of a single issuer notification to shareholders does not provide adequate protection since the only relief available to the shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load. The proposed amendment would close this gap in shareholder protection by providing for Commission approval of the substitution. The Commission would be required to issue an order approving the substitution if it finds the substitution consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. The legislative history makes it clear that the purpose of Section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer by preventing unscrutinized substitutions, which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial premium payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Moreover, a Policy owner forced to redeem may suffer adverse tax consequences. Section 26(c) affords this protection to investors by preventing a depositor or trustee of a unit investment trust that holds shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

4. Applicants assert that the purposes, terms, and conditions of the Substitutions are consistent with the principles and purposes of Section 26(c) and do not entail any of the abuses that Section 26(c) is designed to prevent. The Substitutions are necessary and appropriate because, for the reasons discussed above, continuing to use the Replaced Funds as a funding medium for the Policies is no longer consistent with, or possible under, the business plan that Applicants are now pursuing in order to enhance the success of the Policies and the benefits to Policy owners. Moreover, as also noted above, each Policy has reserved to the issuing insurance company the right to make such substitutions, and each such company has specifically disclosed this reserved right in the prospectuses for its Policies.

5. Applicants contend that the Substitutions will not result in the type of costly forced redemption that Section 26(c) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act.

6. The MainStay VP Value Portfolio is an appropriate Fund to which to move the accumulated values of Policy owners with values allocated to the AmSouth Large Cap Fund, because its investment program, like that of the AmSouth Large Cap Fund, involves seeking long-term total return. The MainStay VP S&P 500 Index Portfolio is an appropriate Fund to which to move the accumulated values of Policy owners with values allocated to the AmSouth Enhanced Market Fund, because its investment program, like that of the AmSouth Enhanced Market Fund, involves investing in a diversified selection of common stocks represented by the S&P 500 Index. The Fidelity ® VIP Mid Cap Portfolio is an appropriate Fund to which to move the accumulated values of Policy owners with values allocated to the AmSouth Mid Cap Fund, because its investment objective, like that of the AmSouth Mid Cap Fund, involves growth of capital by investing, primarily, in companies with market capitalizations that, at the time of investment, are similar to the companies in the S&P MidCap 400 ® Index. The MainStay VP International Equity Portfolio is an appropriate Fund to which to move the accumulated values of Policy owners with values allocated to the AmSouth International Equity Fund, because its investment program, like that of the AmSouth International Equity Fund, involves seeking growth of capital by investing in a portfolio consisting primarily of non-US equity securities.

7. The costs of the Substitutions (including brokerage, legal, accounting, and other expenses) will be borne by NYLIAC and will not be borne by Policy owners. No charges will be assessed to the Policy owners to effect the Substitutions. It is expected that each Substitution will be effected by redeeming shares of the Replaced Fund for cash and using the cash to purchase shares of the corresponding Replacing Fund.

[1] The exception for potentially harmful transfers refers to NYLIAC's procedures designed to limit potentially harmful transfers such as market timing as described under ''Limits on Transfers'' in the prospectus contained in the Policy Registration Statement.

8. For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of the Substitutions, NYLIAC will, as a condition of any Commission order approving the Substitutions, for each Policy outstanding on the date of the Substitution, adjust the Policy values to the extent necessary to effectively reimburse Policy owners invested in a MainStay Replacing Fund for their proportionate share of any amount by which the annual rate of the MainStay Replacing Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes, or for Policy riders added after December 31, 2004) deducted under the terms of the owner's Policy for that fiscal period, exceed the sum of:

(a) The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such Replaced Fund's average daily net assets, for the twelve months ended December 31, 2004; plus

(b) The annual rate of any asset-based charges (excluding any such charges that are for premium taxes), deducted under that Policy for such twelve months.

9. NYLIAC represents that the substitution and the selection of the Fidelity ® VIP Mid Cap Portfolio was not motivated by any financial consideration paid or to be paid to NYLIAC or its affiliates by the Fidelity ® VIP Mid Cap Portfolio, its advisor or underwriter, or their respective affiliates. In connection with assets held under Policies affected by the Substitutions, NYLIAC will not receive, for 36 months following the Substitution, any direct or indirect benefits from the Fidelity ® VIP Mid Cap Portfolio, or its advisor or underwriter (or their affiliates), at a rate higher than that which they had received from the AmSouth Mid Cap Fund, its advisor or underwriter (or their affiliates), including without limitation Rule 12b–1, shareholder service, administration, or other service fees, or revenue sharing or other arrangements.

10. All affected Policy owners will be given notice of the Substitutions prior to the Substitutions, and will have an opportunity to make the following transfers of their accumulated value without the imposition of any charge or limitation (except potentially harmful transfers, as described above) and without diminishing the number of charge-free transfers that otherwise may be made in a Policy year:

• Transfers of accumulated value from a Subaccount investing in a Replaced Fund to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account, from the date of notice until the date of Substitution, and

• Transfers of accumulated value from a Subaccount investing in a Replacing Fund as a result of a Substitution to one or more Subaccounts investing in other Funds available under the applicable Policy or the fixed account, for 30 days after a Substitution.

11. Within five days after each substitution, NYLIAC will send to the affected Policy owners written confirmation that the Substitutions have occurred and identify the shares of the Replaced Funds that have been eliminated and the shares of the Replacing Funds that have been substituted.

12. The Substitutions will in no way alter the insurance benefits to Policy owners or the contractual obligations of NYLIAC. The Substitutions will in no way alter the tax treatment of owners in connection with their Policies, and no tax liability will arise for Policy owners as a result of the Substitutions.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the proposed Substitutions under the terms and subject to the conditions set forth herein. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, Applicants respectfully submit that the Substitutions meet the standards set forth in Section 26(c) and that the approval requested therefore, should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5598 Filed 10–12–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–2439]

Approval of Investment Adviser Registration Depository Filing Fees

AGENCY: Securities and Exchange Commission.

ACTION: Order.

SUMMARY: The Securities and Exchange Commission (Commission or SEC) is waiving for one year Investment Adviser Registration Depository (IARD) annual filing fees for all advisers.

EFFECTIVE DATE: October 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Sawin, Assistant Director, at (202) 551–6787, or *Iarules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

Discusson

Section 203A(d) of the Investment Advisers Act of 1940 (Advisers Act) authorizes us to require investment advisers to file applications and other documents through an entity designated by the Commission, and to pay reasonable costs associated with such filings.[1] In 2000, we designated the NASD as the IARD system operator and approved filing fees,[2] and later required advisers registered or registering with us to file Form ADV through the IARD.[3] Approximately 9,000 advisers now use the IARD to register with us and make State notice filings electronically through the Internet.

IARD filing fee revenues from advisers registering or registered with the SEC (SEC-associated IARD revenues) have exceeded projections made in 2000 when the current fee schedule was approved. Pursuant to that schedule, filing fees vary according to the adviser's assets under management. The number of SEC-registered advisers has grown from an estimated 8,100 in 2000 to approximately 9,000 today. More significantly, advisers' managed assets have increased, which has moved many investment advisers to higher fee

[1] *See* 15 U.S.C. 80b–3a(d).

[2] Designation of NASD Regulation, Inc., to Establish and Maintain the Investment Adviser Registration Depository; Approval of IARD Fees, Investment Advisers Act Release No. 1888 (July 28, 2000) [65 FR 47807 (Aug. 3, 2000)]. Following a corporate restructuring in 2002, the name of the IARD system operator was changed to ''NASD.''

[3] Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 22, 2000) [65 FR 57438 (Sept. 22, 2000)].

categories. In 2000, the filing fees were set based on estimates that nearly half of SEC-registered advisers were in the smallest fee category. As of the end of the 2004 fiscal year, however, fully half of SEC-registered advisers were in the highest fee category. Furthermore, IARD expenses associated with SEC filings (SEC-associated IARD expenses) have been less than was projected in 2000.

As a result, SEC-associated IARD revenues have exceeded SEC-associated IARD expenses, generating a surplus. As of June 30, 2005, the cumulative surplus of SEC-associated IARD revenues over SEC-associated IARD expenses was approximately $8.5 million (SEC-associated surplus). Following discussions among Commission staff, representatives of the North American Securities Administrators Association, Inc. (NASAA) on behalf of the State securities authorities,[4] and NASD, NASD wrote our staff a letter that ''recommends that the annual IARD fee for SEC-registered advisers be waived for a one-year period from November 1, 2005 to October 31, 2006.'' [5] Advisers registered with us pay their IARD annual fees when they file their annual updating amendment to Form ADV, due within 90 days of their fiscal year end.

In light of the SEC-associated surplus, we have determined to waive for one year annual filing fees for all SEC-registered advisers. This action is expected to waive approximately $3.9 million in IARD system fees. The fee waiver will apply to all annual updating amendments filed by SEC-registered advisers from November 1, 2005 through October 31, 2006. Based on current projections of expected SEC-associated IARD revenues and SEC-associated IARD expenses in the next several years, the Commission believes that the current surplus exceeds the amount of surplus needed for system enhancements. Accordingly, the Commission believes that a one-year waiver of IARD annual updating amendment filing fees is appropriate.

In addition, we note that NASD's letter further ''recommends that annual IARD fees for SEC-registered advisers be reduced 30% beginning November 1, 2006.'' [6] In this regard, current projections of fee revenues and system expenses cause us to believe that a reduction in annual filing fees will be necessary to more closely align the IARD filing fees with the costs of those filings. Under Advisers Act section 203A(d), the Commission may require advisers to pay filing fees that reflect the reasonable costs associated with filings made by SEC-registered advisers through the IARD.

Accordingly, we plan to issue shortly a notice soliciting comment on the appropriate level of IARD filing fees for the period after the expiration of the one-year waiver. Among the alternatives on which we plan to seek comment are a percentage fee reduction for annual updating amendments filed by SEC-registered advisers beginning November 1, 2006 and a second one-year waiver of annual updating amendment fees.

It is therefore ordered, pursuant to sections 203A(d) and 206(A) of the Investment Advisers Act of 1940, that:

For annual updating amendments to Form ADV filed from November 1, 2005 through October 31, 2006, the fee otherwise due from SEC-registered advisers is waived.

By the Commission.

Dated: October 7, 2005.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5599 Filed 10–12–05; 8:45 am]

BILLING CODE 8010–01–P

[4] The IARD system is used by both advisers registering or registered with the SEC and advisers registered or registering with one or more State securities authorities. NASAA represents the State securities administrators in setting IARD filing fees for State-registered advisers. State-registered advisers pay their annual system renewal fees in December each year, regardless of their fiscal year.

[5] A copy of the letter is available on our website. NASD has not suggested changes to the initial IARD filing fees, which are intended to cover the costs associated with entitling new registrants on the IARD system. NASD represents that the costs per adviser have not changed substantially. We are not changing or waiving these IARD initial set-up fees, which remain $150 for advisers with assets under management under $25 million; $800 for advisers with assets under management between $25 million and $100 million; and $1,100 for advisers with assets under management over $100 million.

[6] We note that NASAA has announced a one-year waiver of annual filing fees and a subsequent reduction of 30% in annual filing fees for State registered advisers.

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8623; 34–52575, File No. 265–23]

Advisory Committee on Smaller Public Companies

AGENCY: Securities and Exchange Commission.

ACTION: Notice of Meeting of SEC Advisory Committee on Smaller Public Companies.

The Securities and Exchange Commission Advisory Committee on Smaller Public Companies is providing notice that it will hold a public meeting on Monday and Tuesday, October 24 & 25, 2005, in Multi-Purpose Room L006 of the Commission's headquarters, 100 F Street, NE., Washington, DC 20549, beginning at 9 a.m. on each day. The meeting is expected to last until approximately 4 p.m. on each day, with a lunch break from approximately noon to 1 p.m. The meeting will be audio webcast on the Commission's Web site at *http://www.sec.gov.*

The agenda for the meeting includes consideration of proposals of the Advisory Committee's four subcommittees on possible recommendations for changes to the current securities regulatory system for smaller companies. The public is invited to submit written statements for the meeting.

DATES: Written statements should be received on or before October 17, 2005.

ADDRESSES: Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acspc.shtml*); or
- Send an e-mail message to *rule-comments@sec.gov.* Please include File Number 265–23 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Jonathan G. Katz, Committee Management Officer, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. 265–23. This file number should be included on the subject line if e-mail is used. To help us process and review your statement more efficiently, please use only one method. The Commission staff will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acspc.shtml*).

Statements also will be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Kevin M. O'Neill, Special Counsel, at (202) 551–3260, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.-App. 1, § 10(a), and the

regulations thereunder, Gerald J. Laporte, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: October 7, 2005.

Jonathan G. Katz,

Committee Management Officer.

[FR Doc. 05–20569 Filed 10–7–05; 3:55 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52566; File No. SR-PCX–2005–56]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Directed Order Process

October 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 April 21, 2005, the Pacific Exchange, Inc. (''PCX'' 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 PCX. On October 4, 2005, the PCX 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 PCX proposes to modify its Directed Order Process as part of its continuing efforts to enhance participation on the Archipelago Exchange (''ArcaEx'') facility. In conjunction with these modifications, the Exchange proposes two new classifications of Market Makers, Designated Market Makers (''DMMs'') and Lead Market Makers (''LMMs''). Only DMMs and LMMs will be eligible to participate in the Directed Order Process as Market Makers.

The text of the proposed rule change, as amended, appears below. Additions are in italics. Deleted items are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] Amendment No. 1, which replaced and superceded the original filing in its entirety, is incorporated in this notice.

Rule 1

Definitions

Definitions

Rule 1.1 (a)–(aaa)—No change.

(bbb) The term ''Designated Market Maker'' shall mean a registered Market Maker that participates in the Directed Order Process.

(ccc) The term ''Lead Market Maker'' shall mean a registered Market Maker that is the exclusive Designated Market Maker in listings for which the Corporation is the primary market.

* * * * *

Rule 7

Equities Trading

Registration of Market Makers in a Security

Rule 7.22 (a)–(b)—No change.

(c) The Corporation may limit the number of Designated Market Makers in a security upon prior written notice to ETP Holders.

(d) Designated Market Makers and Lead Market Makers shall be selected by the Corporation. Such selection shall be based on, but is not limited to, the following: experience with making markets in equities; adequacy of capital; willingness to promote the Exchange as a marketplace; issuer preference; operational capacity; support personnel; and history of adherence to Exchange rules and securities laws.

[(c)] *(e)* Voluntary Termination of Security Registration. A Market Maker may voluntarily terminate its registration in a security by providing the Corporation with a one-day written notice of such termination. A Market Maker that fails to give advanced written notice of termination to the Corporation may be subject to formal disciplinary action pursuant to Rule 10.

[(d)] *(f)* The Corporation may suspend or terminate any registration of a Market Maker in a security or securities under this Rule whenever, in the Corporation's judgment, the interests of a fair and orderly market are best served by such action.

[(e)] *(g)* An ETP Holder may seek review of any action taken by the Corporation pursuant to this Rule, including the denial of the application for, or the termination or suspension of, a Market Maker's registration in a security or securities, in accordance with Rule 10.13.

* * * * *

Rule 7

Equities Trading

Designated Market Maker Performance Standards

Rule 7.24 [Reserved].

(a) Designated Market Makers will be required to maintain minimum performance standards the levels of which may be determined from time to time by the Corporation. Such levels will vary depending on the price, liquidity, and volatility of the security in which the Designated Market Maker is registered. The performance measurements will include (i) percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the Designated Market Maker to transact in underlying markets.

(b) Designated Market Makers that are Lead Market Makers will be held to higher performance standards in the securities in which they are registered as Lead Market Maker than Designated Market Makers that are not Lead Market Makers.

(c) Market Makers that are not Designated Market Makers will not be required to maintain the minimum performance standards as described in paragraph (a) above.

* * * * *

Rule 7

Equities Trading

Registration of Odd Lot Dealers

Rule 7.25 (a)—No change.

(b) Market Makers Registered in a Security. For each security in which a Market Maker is registered, the Market Maker may become an Odd Lot Dealer in that security. *For each security in which a Market Maker is registered as Lead Market Maker, the Lead Market Maker must also register as an Odd Lot Dealer in that security.*

Rule 7.25 (c)–(e)—No change.

* * * * *

Rule 7

Equities Trading

Orders and Modifiers

Rule 7.31 (a)–(h)—No change.

(i) Directed Order.

(1) Any market or limit order to buy or sell which has been directed to a particular *Designated* Market Maker by the User. *Users must be permissioned by Designated Market Makers to send a Directed Order to that Designated Market Maker.*

[(2) The Corporation shall suspend the Directed Order Process for a security

when a locked or crossed market exists in that security. The Directed Order Process for that security shall resume when the locked or crossed market in that security no longer exists.]

(j) Directed Fill. Any *Designated* Market Maker [with the appropriate technology, as determined from time to time by the Corporation,] may submit a standing instruction to the Archipelago Exchange for the parameters of a Directed Fill, including, but not limited to, the size *and price* of the order.*[,* the Users that may send such Market Maker a Directed Order, the price improvement algorithm and the period of time the instruction is effective.] The Market Maker's Directed Fill described in the instruction will only be generated in response to a Directed Order directed to such Market Maker. [The Directed Fill is a limit order with (1) a size that is equal to or less than the size of the Directed Order and (2) a price that improves the BBO by an automatically preset amount, which, except as provided in Rule 7.6(a), Commentary .06, must be equal to or greater than the MPII, pursuant to a price improvement algorithm; provided, however, the Directed Fill will not be generated if the price is not equal to or better than the NBBO.] A Market Maker may modify the parameters of the instruction for a Directed Fill *at any time* [from time to time], as the Corporation permits.

Rule 7.31 (k)–(hh)—No change.

* * * * *

Rule 7

Equities Trading

Order Execution

Rule 7.37

(a) Step 1: Directed Order Process. [During Core Trading Hours only,] [o]*O*rders may be matched and executed in the Directed Order Process as follows:

(1) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's [d]*D*esignated Market Maker has a standing instruction for a Directed Fill to the Archipelago Exchange, the Directed Order shall be [executed] *matched* against the Directed Fill of the [d]*D*esignated Market Maker.

(2) If a User submits a marketable Directed Order to the Archipelago Exchange and the User's [d]*D*esignated Market Maker has not submitted an instruction for a Directed Fill, the Directed Order shall enter the Display Order Process, as described in subsection (b) of this Rule.

(3) Directed Orders that are matched for execution against Directed Fills may be broken up by orders on the Arca Book if there is a displayed order on the Arca Book priced at or better than the matched order. In the event that the matched order is broken up, it will be handled as follows:

(i) If the remaining balance of the matched order results in the Designated Market Maker side of the order being unexecuted, the remaining balance of the order shall be returned to the Directed Process to be eligible as a Directed Fill instruction.

(ii) If the remaining balance of the matched order results in the User being unexecuted, the remaining balance of the order will be posted in the Arca Book.

([3]*4*) If a User submits any order other than a marketable Directed Order to the Archipelago Exchange, the User's order immediately shall enter the Display Order Process, as described in subsection (b) of this Rule, without interacting with any Directed Fills.

[(4) No Directed Order to buy (sell) shall be executed at a price equal to or better than the national best bid (offer) within the Directed Order Process. Such Directed Orders immediately shall enter the Display Order Process, as described in subsection (b) of this Rule, without interacting with any Directed Fills.]

Rule 7.37 (b)–(d)—No change.

* * * * *

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

Currently, PCXE Rule 7.37 describes ArcaEx's order execution processes.[4] This proposal seeks to modify the first of those processes, the Directed Order Process. In particular, the Exchange seeks to make the following modifications. First, the Exchange proposes to add a provision that requires Users [5] to be permissioned by DMMs to send a Directed Order to that DMM. Second, the Exchange proposes to eliminate a provision of PCXE Rule 7.31 that suspends the Directed Order Process when a locked or crossed market exists in a security. This section would be eliminated because the Exchange believes that it is not relevant to suspend the Directed Order Process during a locked or crossed market. Third, the Exchange proposes to simplify the ''Directed Fill'' definition to make clear that a Directed Fill specifies the size and price of the Directed Fill.

The modifications to PCXE Rule 7.37 and the Directed Order Process are described below. First, the Exchange proposes that the Directed Order Process be available during Opening, Core, and Late trading sessions and that PCXE Rule 7.37's language that limits the Directed Process to Core Trading Hours be eliminated. Second, the Exchange proposes to simplify language in PCXE Rule 7.31(j) related to the definition of a Directed Fill to make clear that the parameters of a Directed Fill are price and size, and to delete obsolete language no longer necessary. Third, the Exchange proposes that marketable Directed Orders first attempt to match against the DMM to which the order has been directed. Directed Orders that are matched against DMMs pursuant to their Directed Fill instructions would be exposed to the Arca Book before execution.[6] Such matched orders would be broken up if there is an order displayed on the Arca Book at a price that is at or better than the matched order. In the event that a matched order is broken up, the remaining portion of the Directed Order would be posted in the Arca Book. Further, because the displayed orders in the book take priority over Directed Orders, the Exchange proposes deleting the existing reference in PCXE Rule 7.37(a)(4).[7]

In addition, the Exchange proposes creating a definition of ''Designated Market Maker.'' The definition would be added to PCXE Rule 1.1 to clarify that a DMM is a registered Market Maker that participates in the Directed Order

[4] PCXE Rule 7.37 includes the following ArcaEx order execution processes: Directed Order Process, Display Order Process, Tracking Order Process, and Routing Away. This rule proposal seeks to modify the Directed Order Process.

[5] *See* PCXE Rule 1.1(yy).

[6] Directed Fills that are matched against Directed Orders would not be eligible for post trade anonymity and, as such, the Exchange is not seeking a limited exemption from Paragraph (a)(2)(i)(A) of Rule 10b–10 under the Act.

[7] PCXE Rule 7.37(a)(4) states that ''[n]o Directed Order to buy (sell) shall be executed at a price equal to or better than the national best bid (offer) within the Directed Order Process. Such Directed Orders immediately shall enter the Display Order Process, as described in subsection (b) of this Rule, without interacting with any Directed Fills.''

Process. The Exchange also proposes adding a definition to PCXE Rule 1.1 to describe a LMM as an exclusive DMM for primary listings. Further, the Exchange proposes adding language to PCXE Rule 7.22 regarding the Registration of Market Makers to provide the Corporation with the ability to limit the number of DMMs with prior written notice to ETP Holders.[8] PCXE Rule 7.22 already provides that the Corporation may consider certain performance and capability guidelines in selecting Market Makers. The Exchange also proposes adding DMM and LMM selection criteria that is consistent with the criteria described in PCX Rule 6.82 for options LMMs.[9] In addition, the Exchange seeks to clarify in PCXE Rule 7.24 that DMMs would be required to maintain certain performance standards which may vary depending on the price, liquidity, and volatility of the security. In particular, such standards would include (i) Percent of time at the NBBO; (ii) percent of executions better than the NBBO; (iii) average displayed size; (iv) average quoted spread; and (v) in the event the security is a derivative security, the ability of the DMM to transact in the underlying markets. The Exchange would have the ability to modify the specific levels to be used in defining the performance standards, however, the Exchange would not modify the types of standards to be used. Lastly, PCXE Rule 7.25 would be modified to require LMMs to register as Odd Lot Dealers in the securities in which they are registered as LMM. This modification would ensure that odd lot executions are facilitated for primary listings that could not otherwise be routed away to another market center for execution.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals 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 Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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 Exchange consents, the Commission will:

(A) by order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, 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–2005–56 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–PCX–2005–56. 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, Station Place, 100 F Street, NE., Washington, DC 20549. Copies of such 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–2005–56 and should be submitted on or before November 3, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E5–5594 Filed 10–12–05; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* PCXE Rule 1.1(n).

[9] *See* PCX Rule 6.82(e) which states ''The Exchange will select that candidate who appears best able to perform the functions of an LMM in the designated option issue. Factors to be considered for selection include, but are not limited to, the following: experience with trading the option issue; adequacy of capital; willingness to promote the Exchange as a marketplace; operational capacity; support personnel; history of adherence to Exchange rules and securities laws; trading crowd evaluations made pursuant to Rule 6.100; and any other criteria specified in this Rule.''

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 06/76–0329]

Pharos Capital Partners II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Pharos Capital Partners II, L.P., One Burton Hills Blvd., Suite 180, Nashville, TN 37215, a Federal Licensee under the Small Business Investment Act of 1958, as amended (''the Act''), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and § 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Pharos Capital Partners II, L.P. proposes to provide equity/debt security financing to Alereon, Inc. The financing

is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Pharos Capital Partners, L.P. is an Associate of Pharos Capital Partners II, L.P. which owns more than ten percent of Alereon, Inc. Therefore, Alereon, Inc. is considered an Associate of Pharos Capital Partners II, L.P. as defined in 13 CFR 107.50 of the SBIC Regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Jaime Guzmańn-Fournier,

Associate Administrator for Investment.

[FR Doc. 05–20496 Filed 10–12–05; 8:45 am]

BILLING CODE 6025–01–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1003

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on November 16, 2005.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with DOL.

DATES: SSA will file a report of the subject matching program with the Committee on Homeland Security and Governmental Affairs of the Senate; the Committee on Government Reform and Oversight of the House of Representatives; and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 245 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving the Federal government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency, or agencies, participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: September 27, 2005.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, terms, and safeguards for DOL's disclosure of Part C Black Lung (BL) benefit data to SSA. SSA will use the match results to verify that recipients of Part C BL benefits are receiving the correct amount of Social Security disability benefits, as required by the Social Security Act (the Act).

C. Authority for Conducting the Matching Program

The legal authority for SSA to conduct this matching activity is contained in section 224(h)(1) of the Act (42 U.S.C. 424a(h)(1)).

D. Categories of Records and Individuals Covered by the Matching Program

DOL will provide SSA with a file extracted from the Office of Workers' Compensation Programs' BL Benefit Payments File. The extracted file will contain information about all live miners, under age 65, entitled to Part C BL benefits. Each record on the DOL file will be matched with SSA's Master Beneficiary Record (SSA/OEEAS 60–0090) to identify individuals potentially subject to benefit reductions due to their receipt of Part C BL benefits, under section 224 of the Act (42 U.S.C. 424a).

E. Inclusive Dates of the Matching Program

The matching program will become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 05–20502 Filed 10–12–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Alterations to Existing System of Records and New Routine Use Disclosure

AGENCY: Social Security Administration (SSA).

ACTION: Altered System of Records and Proposed New Routine Use.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to alter an existing system of records entitled the Visitor Intake Process/Customer Service Record (VIP/CSR) System, 60–0350. The proposed alterations will result in the following changes to the VIP/CSR system of records:

(1) Expansion of the categories of individuals covered by the VIP/CSR system of records to include individuals who visit any SSA office or who may contact any SSA office by telephone and/or by e-mail and who attempt or commit a violent act or make threats of violence towards an SSA employee, any individual visiting an SSA office conducting business, or any SSA office; and recording identifying information about the individual within the Visitor Intake Process/Customer Service Record (VIP/CSR) system.

(2) Expansion of the categories of records maintained in the VIP/CSR system of records to include identifying information about the new category of individuals that will be maintained in the VIP/CSR system of records, and a ''High Risk'' alert indicator based on type of threat or act of violence perpetrated by the individual.

(3) Expansion of the purposes for which SSA uses information maintained in the VIP/CSR system of records to include use of the system to alert employees in a Social Security office when an individual attempted or committed a violent act or made threats of violence towards an SSA employee, any individual visiting an SSA office conducting business, or any SSA office ; and

(4) A proposed new routine use disclosure applicable to information in the VIP/CSR system of records providing for the release of information to law enforcement agencies and private security contractors to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or to assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

All of the proposed alterations are discussed in the Supplementary Information section below. We invite public comment on this proposal.

DATES: We filed a report of the proposed new routine use disclosures with the Chairman of the Senate Committee on Homeland Security and Governmental Affairs, the Chairman of the House Committee on Government Reform, and the Director, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on October 3, 2005. The proposed altered system of records, including the proposed new routine use respective to the system, will become effective on November 12, 2005, unless we receive comments warranting them not to become effective.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION: Contact Earlene Whitworth Hill, Social Insurance Specialist, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, in Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone at (410) 965–1817, e-mail: *earlene.whitworth.hill@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Proposed Alterations to the VIP/CSR System of Records

A. General Background

SSA originally published a notice of the VIP/CSR system of records in the **Federal Register** at 67 FR 63489, October 11, 2002. SSA uses information in the VIP/CSR system of records for management information and administrative purposes, such as tracking scheduled appointments and monitoring visitor information, and for programmatic purposes associated with individuals' claims for benefits under programs administered by SSA. We are making several alterations to the VIP/CSR system of records as discussed below.

B. Discussion of Proposed Alterations to the VIP/CSR System of Records

SSA provides a variety of services to the general public in connection with various programs under the Social Security Act. This involves personal interaction between SSA employees and the public on many occasions. At times, individuals with whom SSA employees must interact make threats or commit acts of violence against SSA employees. On these occasions, appropriate measures are employed to ensure the safety of our employees and the public. These measures include using security guards to maintain order in Social Security offices and contacting law enforcement officials, as necessary.

However, we have never had a reliable means of ensuring that our employees in one office would have knowledge of an incident involving an individual in another office. We are developing a ''High Risk'' alert to assist in protecting the safety of our employees, individuals conducting business with SSA and other individuals accompanying such individuals, and SSA facilities. We are proposing to implement the ''High Risk'' alert by making alterations to the VIP/CSR system of records to allow the electronic maintenance of the ''High Risk'' alert indicator as a part of the VIP/CSR system of records. This will enable SSA employees at any SSA office to be aware of the potential security risks and to use extra caution when dealing with an individual who is identified in the VIP/CSR system of records as having made a threat or committed an act of violence against an SSA employee, a member of the public conducting business at an SSA facility, or an SSA facility. The specific changes to the VIP/CSR system of records are discussed below.

1. Expansion of the Categories of Individuals Covered by the VIP/CSR System of Records

We are adding a new category of individuals to the VIP/CSR system of records to include information about individuals who contact any SSA office in person, by telephone, or by mail and make a threat, or commit an act of violence, against an SSA employee, individuals conducting business with SSA or other individuals accompanying such individuals, or any SSA office.

2. Expansion of the Categories of Records Maintained in the VIP/CSR System of Records

We are expanding the categories of records covered by the VIP/CSR system of records to include the following ''High Risk'' alert information about an individual who makes a threat or commits an act of violence against an SSA employee, individuals conducting business with SSA or other individuals accompanying such individuals, or any SSA office:

- Identifying information such as the individual's name and/or Social Security number, and date of birth;
- Information pertaining to the specific nature of the threat or act of violence; and
- Information pertaining to the date and time, and the location of the threat or act of violence.

3. Expansion of the Purpose(s) of the VIP/CSR System of Records

We are expanding the purposes for which we use the information maintained in the VIP/CSR system to include a ''High Risk'' alert. The alert information will assist SSA employees in identifying individuals who have threatened an act of violence or who have committed an act of violence against an SSA employee, a visitor to any SSA office, or any SSA office.

II. Proposed New Routine Use Disclosure of Data Maintained in the VIP/CSR System of Records

A. Establishment of New Routine Use

We are proposing to establish a new routine use which allows disclosure of information maintained in the Visitor Intake Process/Customer Service Record system to law enforcement agencies and private security contractors.

Federal, State, and local law enforcement agencies, and private security contractors, have responsibility for preventing, handling, monitoring and investigating incidents that affect the safety and security of SSA employees, customers, and workplaces, or otherwise disrupt SSA operations. Prosecution of persons involved in these activities for violation of Federal or local laws may also be appropriate. SSA managers of most SSA leased facilities have to rely primarily on local law enforcement authorities and private security contractors to meet the protective security needs of customers, employees and workplaces.

The new routine use in the VIP/CSR system of records, numbered 7, provides for disclosure of information:

To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupts the operation of SSA facilities.

B. Compatibility of Proposed New Routine Use Disclosure

The Privacy Act (5 U.S.C. 552a(a)(7) and (b)(3)) and SSA's disclosure regulation (20 CFR part 401) permit us to disclose information under a published routine use for a purpose that is compatible with the purpose for which we collected the information. Section 401.150(c) of the regulation permits us to disclose information under a routine use, where necessary, to carry out SSA programs or assist other agencies in administering similar programs. In order for SSA to carry out its programs, it must ensure that its places of business are safe and secure for both customers and employees, that premises and property are safe from theft and damages, that employees can perform their duties without fear of intimidation or injury, and that SSA can prevent and appropriately deal with disruptions in the operation of its facilities. In so far as disclosure to law enforcement agencies and private security contractors will help to accomplish these objectives, the disclosures are an integral part of our program administration responsibilities. Thus, the proposed new routine use disclosure is appropriate and meets the relevant statutory and regulatory criteria.

III. Effect of the Proposed Alterations to the VIP/CSR System of Records

The proposed alterations and new routine use disclosure to the Visitor Intake Process/Customer Service Record (VIP/CSR) System pertain to SSA's responsibilities in collecting, maintaining, and disclosing information about individuals who have threatened an act of violence and/or who have committed an act of violence against an SSA employee, a visitor to any SSA office, and to any SSA office. We will adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our responsibilities. Therefore, we do not anticipate that the proposed alterations and new routine use disclosure will have an unwarranted adverse effect on the right of individuals.

Dated: October 3, 2005.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NUMBER: 60–0350.

SYSTEM NAME:

Visitor Intake Process/Customer Service Record (VIP/CSR) System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, 6401 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system covers visitors to the Social Security Administration (SSA) field offices (FOs) for various purposes (see ''Purpose(s)'' section below) and individuals who have threatened an act of violence or have committed an act of violence against an SSA employee, a visitor to any SSA office conducting business or another individual accompanying such visitor, or to any SSA office.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following information about each visitor: (1) Visitor information such as Social Security number (SSN), full name and date of birth, when such information is provided by the visitor; (2) visit information such as the time visitor entered and left the office, an assigned group number, number of interviews associated with the visit and remarks associated with the visit; (3) appointment information such as date/time of appointment, source of appointment and appointment unit number (unit establishing appointment); (4) notice information such as close-out notice type (e.g., title II 6-month closeout letter, title XVI SSA–L991) and close-out notice date/time when sent; (5) interview information such as each occurrence, subject of interview, estimated waiting time, preferred language, type of translator, number of interview in queue, interview disposition (e.g., completed, deleted, left without service), interview priority, start and ending time and name of interviewer; (6) SSN, full name and relationship to claimant/beneficiary, when such information is provided; (7) ''High Risk'' alert information; i.e., personal information about the visitor such as name, SSN, date of birth, specific nature of the threat or act of violence, the date and time, and the location of the threat or act of violence; and (8) source of the report from the SSA–3114–U4.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 222, 223, 225, 1611, 1615, 1631 and 1633 of the Social Security Act (42 U.S.C. 422, 423, 425, 1382, 1382d, 1383 and 1383b); the Federal Records Act of 1950 (Pub. L. 81–754, 64 Stat. 583), as amended.

PURPOSE(S):

Information in this system will be used to:

- Provide a means of collecting waiting time data on all in-office interviews in SSA FOs;
- Provide management information on other aspects of all in-office interviews in SSA FOs;
- Provide a source for customer service record data collection for such interviews, and
- Capture discrete data about the volume and nature of inquiries to

support management decisions in the areas of process improvement and resource allocation.

• Provide a means of collecting information about individuals who have threatened an act of violence and/or have committed an act of violence against an SSA employee, or a visitor to any SSA office conducting business, and/or to any SSA office.

• Generate a timely ''High Risk'' alert to the intake employees of the possibility of an individual who possibly pose a security risk.

• Provide a standard approach to insuring the safety of SSA employees, visitors to any SSA office conducting business, and/or to any SSA office.

The information collected from visitors to SSA FOs will be used for filing claims for benefits under title II, transacting post-entitlement actions if currently entitled to benefits under title II, filing claims for benefits under title XVI, transacting post-eligibility actions if currently eligible for benefits under title XVI, obtaining an SSN, transacting other actions related to a SSN, or other actions/queries that may require an interview at SSA.

The information collected from the ''High Risk'' alert will be used to advise the intake employee at any SSA office of the potential security risk and to use extra caution when dealing with the individual that is before them and/or who has scheduled an appointment. The ''High Risk'' alert will include personal information about the visitor such as name, SSN, date of birth, specific nature of the threat or act of violence, the date and time, and the location of the threat or act of violence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosures may be made for routine uses as indicated below.

1. To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or from a third party on his or her behalf.

2. To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

3. To the Department of Justice (DOJ), a court, or other tribunal, or other party before such tribunal when:

(a) SSA, or any component thereof, or

(b) Any SSA employee in his/her official capacity; or

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA Where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, a court, or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

4. To contractors and other Federal agencies, as necessary, to assist SSA in the efficient administration of its programs.

5. To student volunteers, individuals working under a personal services contract, and other individuals performing functions for SSA but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

6. Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and § 2906, as amended by NARA Act of 1984, for the use of those agencies in conducting records management studies.

7. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, information necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are maintained in both electronic and paper form (e.g., magnetic tape and disc and microfilm).

RETRIEVABILITY:

Records in this system will be retrieved by the individual's SSN and/or name.

SAFEGUARDS:

Security measures include the use of access codes to enter the computer system which will maintain the data, and storage of the computerized records in secured areas which are accessible only to employees who require the information in performing their official duties. SSA employees who have access to the data will be informed of the criminal penalties of the Privacy Act for unauthorized access to or disclosure of information maintained in the system. *See* 5 U.S.C. 552a(i)(1).

Contractor personnel and/or alternate participants having access to data in the system of records will be required to adhere to SSA rules concerning safeguards, access and use of the data.

RETENTION AND DISPOSAL:

Records in the Visitor Intake Process/Customer Service Record (VIP/CSR) System ''High Risk'' file will be retained for three years. The means of disposal of the information in the Visitor Intake Process/Customer Service Record (VIP/CSR) System ''High Risk'' file will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records). In addition, management officials will have the ability to delete records from the ''High Risk'' file electronic database.

Records in the Visitor Intake Process/Customer Service Record (VIP/CSR) System are retained for one year when they pertain to documents provided by and returned to an individual, denial of requests for confidential information, release of confidential information to an authorized third party, and undeliverable material. Records are maintained for four years when they contain information and evidence pertaining to Social Security coverage, wage, and self-employment determinations, or when they affect future claims development. Additional information collected, such as waiting time information, may be retained for longer periods for purposes of analysis and process improvement, without regard to individual records.

The means of disposal of the information in this system will be appropriate to the storage medium (e.g., deletion of individual electronic records or shredding of paper records).

SYSTEM MANAGER(S) AND ADDRESS(ES):

Deputy Commissioner, Office of Systems, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235.

NOTIFICATION PROCEDURE(S):

An individual can determine if this system contains a record about him/her by writing to the system manager(s) at the above address and providing his/her name, SSN, or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a

photograph, such as a driver's license. If an individual does not have identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth, along with one other piece of information such as mother's maiden name), and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURE(S):

Same as ''Notification'' procedure(s). Requesters also should reasonably specify the record contents they are seeking. These procedures are in accordance with SSA Regulations (20 CFR 401.50).

CONTESTING RECORD PROCEDURE(S):

Same as ''Notification'' procedures. Requesters also should reasonably identify the record, specify the information they are contesting, and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from information collected from individuals interviewed in person in SSA FOs, from existing systems of records, such as the Claims Folders System, (60–0089), Master Beneficiary Record, (60–0090), Supplemental Security Income Record and Special Veterans Benefits, (60–0103), and from information generated by SSA, such as computer date/time stamps at various points in the interview process.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 05–20503 Filed 10–12–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5204]

Notice of Meeting; United States International Telecommunication Advisory Committee Information Meeting on the World Summit on the Information Society

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee (ITAC). The purpose of the Committee is to advise the Department on matters related to telecommunication and information policy matters in preparation for international meetings pertaining to telecommunication and information issues.

The ITAC will meet to discuss the matters related to the second phase of the World Summit on the Information Society (WSIS), in preparation for the WSIS Summit in mid-November. The meeting will take place on Tuesday, October 25, 2005 from 2 p.m. to 4 p.m. in the auditorium of the Historic National Academy of Science Building. The National Academy of Sciences is located at 2100 C St. NW., Washington, DC.

Members of the public are welcome to participate and may join in the discussions, subject to the discretion of the Chair. Persons planning to attend this meeting should send the following data by fax to (202) 647–5957 or e-mail to *jillsonad@state.gov* not later than 24 hours before the meeting: (1) Name of the meeting, (2) your name, and (3) organizational affiliation. A valid photo ID must be presented to gain entrance to the National Academy of Sciences Building. Directions to the meeting location may be obtained by calling the ITAC Secretariat at (202) 647–5205.

Dated: October 6, 2005.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 05–20550 Filed 10–12–05; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–16944]

Operating Limitations at Chicago O'Hare International Airport

ACTION: Notice of order.

SUMMARY: On July 18, 2005, the Federal Aviation Administration (FAA) issued an order to show cause, which solicited written views on extending for a second time the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport (O'Hare). The August 2004 order made effective a series of schedule adjustments that the air carriers individually agreed to during a scheduling reduction meeting. These agreements, in general, resulted in a voluntary peak-hour arrival rate at O'Hare of eighty-eight scheduled flights, with the exception of the 8 p.m. hour—the final peak hour of the day—when the rate would not exceed ninety-eight scheduled arrivals.

The FAA previously extended the effectiveness of the August 2004 order through October 29, 2005. This notice announces that the FAA Administrator has signed an order that further extends the August 2004 order through April 1, 2006. The text of the extension order is published below as supplementary information to this notice.

FOR FURTHER INFORMATION CONTACT: Gerry Shakley, System Operations, Air Traffic Organization: telephone (202) 267–9424; facsimile (202) 267–7277; e-mail *gerry.shakley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Second Order Extending the August 2004 Limitation of Scheduled Operations at O'Hare International Airport

On July 18, 2005, the Federal Aviation Administration (FAA) issued an order to show cause, soliciting written views on extending through April 1, 2006, the August 2004 order limiting scheduled operations at O'Hare International Airport (O'Hare).[1] The August 2004 order made effective a series of schedule adjustments that air carriers

[1] 70 FR 42135 (July 21, 2005).

individually agreed to during a scheduling reduction meeting convened under 49 U.S.C. § 41722. The FAA previously extended the order through October 29, 2005. After careful reflection on the written views submitted, the FAA is now extending the August 2004 order through April 1, 2006.

The FAA is taking this action to ensure that congestion and delay at O'Hare remain at manageable levels through the upcoming winter scheduling season while the agency considers the need for additional measures. The FAA has separately issued a notice of proposed rulemaking that would limit scheduled arrivals at O'Hare and establish allocation, transfer, and other procedures not included in the August 2004 order.[2] The comment period for the proposed rule closed on May 24, and the FAA and the Office of the Secretary of Transportation are evaluating the comments filed in that proceeding. The FAA intends to make a final decision in that proceeding as promptly as possible. The FAA expects that this extension of the August 2004 order will permit the order's expiration to coincide with the effective date of a final rule, if a rule is adopted.

The FAA's authority to extend the August 2004 order is the same authority cited in that order. The FAA proposed to extend the August 2004 order under the agency's broad authority in 49 U.S.C. § 40103(b) to regulate the use of the navigable airspace of the United States. This provision authorizes the FAA to develop plans and policy for the use of navigable airspace and, by order or rule, to regulate the use of the airspace as necessary to ensure its efficient use. In addition, 49 U.S.C. § 41722 authorizes the FAA to conduct scheduling reduction meetings. The FAA's authority under section 41722 would be unenforceable if the FAA lacked the related authority to capture voluntary schedule reductions in FAA orders.

Discussion of the Written Submissions: A total of six respondents filed written views on the FAA's proposed extension of the August 2004 order. The respondents included four air carriers (American Airlines, Independence Air, Northwest Airlines, and United Airlines), one air carrier organization (the Air Carrier Association of America), and the City of Chicago (City). None of the respondents representing air carrier interests opposed the extension of the August 2004 order through April 1, 2006.

As the operator of O'Hare, the City registers a concern that the restrictions contained in the August 2004 order will be effective indefinitely. We reiterate that the agreements reached during the August 2004 scheduling reduction meeting are temporary. In the August 2004 order, the FAA emphasized that capacity increases—not negotiated schedule reductions or other restrictions on demand—are the preferred means of curtailing delays like those the O'Hare experienced prior to the order. In addition, as the July 18 Order to Show Cause reflects, the FAA has issued a notice of proposed rulemaking on the subject of flight limitations at O'Hare, and the FAA and Office of the Secretary of Transportation are evaluating the comments received in that matter. Our decision to extend the August 2004 order through April 1, 2006, will permit adequate time to consider the comments on the proposed rulemaking and, if a rule is adopted, to implement a final rule. Again, we continue to anticipate that the August 2004 order will endure for the shortest practical duration.

The City asks the FAA to let the order expire to determine whether over scheduling at O'Hare will recur. The City reasons that a capacity constraint can be imposed again if it proves necessary. In the August 2004 order, the FAA recounted in detail the impact of over scheduling at O'Hare. The nationwide and debilitating nature of the resulting delays caused the FAA to convene the scheduling reduction meeting. The recent and expected air traffic procedural improvements and equipment upgrades that the City identifies will not increase O'Hare's capacity so significantly that intolerable delay will not recur if the August 2004 order were to expire as now scheduled. the FAA's overall approach seeks to avoid the instability that successive expiration and reinstitution of voluntary schedule reductions at O'Hare would inflict on air carriers and the public. Moreover, while the FAA recognizes the City's view that the O'Hare Modernization Program, if approved and implemented, could significantly increase the airport capacity, the program could not be completed before the August 2004 order is currently scheduled to expire.

The City also asserts that the hourly scheduled arrival rate of eighty-eight during most peak hours, as set forth in the August 2004 order, is too low. The City would prefer an hourly scheduled arrival rate of ninety-two. In addition, the City repeats that, in its view, the FAA should amend the August 2004 order to exempt all international operations from the order's limitations.

The City previously raised identical concerns over the FAA's first extension of the August 2004 order, and the FAA therefore addressed the City's views in detail when it extended the order in March 2005.[3] In the context of extending the voluntary scheduling limits, the FAA's prior assessment of the City's views has not materially changed. In addition, the City has filed similar comments in the public docket for the related rulemaking proceeding. The FAA and the Office of the Secretary of Transportation are affording the City's comments most careful consideration in that proceeding. Because the only matter at issue in this order is the contemplated short-term extension of the August 2004 order through April 1, 2006, it is unwise to address here issues that are now the subject of an open rulemaking before the agency. The FAA will address the merit of these comments in the rulemaking process.

Finally, we reject the City's suggestion that the agency lacks the authority to limit arrivals at O'Hare by extending the August 2004 order. As an initial matter, the August 2004 order was the product of voluntary schedule limitations negotiated during a scheduling reduction meeting that Congress specifically authorized in 49 U.S.C. 41722. An FAA-issued order is the only practical means by which we can enforce the voluntary agreements that a scheduling reduction meeting produces. Accordingly, in authorizing the FAA to conduct such meetings, Congress presumably perceived that the FAA would issue and maintain orders, like the August 2004 order, as extended, that comport with the air carriers' agreements.

Furthermore, in phasing out the High Density Rule at O'Hare in July 2002, Congress simultaneously emphasized that it did not disturb the FAA's authority over safety and the movement of air traffic. 49 U.S.C. 41715(b). Our continuing authority in these areas is more than adequate to permit the extension of the August 2004 order that we specify here.

Conclusion: The FAA proposed to extend the August 2004 order through April 1, 2006, on the basis of its tentative finding that such an extension is necessary to prevent a recurrence of overscheduling at O'Hare. After considering the responses, the FAA has determined to make this finding final and to extend the order through April 1, 2006.

Accordingly, with respect to scheduled flight operations at O'Hare, it is ordered that:

[2] 70 FR 15520 (Mar. 25, 2005).

[3] Mar. 21, 2005, Order at 5–10.

1. Ordering paragraph seven of the FAA's August 18, 2004, order limiting scheduled operations at O'Hare International Airport is amended to state that the order shall expire at 9 p.m. on April 1, 2006.

Issued in Washington, DC, on October 5, 2005.

Rebecca MacPherson,

Assistant Chief Counsel for Regulation.

[FR Doc. 05–20464 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice

SUMMARY: Consistent with Agency practice, this notice is issued to advise interested parties of the addition of the States of Idaho and Utah to the list of those thirty-three states from which the Aircraft Registration Branch (FAA Aircraft Registry), Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, will accept artisan liens for recordation. Since December 17, 1981, the Aeronautical Center Counsel has issued these notices in the Federal Register.

DATE: This notice is effective October 13, 2005.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel, Aeronautical Center (AMC–7), Federal Aviation Administration, 6500 S. MacArthur, Oklahoma City, OK 73169. Telephone (405) 954–3296.

SUPPLEMENTARY INFORMATION: In 46 FR 61528, December 17, 1981, the Federal Aviation Administration published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. Subsequently, we advised that Florida, Nevada, and New Jersey had passed legislation that, in our opinion, allows the FAA Aircraft Registry to accept artisan liens from those states (49 FR 17112, April 23, 1984).

The Agency continued this practice when we adivsed that the following states had passed legislation that either required or allowed recording of notice of lien thereby allowing the FAA Aircraft Registry to accept and record artisan liens claimed under those states' law:

Minnesota and New Mexico (51 FR 21046, June 10, 2986)
Missouri (53 FR 23716, June 23, 1988)
Texas, (54 FR 38584, September 19, 1989)
North Dakota, (54 FR 51965, October 17, 1989)
Michigan and Tennessee, (55 FR 31938, August 6, 1990)
Arizona, (56 FR 27989, June 18, 1991)
Iowa, (56 FR 36189–36190, July 31, 1991)
California (General Aviation only), Connecticut, Ohio, and Virginia (58 FR 50387, September 27, 1993)
Louisiana, Massachusetts, and Rhode Island (67 FR 68902, November 13, 2002)

This notice is to advise interested parties that the states of Idaho and Utah are now identified as additional states from which artisan liens will be accepted.

With the addition of Idaho and Utah, the complete list of thirty-five states from which artisan liens on aircraft will be accepted as of this date is: Alaska, Arizona, Arkansas, California (General Aviation Only), Connecticut, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virgin Islands, Virginia, Washington, and Wyoming.

Issued in Oklahoma City on September 28, 2005.

Joseph R. Standell,

Aeronautical Center Counsel.

[FR Doc. 05–20467 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Prepare an Environmental Impact Statement and To Conduct Scoping Meetings for the Proposed Relocation of Runway 11R/29L and Associated Development at the Tucson International Airport in Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement and to conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared to assess the potential impacts of the proposed relocation of Runway 11R/29L and associated development at Tucson International Airport. To ensure that all significant issues related to the proposed action are identified, one (1) public scoping meeting and one (1) governmental agency scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Michelle Simmons, Environmental Protection Specialist, Federal Aviation Administration, Western-Pacific Region, Airports Division, P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3614. Any scoping comments and suggestions regarding the EIS must be submitted to the address above and must be received no later than 5 p.m. Pacific Standard Time, December 15, 2005.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) will prepare an Environmental Impact Statement (EIS) for addressing specific improvements at Tucson International Airport. The (EIS) will be prepared in accordance with the procedures described in FAA Order 5050.4A, *Airport Environmental Handbook,* and FAA Order 1050.1E, *Environment Impacts: Policies and Procedures.* The Tucson Airport Authority, the owner of Tucson International Airport proposes the following development as identified in the 2004 Tucson International Airport Master Plan: Relocate Runway 11R/29L, 450 feet to the southwest, creating a centerline to centerline separation of 1,156 feet between the existing Runway 11L29R and the relocated Runway 11R/29L. The length of the relocated Runway 11R/29L will be 11,000 feet long by 150 feet wide. The development will also include the extension of existing Taxiways A–6 and A–17, and provisions for acute angled ''high speed'' exits at Taxiways A–11, A–13, and A–15; addition of new Taxiways A–16 and A–18; extension of Taxiway B, (which is currently marked as 11R/29L); relocation of the airport service road to accommodate the proposed runway relocation; and installation of an Instrument Landing System (ILS) in conjunction with the relocated runway, including a Medium Intensity Approach Lighting System with Runway Alignment Indicator Lights (MALSR) in both directions. The Airport Master Plan Update identified the need to provide additional airfield capacity at the Airport to meet the projected levels of operational and passenger demand. Within the EIS, FAA proposed to consider a range of alternatives that could potentially meet the need for additional airport capacity in the Tucson metropolitan area including, but not limited to, the following:

Alternative One—Sponsor's Proposed Action: Relocate Runway 11R/29L, 450 feet to the southwest, creating a centerline separation of 1,156 feet between the existing Runway 11L/29R and the relocated Runway 11R/29L. The relocated Runway 11R/29L will be 11,000 feet long by 150 feet wide. The relocation of Runway 11R/29L will include construction of a parallel and connecting taxiway system, and associated navigational aids.

Alternative Two—Alternative Airfield Development at Tucson: Extending and upgrading the current general aviation Runway 11R/29L to an air carrier runway, maintaining a 700-foot centerline separation between the current air carrier Runway 11L/29R and the extended and upgraded runway 11R/29L, and

Alternative 3—Relocating and upgrading the general aviation Runway 11R/29L, to an air carrier runway, 2,500 feet south of Runway 11L/29R and converting the current runway 11R/29L to a parallel taxiway that would serve both runways, and

Alternative 4—Relocating and upgrading the general aviation Runway 11R/29L to an air carrier runway, 1,156 feet south of Runway 11L/29R, and converting the runway to a parallel taxiway that would serve both runways. This alternative incorporates a localizer directional aide (LDA) approach.

These airfield development alternatives identified under Alternative 2, 3 and four would likely include several of the support features of Alternative One, including taxiway improvements and associated navigational aids. The specific details of the alternative airfield development at Tucson International Airport will be refined following the scoping process during the preparation of the EIS.

Alternative Five—Use of Other Existing Airports: The possible use of other existing area airports including, but not limited to, Ryan Airfield and Marana Regional Airport will be evaluated.

Alternative Six—Use of Other Modes of Transportation: Use of intercity bus line, rail, and automobile transportation will be evaluated.

Alternative Seven—No Action Alternative: Under this alternative, the existing airport would remain unchanged. Runway 11R/29L would remain in its current configuration.

Comments and suggestions are invited from Federal, State and local agencies, and other interested parties to ensure that the full range of issues related to these proposed projects are addressed and all significant issues are identified. Written comments and suggestions may be mailed to the FAA informational contact listed above and must be received no later than 5:00 p.m. Pacific Standard Time, December 15, 2005.

Scoping Meetings: The FAA will hold one (1) public and one (1) governmental agency scoping meeting to solicit input from the public and various Federal, State and local agencies having jurisdiction or having specific expertise with respect to any environmental impacts associated with the proposed projects. The public scoping meeting will be held on Tuesday, November 15, 2005, in the Tucson Airport Authority Boardroom at 7005 South Plumer Avenue, Tucson, Arizona 85706. The meeting will be held from 4 p.m. to 7 p.m. Mountain Standard Time (MST). A scoping meeting will be held specifically for governmental agencies on the same day at the same location from 10 a.m. to 12 p.m. MST.

Issued in Hawthorne, California on Tuesday, October 4, 2005.

Mark A. McClardy,

Manager, Airports Division, Western-Pacific, Region AWP–600.

[FR Doc. 05–20461 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Proposed Policy Statement No. ANE–200X–33.3–X]

Policy for Repair and Alteration of Rotating Turbine Engine Life Limited Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for the repair and alteration of rotating turbine engine-life limited parts (RTE–LLPs). This proposed policy establishes that the FAA will treat all repairs and alterations of RTE–LLPs as major repairs and major alterations. We are also proposing that all RTE–LLP repair and alteration data must include a methodology to assess the life of the repaired or altered part and the continued operational safety of the repaired product. This proposed policy provides guidance for: (1) Technical substantiation for repair or alteration of RTE–LLPs; and (2) Aircraft Certification Offices (ACOs) and Designated Engineering Representatives to evaluate and approve repair and alteration data.

DATES: Comments must be received by November 14, 2005.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *karen.m.grant@faa.gov*; telephone (781) 238–7119; fax: (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited: The proposed policy is available on the Internet at the following address: *http://www.faa.gov/aircraft/draft_docs/*. If you do not have access to the Internet, you may request a copy by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. The FAA invites interested parties to comment on the proposed policy. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT.** The FAA will consider all comments received by the closing date before issuing the final policy.

We will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed policy. The docket is available for public inspection before and after the comment date. If you wish to review the docket in person, go to the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Background: During the past year, we reviewed the technical data for numerous RTE–LLP repairs. We observed deficiencies in the data for many of these repairs. We also noted that may repairs were improperly assessed as minor and were not properly coordinated with the appropriate ACOs. This proposed policy would provide guidance on the coordination and the technical data needed for RTE–LLP repairs and alterations.

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

Issued in Burlington, Massachusetts, on October 3, 2005.

Francis A. Favara,

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

[FR Doc. 05–20457 Filed 10–12–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Harris Ellsworth & Levin on behalf of Trinity Industries, Inc. (WB605–1—10/5/2005) for permission to use certain data from the Board's 2003 and 2004 Carload Waybill Sample. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20529 Filed 10–12–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–6 (Sub–No. 430X) and AB–1040X]

BNSF Railway Company—Abandonment Exemption—in Oklahoma County, OK and Stillwater Central Railroad, Inc.—Discontinuance of Service Exemption—in Oklahoma County, OK

BNSF Railway Company (BNSF) and Stillwater Central Railroad, Inc. (SLWC) have jointly filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for BNSF to abandon, and for SLWC to discontinue service over, approximately 2.95 miles of railroad between milepost 539.96 and milepost 542.91 in Oklahoma City, Oklahoma County, OK. The line traverses United States Postal Service Zip Codes 73102, 74108, and 73129.

BNSF and SLWC have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (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 (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 report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance 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, these exemptions will be effective on November 12, 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 October 24, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 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 applicants' representatives: Sidney L. Strickland, Jr., 3050 K Street, NW., Suite 101, Washington, DC 20007; and Karl Morell, 1455 F Street, NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

BNSF and SLWC have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 18, 2005. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) 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), BNSF shall file a notice of 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 BNSF's filing of a notice of consummation by October 13, 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: October 3, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20243 Filed 10–12–05; 8:45 am]

BILLING CODE 4915–01–P

[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 exemptions' 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 exemptions' 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).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–303 (Sub–No. 29X)]

Wisconsin Central Ltd.—Abandonment Exemption—in Forest County, WI

Wisconsin Central Ltd. (WCL) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.62-mile line of railroad, from milepost 235.84 on the Pembine Sub (formerly milepost 249.38 on the old Shawano Sub), near Crandon, to the end of the track at milepost 231.22 on the Pembine Sub (formerly milepost 254.00 on the old Shawano Sub), in Forest County, WI. The line traverses United States Postal Service Zip Code 54520.

WCL 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 that would have to be rerouted; (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 at 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)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee 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 November 12, 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 October 21, 2005. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 2, 2005, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to WCL's representative: Michael J. Barron, Jr., CN, 17641 S. Ashland Avenue, Homewood, IL 60430–1345.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

WCL has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by October 18, 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), WCL shall file a notice of 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 WCL's filing of a notice of consummation by October 13, 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: October 6, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–20528 Filed 10–12–05; 8:45 am]

BILLING CODE 4915–01–P

[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 is currently set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Public Meeting of the President's Advisory Panel on Federal Tax Reform

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice advises all interested persons of the location of the October 18, 2005, public meeting of the President's Advisory Panel on Federal Tax Reform. This meeting was previously announced in 70 FR 57923 (October 4, 2005).

DATES: The meeting will be held on Tuesday, October 18, 2005, in Washington, DC, and will begin at 9 a.m.

ADDRESSES: The meeting will be held at the Ronald Reagan Building & International Trade Center Amphitheater, Concourse Level, 1300 Pennsylvania Avenue NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: The Panel staff at (202) 927–2TAX (927–2829) (not a toll-free call) or e-mail *info@taxreformpanel.gov* (please do not send comments to this box). Additional information is available at *http://www.taxreformpanel.gov*.

Dated: October 11, 2005.

Mark S. Kaizen,

Designated Federal Officer.

[FR Doc. 05–20577 Filed 10–12–05; 8:45 am]

BILLING CODE 4811–33–P

DEPARTMENT OF THE TREASURY

Appointment of Members to the Legal Division Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury, including the authority conferred by 31 U.S.C. 301 and Treasury Department Order No. 101–5 (revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following individuals to the General Counsel Panel of the Legal Division Performance Review Board for Fiscal Year 2005:

James W. Carroll, Jr., Deputy General Counsel, who shall serve as Chairperson;

Thomas M. McGivern, Assistant to the General Counsel (Legislation & Litigation);

Russell L. Munk, Assistant General Counsel (International Affairs);

Kenneth R. Schmalzbach, Assistant General Counsel (General Law and Ethics);

Roberta K. McInerney, Assistant General Counsel (Banking and Finance);

Marilyn L. Muench, Deputy Assistant General Counsel (International Affairs);

Peter A. Bieger, Deputy Assistant General Counsel (Banking and Finance);

Daniel P. Shaver, Chief Counsel, United States Mint;

Robert M. Tobiassen, Chief Counsel, Alcohol and Tobacco Tax and Trade Bureau;

Sean M. Thornton, Chief Counsel, Office of Foreign Assets Control;

Brian L. Ferrell, Chief Counsel, Financial Crimes Enforcement Network;

Michael J. Davidson, Chief Counsel, Bureau of Engraving & Printing; and

Margaret V. Marquette, Chief Counsel, Financial Management Service.

Dated: October 6, 2005.

Arnold I. Havens,

General Counsel.

[FR Doc. 05–20476 Filed 10–12–05; 8:45 am]

BILLING CODE 4811–37–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, ''Release of Non-Public Information—12 CFR 4, Subpart C.''

DATES: You should submit written comments by December 12, 2005.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0200, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0200, by mail to U.S. Office of Management and Budget, 725, 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC is proposing to extend OMB approval of the following information collection:

Title: Release of Non-Public Information—12 CFR 4, Subpart C.

OMB Number: 1557–0200.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information collection is required to protect non-public OCC information from unnecessary disclosure in order to ensure that national banks and the OCC engage in a candid dialogue during the bank examination process. Individuals who request non-public OCC information are required to provide the OCC with information regarding the requester's legal grounds for the request. Inappropriate release of information would inhibit open consultation between a bank and the OCC.

The information requirements in 12 CFR part 4, subpart C, are located as follows:

12 CFR 4.33: Request for non-public OCC records or testimony.

12 CFR 4.35(b)(3): Third parties requesting testimony.

12 CFR 4.36(a)(2): OCC former employee notifying OCC of subpoena.

12 CFR 4.37(a) and (b): Agreement to limit dissemination of released information.

12 CFR 4.38(d): Request for authenticated records or certificate of nonexistence of records.

The OCC uses the information to process requests for non-public OCC information and to determine if sufficient grounds exist for the OCC to release the requested information or provide testimony. This information collection makes the mechanism for processing requests more efficient and facilitates and expedites the OCC's release of non-public information and testimony to the requester.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit; individuals.

Number of Respondents: 110.

Total Annual Responses: 170.

Frequency of Response: On occasion.

Total Annual Burden: 467 hours.

Comments: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: October 6, 2005.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 05–20509 Filed 10–12–05; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: North Pointe Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 2 to the Treasury Department Circular 570; 2005 Revision, published July 1, 2005, at 70 FR 38502.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6765.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2005 Revision, on page 38531 to reflect this addition: North Pointe Insurance Company (NAIC # 27740). Business Address: P.O. Box 2223, Southfield, Michigan 48037–2223. Phone: (248) 358–1171 x–146. Underwriting Limitation b/: $3,268,000. Surety Licenses c/: DE, GA, IL, IN, IA, KS, KY, MD, MI, NE, NJ, OH, PA, SD, TN. Incorporated in: Michigan.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO)

Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–05219–0.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 8, 2005.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 05–20556 Filed 10–12–05; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Thursday,
October 13, 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 the Arkansas River Basin Population of the Arkansas River Shiner (*Notropis girardi*); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT84

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Arkansas River Basin Population of the Arkansas River Shiner (*Notropis girardi*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 856 kilometers (532 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank are included within the boundaries of the critical habitat designation. The areas that we have determined to possess the features that are essential to the conservation of the Arkansas River shiner include portions of the Canadian River (often referred to as the South Canadian River) in New Mexico, Texas, and Oklahoma, the Beaver/North Canadian River in Oklahoma, and the Cimarron River in Kansas and Oklahoma, and the Arkansas River in Kansas. As presented in the proposed rule, we have excluded from this designation all previously designated critical habitat in the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas under authority of section 4(b)(2) of the Act. In addition, we have excluded all previously proposed critical habitat in Unit 1a of the Canadian River in New Mexico and Texas and a portion of Unit 1b in Texas and Oklahoma under authority of section 4(b)(2) of the Act.

EFFECTIVE DATE: November 14, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Oklahoma Ecological Services Office, U.S. Fish and Wildlife Service, 222 South Houston, Tulsa, Oklahoma 74127–8909 (telephone 918/581–7458). The final rule, maps, economic analysis, and environmental assessment also will be available via the Internet at *http://ifw2es.fws.gov/Oklahoma*.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Oklahoma Ecological Services Office (telephone 918/581–7458; facsimile 918/581–7467).

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 470 species or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 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 two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service, et al.*, F.3d 434 and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force, et al.* v. *United States Fish and Wildlife Service*). 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

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves 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 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

Background information on the Arkansas River shiner and its habitat requirements can be found in our previous final designation of critical habitat for this species, published in the **Federal Register** on April 4, 2001 (66 FR 18002). Additional background information is also available in our recent proposal of critical habitat for the Arkansas River shiner, published on October 6, 2004 (69 FR 59859). That information is incorporated by reference into this final rule. This rule, which becomes effective on the date listed under **EFFECTIVE DATE** at the beginning of this document, replaces the April 4, 2001, critical habitat designation for this species.

Previous Federal Actions

We previously designated a total of approximately 1,846 kilometers (1,148 miles) of rivers, and 91.4 meters (300 feet) of their adjacent riparian zones, encompassing portions of the Arkansas River in Kansas, the Cimarron River in Kansas and Oklahoma, the Beaver/North Canadian River in Oklahoma, and the Canadian River in New Mexico, Texas, and Oklahoma on April 4, 2001 (66 FR 18002). On April 25, 2002, the New Mexico Cattle Growers Association and 16 other plaintiffs filed a complaint in United States District Court for the District of New Mexico for alleged violations of the Act, the Administrative Procedure Act, and NEPA. A Memorandum Opinion in that case was issued by Senior U.S. District Judge C. LeRoy Hansen in September of 2003 that vacated critical habitat for the Arkansas River shiner and ordered the Service to complete a final rulemaking to redesignate critical habitat by September 30, 2005. In accordance with this Memorandum Opinion, we published a proposed rule to designate 2,002 kilometers (1,244 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank on October 6, 2004. This distance included areas that were proposed to be excluded in the final rule. We extended the comment period associated with this proposed rule on April 28, 2005 (70 FR 21987). On August 1, 2005, we published a notice announcing the availability of the draft economic analysis (DEA) and draft environmental assessment, public hearing locations and dates, and reopening of the public comment period (70 FR 44078).

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Arkansas River shiner in the proposed rule published on October 6, 2004 (69 FR 59859). We also contacted the appropriate Federal, State, and local agencies, Tribes, scientific organizations, and other interested parties and invited them to comment on the proposed rule. The initial comment period was open from October 6, 2004 through April 30, 2005. We extended this comment period until June 17, 2005 (April 28, 2005, 70 FR 21987). A second comment period was open from August 1, 2005 to August 31, 2005, to also solicit comments on the draft environmental assessment and draft economic analysis and to announce the dates, locations, and times of the public hearings (70 FR 44078). In addition, we published newspaper notices inviting public comment and announcing the public hearings in the following newspapers in New Mexico: Quay County Sun; Kansas: Dodge City Globe, Hutchinson News Herald, and Wichita Eagle Beacon; Oklahoma: Woodward News, The Daily Oklahoman, and Tulsa World; Texas: Amarillo Globe News and Lubbock Avalanche Journal. We held three public hearings on the proposed rule: Oklahoma City, Oklahoma (August 15, 2005); Amarillo, Texas (August 17, 2005); and Liberal, Kansas (August 18, 2005). Transcripts of these hearings are available for inspection (see **ADDRESSES** section). All comments and new information received during the two comment periods have been incorporated into this final rule as appropriate.

A total of 255 commenters responded during the two comment periods, including 11 Federal agencies (including elected officials), 7 State agencies, 11 private organizations, and 226 individuals. Several commenters individually submitted more than one set of comments. We received 5 comments after the close of the second comment period, but those comments were similar in nature to comments we had already received. During the comment period that opened on October 6, 2004, and closed on June 17, 2005, we received 26 comments directly addressing the proposed critical habitat designation: 2 from peer reviewers, 4 from Federal agencies, 3 from State agencies, and 5 from private organizations. Of the 26 parties responding to the proposal during the first comment period, 2 supported the proposed designation, 15 were opposed, and 9 provided additional information or otherwise expressed no position on the proposal. During the second comment period that opened on August 1, 2005, and closed on August 31, 2005, we received 235 comments directly addressing the proposed critical habitat designation, DEA, and draft environmental assessment. Of these latter comments, 8 were from a Federal agency, 7 from members of Congress, 7 from State agencies, 8 from private organizations, and 212 from individuals. Many of the comments (138) from private individuals were signed form letters. During the second comment period a total of 2 commenters supported the designation of critical habitat for the Arkansas River shiner and 71 opposed the designation. Many of those opposing the designation or not expressing a position did express support for excluding one or more of the proposed critical habitat units. We reviewed all comments for substantive information and new data regarding the Arkansas River shiner and its critical habitat. Comments have been grouped together by issue and are addressed in the following summary. All comments and information have been incorporated into the final rule as appropriate.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from at least three knowledgeable individuals who have expertise with the species, with the geographic region where the species occurs, and/or familiarity with the principles of conservation biology. Of the six individuals contacted, two responded. The peer reviewers who submitted comments generally supported the proposal and their comments are included in the summary below and incorporated into the final rule, as appropriate.

Peer Review Comments

(1) *Comment:* A peer reviewer at an academic institution who conducts research on a variety of fish species found our proposal to be extremely thorough and appropriate for an understanding of the needs of the Arkansas River shiner. He stated that the life history of the Arkansas River shiner dictates that long stretches of free-flowing water are critical Arkansas River shiner habitats.

Our Response: As noted by the peer reviewer, we have tried to be as thorough as possible, and have considered and applied every known

study describing the life history and habitat requirements of the species when determining critical habitat for the Arkansas River shiner.

(2) *Comment:* This peer reviewer found the argument for excluding the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas to be convincing and supported using these areas to establish experimental populations of the Arkansas River shiner.

Our Response: We agree that excluded areas still have the features that are essential for the Arkansas River shiner and we intend to utilize many recovery tools throughout the range of the species, including establishing experimental populations, as appropriate.

(3) *Comment:* Another peer reviewer at a different academic institution who has extensive experience with riverine systems in Kansas, New Mexico, and Oklahoma expressed concern regarding proposed exclusion of Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas. He stated that our position is based on the assumption that Arkansas River shiner populations in these two reaches are either so small that they cannot recover or that these populations are extirpated. In his opinion, these two reaches have not been sampled adequately for us to reach this conclusion. The recent capture of the Arkansas River shiner from the Cimarron River near Guthrie, Oklahoma is used as an example of our inability to conclude that the Arkansas River shiner has been extirpated from any particular reach.

Our Response: We agree that only a small percentage of either of these two reaches have been extensively searched for the Arkansas River shiner. We strive to base our listing decisions on the best scientific and commercial data available. Unfortunately, extensive survey data for both of these reaches were unavailable. We will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require such designation. Additionally, 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 mean that habitat outside the designation is unimportant or may not be required for recovery. Before initiating any efforts to establish experimental populations in these reaches, we intend, subject to available funding, to conduct more exhaustive surveys of both units.

We believe a major benefit of excluding areas from critical habitat designation is that landowners, local jurisdictions, and other entities involved in recovery efforts for the Arkansas River shiner will be more willing to work with us in a spirit of cooperation and partnership. A possible benefit of including critical habitat on such lands is education about the species and its habitat needs. We considered that this educational benefit has largely already been met by the public participation process, and therefore, that this would not be a particularly important benefit of critical habitat designation. We have concluded, therefore, that the benefits of excluding critical habitat from such lands exceed the value of including the lands as critical habitat. See additional discussion under ''Exclusion Under Section 4(b)(2) of the Act.''

(4) *Comment:* This peer reviewer, in his best professional judgment, suggested that restoring Arkansas River shiners in the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas would be extremely beneficial considering these repatriated populations would help ensure that multiple populations of the species persist. However, he expressed reservation that repatriation of the species was the only means to accomplish this objective. Instead both habitat restoration and repatriation might be necessary or habitat restoration alone would be sufficient should remnant populations still persist.

Our Response: We agree that restoration of Arkansas River shiner populations to additional portions of their historical range significantly reduces the likelihood of extinction and that some habitat restoration may also be necessary. A vital recovery component for this species will likely involve establishment of secure, self-sustaining populations in habitats from which the species has been extirpated. While we believe excluding historically occupied areas from the critical habitat designation could be detrimental to conservation of the species, we also believe negative public perceptions with respect to critical habitat could seriously hamper voluntary restoration efforts. Establishing experimental populations under section 10(j) of the Act appears to be the most appropriate tool to utilize in future restoration efforts. We believe the provisions of section 10(j) would help foster an atmosphere of cooperation that would encourage future voluntary conservation actions. Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from non-experimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species status elsewhere in its range. In situations where we have experimental populations, certain section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to endangered and threatened species may no longer apply, and a special rule can be developed that contains the prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes. Please see the ''Units 2 and 4'' discussion under the ''Exclusion Under Section 4(b)(2) of the Act'' section below for more detailed information on the section 10(j) regulation and process.

(5) *Comment:* This peer reviewer expressed concern that we proposed to exclude the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas and was unclear why reintroduction of the Arkansas River shiner could not occur in these units if they were designated as critical habitat. The importance of these units to the conservation of the species would seem to outweigh the benefit of not designating these reaches as critical habitat.

Our Response: We strongly believe that, in order to achieve recovery for the Arkansas River shiner, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of augmenting and reestablishing Arkansas River Shiner populations in the Beaver/North Canadian River and/or the Arkansas River. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not

essential to the continued existence of a species. In the case of the Arkansas River shiner, the flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat.

If, during the recovery planning process we determine a revision is warranted, we can amend critical habitat at that time. Provided such a revision is warranted, and funding available, we could propose revised critical habitat and consider any new information provided, both on additional areas to be considered in the revision as well as areas included in the current designation as essential (i.e., excluded and designated areas). Based on the best available science at this time, we determine that the areas designated by this rule are sufficient to conserve the species.

(6) *Comment:* This peer reviewer stated the proposal did a good job referencing the existing literature and outlining the factors limiting the existence of the Arkansas River shiner. However, he expressed concern that much was still unknown and management actions should proceed with caution. What was clear was the critical importance of habitats in the Arkansas and Beaver/North Canadian Rivers for recovery of the species.

Our Response: We have based this proposal on the best scientific and commercial data available but we agree that many details of Arkansas River shiner life history and habitat requirements are still unknown. Our intent is to implement conservation actions for the species in a manner consistent with the available information but which avoids or minimizes the risk to the species. We agree that these habitats are important for recovery of the species and intend to address appropriate conservation of these habitats during the recovery planning process. However, based on the current information, which indicates these two reaches are unoccupied, we have excluded these areas from the final critical habitat designation.

Comments Related to Previous Federal Actions, the Act, and Implementing Regulations

(7) *Comment:* Designating critical habitat prior to development of a recovery plan for the Arkansas River shiner is inappropriate. The public should be allowed to participate in developing a recovery plan for the species, which would be far more effective than designating critical habitat.

Our Response: We agree that, in an ideal situation, we would have a recovery plan in place for any species prior to designating its critical habitat. In that way, the public would have input into the recovery process, and enough would be known about the species to help determine what areas should be designated as critical habitat. However, the Act requires that critical habitat be designated concurrently with a species' listing or, in some circumstances, within one year of a final listing determination. Unfortunately, the Act does not allow for a delay in critical habitat designation until after a recovery plan is in place.

It is important to note that the recovery planning process, which will allow the involvement of affected individuals; local, state, and tribal governments; and others interested in conservation of the Arkansas River shiner, will result in development of specific recovery actions to be implemented on behalf of the species' conservation. Although implementation is not mandatory, the recovery plan provides a ''blueprint'' for achieving recovery and substantially influences how the species is managed under the Act. Thus, although critical habitat is usually designated prior to recovery plan development, its on-the-ground recovery implementation can be influenced by a final recovery plan.

(8) *Comment:* Critical habitat designation is not necessary and provides little conservation benefit or protection to the species.

Our Response: The Act under section 4(a)(3) requires that critical habitat be designated for species listed as threatened or endangered unless such designation would not be prudent. We believe such designation would be prudent for the Arkansas River shiner. Critical habitat designation is only one facet of species conservation. The protections afforded listed species under sections 7 and 9 are substantial, and a critical habitat designation usually adds only marginal protections above those already afforded listed species. Partnerships with individual landowners and a variety of stakeholders can provide a much greater conservation benefit for listed species, as they offer positive management actions that cannot be achieved through a critical habitat designation. We agree that designation of critical habitat often provides little or no additional benefit to species conservation (see ''Designation of Critical Habitat Provides Little Additional Protection to Species'').

(9) *Comment:* The Service has underestimated the degree to which federal actions will trigger section 7 consultation for actions that occur within or near critical habitat.

Our Response: We disagree. As described in the ''Section 7 Consultation'' section below, consultation would occur when the action agency determines that activities they sponsor, fund, or authorize may affect federally listed species or are likely to destroy or adversely modify their critical habitat. The threshold for triggering section 7 consultation is clear. During the informal section 7 consultation process, we will assist Federal agencies in making a determination if their action is likely to affect critical habitat. However, the Federal Action Agency has the responsibility to make that determination, not us.

(10) *Comment:* The comment period for the NEPA document and economic analysis were inadequate to allow the public to understand and comment meaningfully and should be extended.

Our Response: The notice of availability for the NEPA document and economic analysis published August 1, 2005. We accepted comments on these two documents, in addition to the proposed rule, for 30 days ending on August 31, 2005. We believe this public comment period provided adequate opportunity for public comment. In addition, due to the large scope of this rule and in order to comply with our September 30, 2005, court ordered date for completion of the final rule it would not have been possible to extend the comment period beyond August 31, 2005.

Comments Related to Critical Habitat, Primary Constituent Elements, and Methodology

(11) *Comment:* The 300-foot lateral extent or ''buffer zone'' is excessive and unnecessary.

Our Response: Critical habitat includes the area of bankfull width plus 300 feet on either side of the banks. This is not for the purpose of creating a ''buffer zone.'' Rather, it defines the lateral extent of those areas we believe contain the features that are essential to the species' conservation. Although the Arkansas River shiner cannot be found in the riparian areas when they are dry, these areas are sometimes flooded and provide habitat during high-water periods. In addition, the riparian vegetation within these lateral areas

provides seeds and insects eaten by Arkansas River shiners, and thus contains a primary constituent element of critical habitat.

The riparian zone also provides an array of important watershed functions that directly benefit plains fishes. Vegetation in the corridor shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to aquatic life. Conversely, human activities in the riparian zone can harm stream function and fishes by directly and indirectly interfering with these important functions. Because the riparian corridor is particularly susceptible to degradation, we concluded that the adjacent riparian corridor would require special management consideration and therefore was appropriate for inclusion in critical habitat.

Comments Related to Site-Specific Areas

The following comments and responses involve issues related to the inclusion or exclusion of specific stream reaches or our methods for selecting appropriate areas for designation as critical habitat.

(12) *Comment:* Several commenters expressed support for exclusion of various units or portions of those units. One supported exclusion of the City of Wichita from Unit 4, four supported exclusion of the entirety of Unit 4, four supported exclusion of Units 2 and 4, and 141 supported exclusion of Unit 2 alone. Others (15) expressed support for exclusion of all or a portion of Unit 1a, including the segment within the upper reaches of Lake Meredith.

Our Response: Areas in Unit 1a, Unit 2, and Unit 4 are excluded from critical habitat (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion).

(13) *Comment:* Several commenters expressed support for exclusion of Units 1b and 3 or exclusion of all of the units from the designation.

Our Response: All proposed areas in Unit 1b and Unit 3, with the exception of a 204 km (127 mi) long reach of Unit 1b, were not excluded from critical habitat (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). Units 1b and 3 contain all of the primary constituent elements and require special management. We cited streamflow alteration, introductions of nonnative species and water quality degradation as some of the threats in those areas that require special management considerations.

(14) *Comment:* Several commenters expressed concern regarding the designation of Unit 3. One stated the Cimarron River does not support a viable population, two stated the unit is unoccupied by the Arkansas River shiner, four stated the portion of Unit 3 in Kansas is unoccupied, and five stated the Cimarron River does not support the primary constituent elements.

Our Response: The Cimarron River is included in the designation because it contains all of the primary constituent elements and is occupied by the species. As stated in this final rule, 16 specimens of the Arkansas River shiner were reported captured from the Cimarron River between 1985 and 1992. In August of 2004, eight Arkansas River shiners were collected near Guthrie, Oklahoma, by SWCA Environmental Consultants (Stuart Leon, U.S. Fish and Wildlife Service, in litt. 2004). While this population is undoubtedly small and is by no means secure, it continues to persist over time. Because the Arkansas River shiner has a maximum life span of about 3 years, with the majority not surviving past two years of age, it is doubtful that the species would continue to be collected if a small population did not persist. We cannot reasonably conclude the species is extirpated from any portion of the Cimarron River unit based on the continued, although infrequent, observation of the Arkansas River shiner. Failure to record Arkansas River shiner from specific locations in the past several years is generally indicative of low population levels but does not necessarily support a declaration of extirpation from the entire stream. Documentation of small populations is very difficult and often results in false declarations of extirpation (Mayden and Kuhajda 1996). At the least, this illustrates the need for caution in concluding that a population has been extirpated. Fish, particularly small species, are often very difficult to locate when population levels are very low.

We agree that the Cimarron River and many of the other rivers and streams historically occupied by the Arkansas River shiner have portions that dry either seasonally, during drought conditions, or for other natural reasons. This species is adapted to this phenomenon and often persists in isolated pools and tributary refugia only to recolonize these dewatered areas once flow resumes. If sufficient areas of flow persist, and if all other habitat requirements are met, the stream is suitable for the species whether or not there is flow throughout all areas at all times. Consequently, the absence of the Arkansas River shiner from an area during certain periods or under certain conditions does not necessarily demonstrate that they are not present at other times. As long as a permanent barrier does not exist, Arkansas River shiners move fairly long distances within these streams.

Comments Related to National Environmental Policy Act (NEPA) Compliance

(15) *Comment:* An Environmental Assessment (EA) is not adequate for an action of this magnitude; instead an Environmental Impact Statement (EIS) is required.

Our Response: Our EA considered a no-action alternative and several action alternatives and discussed the adverse and beneficial environmental impacts of each. We determined through the EA that the overall environmental effects of this action are insignificant. An EIS is required only if we find that the proposed action is expected to have a significant impact on the human environment. Based on our analysis and comments received from the public, we prepared a final EA and made a Finding of No Significant Impact (FONSI), negating the need for preparation of an EIS. We believe our EA was consistent with the spirit and intent of NEPA. The final EA, FONSI, and final economic analysis provide our rationale for determining that critical habitat designation would not have a significant effect on the human environment. Those documents are available for public review (see **ADDRESSES** section).

Comments Related to Section 7 Consultation

(16) *Comment:* Consultation will result in project-related delays.

Our *Response:* As described in the ''Section 7 Consultation'' section below, consultation would occur when the action agency determines that activities they permit, fund, authorize, or undertake may affect federally listed species or destroy or adversely modify their critical habitat. The designation of critical habitat only affects these activities. Absent Federal permitting, funding, or authorization, critical habitat designation on private (non-Federal) lands would not obligate or trigger any consultation requirement for private (non-Federal) actions on private land.

Section 3 of the draft economic analysis addressed the administrative costs associated with section 7 consultation. The duration and complexity of any particular section 7

consultation can be influenced by a number of factors and may require substantial administrative effort on the part of all participants. Generally most delays related to project implementation can be avoided or minimized if consultation is initiated early during the project planning process. The Act specifies timeframes under which consultations are to be completed and we strive to meet those timeframes.

Comments Related to Biological Concerns

The following comments and responses involve issues related to the biological basis for the designation and status of the Arkansas River shiner.

(17) *Comment:* The Arkansas River shiner does not require the protection of the Act.

Our Response: The Arkansas River Basin population of the Arkansas River shiner was listed as threatened in 1998. Additional information on the biology and status of this species and our rationale for the listing can be found in the November 23, 1998, final listing determination (63 FR 64772).

(18) *Comment:* Current soil conservation practices keep runoff from entering the river and such measures would likely preclude existence of Arkansas River shiner habitat.

Our Response: Some soil conservation practices, such as terracing, are very effective at reducing run-off and may contribute to overall declines in peak discharge during rainfall events. However many conservation practices, such as construction of terraces, shelterbelts, grassed waterways, and certain vegetative plantings, are specifically designed to minimize soil erosion and control sedimentation. Without these practices in place, soil erosion and ensuing increased siltation would likely occur in rivers and streams of the Arkansas River basin. We do not believe that construction of terraces, shelterbelts, grassed waterways, and other vegetative plantings for conservation are likely to significantly impact habitat or threaten survival of the Arkansas River shiner.

(19) *Comment:* Grazing by livestock will not have an adverse impact on the Arkansas River shiner, at least no more significant than grazing by other ungulates such as deer or bison.

Our Response: As stated in the final listing determination (63 FR 64772), we believe well-managed, free-range livestock grazing is compatible with viable Arkansas River shiner populations and will not cause significant degradation of the riparian zone. In fact, low to moderate grazing and seasonal or rotational grazing practices are compatible with many natural resource objectives.

(20) *Comment:* The Arkansas River shiner has no lasting value and should be allowed to become extinct.

Our Response: Congress, in section 2 of the Act (Findings, Purposes, and Policy), found that numerous species of fish, wildlife, and plants had become extinct or were in danger of, or, threatened with, extinction due to a lack of concern for their conservation. Furthermore, Congress found that these species of fish, wildlife, and plants are intrinsically valuable to the nation and its people for reasons of aesthetic, ecological, educational, historical, recreational, and scientific value (section 2(a)(3)). These findings are the basis of the Act.

A variety of opinions likely exist as to a particular species' contribution to society. We believe that conserving all species of wildlife has a positive effect on society. Society, like the Arkansas River shiner, depends upon reliable supplies of clean water. Conserving water resources will help to provide a necessary resource for future generations of people and maintain a healthy aquatic ecosystem for fish and wildlife. As the health of ecosystems declines, the number of species inhabiting those systems decline. In general, the presence of rare and declining species is very often a good indicator of failing ecosystem health. It would be contrary to the Act and our mission to allow the Arkansas River shiner to become extinct without undertaking all reasonable conservation actions.

(21) *Comment:* The Arkansas River shiner and Red River shiner (Notropis bairdi) are not distinct species.

Our Response: We disagree. While the morphological characteristics, life history, and phylogeny of the two fishes are similar, all of the published scientific literature concludes the two fishes are separate and taxonomically distinct. For example, the scholarly publications on the fishes of Oklahoma (Miller and Robison 1973), Arkansas (Robison and Buchanan 1988), and Kansas (Cross 1967) all show the two fishes to be distinct species. Other scientific publications such as Felley and Cothran (1981), Marshall (1978), Cross *et al.* (1983), and Gilbert (1980) also consider these fishes to be separate, distinct taxa. Hubbs and Ortenburger (1929) provided the first description of both the Arkansas River shiner and the Red River shiner. They considered both to be separate and taxonomically distinct. Most recently, Mayden (1989) thoroughly examined the phylogenetic relationships of all North American minnows. He concluded that the two species are valid and distinct. We are not aware of any studies, scholarly or otherwise, which suggest these two species are not separate and taxonomically distinct.

(22) *Comment:* Several commenters provided additional information or confirmed the existence of numerous threats to the Arkansas River shiner including: impoundments, predation, introduction of Red River shiner, water quality degradation, and declining stream flows.

Our Response: We agree that these and other threats have influenced the distribution and abundance of the Arkansas River shiner. Please refer to information in this rule or refer to the ''Summary of Factors Affecting the Species'' section of our final listing determination (63 FR 64772).

Comments Related to the Effects of Designation

The following comments and responses involve issues related to the effects of critical habitat designation on land management or other activities.

(23) *Comment:* We received many comments from individuals expressing their concern that critical habitat designation will infringe on their rights as private property owners and that the designation could result in a reduction in their property's value.

Our Response: Only activities taking place on private property having some sort of Federal nexus (*e.g.*, Federal funding, permitting, authorization) could potentially be affected. Our experience has shown that the majority of such activities have rarely triggered formal section 7 consultation. Please see our economic analysis for further information about economic effects of this designation.

(24) *Comment:* Numerous commenters expressed concern that the designation of critical habitat will restrict access to the affected areas, impose land use restrictions, force fencing of the riparian zone, further regulate the oil and gas industry, or restrict off-road and recreational vehicle use.

Our Response: Individuals, organizations, States, local and tribal governments, and other non-Federal entities could potentially be affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding and the action has the potential to affect the species or its critical habitat. In this instance, Federal agencies are required to enter into section 7 consultation with us. Effects of

the designation on projects with a Federal nexus are explained in the ''Effect of Critical Habitat Designation'' section. Designation of critical habitat does not prescribe specific management actions but does serve to identify areas that are in need of special management considerations.

(25) *Comment:* Off-road vehicle (ORV) use is not affecting the Arkansas River shiner.

Our Response: Specific information on this issue is lacking, however it is possible that heavy recreation use may adversely impact the stream and habitat for the Arkansas River shiner, particularly during periods of low flow. Recreational activities involving a Federal nexus are rare within any of the units and occur primarily within Unit 1a. The entirety of Unit 1a, including the Rosita ORV area, has been excluded from the final critical habitat designation, thus should not be influenced by the designation of critical habitat. However, the National Park Service is contemplating restrictions within the Rosita ORV area to prevent potential adverse impacts to the Arkansas River shiner under the jeopardy standard. The primary adverse impacts involve use of the river channel during the spawning season and during summertime low-flow periods when fish are concentrated in isolated pools. The Rosita ORV area is considered to be occupied by the Arkansas River shiner; therefore, this restriction is being considered regardless of the critical habitat designation.

(26) *Comment:* The designation of critical habitat will result in control of, or ''taking'' of, private property in violation of the rights granted under the Fifth and Tenth Amendments to the U.S. Constitution.

Our Response: The mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land (*Agins* v. *City of Tiburon*, 447 U.S. 255, 260–263 (1980); *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264, 195 (1981); *Lucas* v. *South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992)). The Act does not automatically restrict all uses of critical habitat, but only imposes requirements under section 7(a)(2) on Federal agency actions that may result in destruction or adverse modification of designated critical habitat. This requirement does not apply to private actions that do not need Federal approvals, permits, or funding. Furthermore, as discussed above, if a biological opinion concludes that a proposed action is likely to result in destruction or modification of critical habitat, we are required to suggest reasonable and prudent alternatives. In accordance with Executive Order 12630, we conclude that this designation does not have significant takings implications (see ''Required Determinations'' section below).

Comments Related to Recovery

The following comments and responses involve issues related to recovery and recovery planning for the Arkansas River shiner. Although not relevant to the designation of critical habitat, we chose to address some of the comments related to this issue.

(27) *Comment:* Some comments expressed concern regarding implementation of unfavorable recovery actions or noted that the details, costs, and recovery goals of the recovery program have not been provided. Others mentioned specific tasks, such as further research, captive propagation, control of salt cedar (*Tamarix* spp.), stream flow restoration, control of nonnative fishes, and restoration of the Arkansas River shiner to unoccupied habitat, which we might implement during recovery.

Our Response: On July 1, 1994, the Secretaries of the Interior and Commerce set forth an interagency policy to minimize social and economic impacts of the Act consistent with timely recovery of listed species (59 FR 34272). Consistent with this policy, we intend to work closely with stakeholders throughout the Arkansas River basin regarding development of recovery actions for the Arkansas River shiner and will strive to balance implementation of those recovery actions with social and economic concerns.

The ultimate purpose of listing a species as threatened or endangered under the Act is to recover the species to the point at which it no longer needs the Act's protections. The Act mandates the conservation of listed species through different mechanisms. Section 4(f) of the Act authorizes us to develop and implement recovery plans for listed species. A recovery plan delineates reasonable actions which are believed to be required to recover and delist the species, and which may include measures specifically mentioned during the comment period. Recovery plans do not, of themselves, commit personnel or funds nor obligate an agency, entity, or person to implement the various tasks listed in the plan. Recovery plans serve to bring together Federal, State, and private stakeholders in the development and implementation of conservation actions for the species, by providing a framework to identify site specific management actions necessary to achieve conservation and survival of the species, set recovery priorities, and estimate costs of various tasks necessary to accomplish the goals of the plan. One of the main emphases of recovery plans is to address threats affecting the survival of the species and to remove or minimize their influence. However, we have no intention of restoring these ecosystems to pristine conditions.

In the ''Available Conservation Measures'' section of the final listing determination, we listed four general conservation measures that could be implemented to help conserve the Arkansas River shiner. While this list does not constitute the entire scope of a recovery plan as discussed in the provisions of section 4(f) of the Act, it does provide an indication of measures we intend to investigate during preparation of a recovery plan.

Future conservation and recovery of the shiner will emphasize remaining aggregations and habitats in the Canadian, Cimarron, and Beaver\North Canadian Rivers. We also intend to address the implications of groundwater withdrawals and diversions of surface water during the recovery process. Generally, we will support and encourage the States in their efforts to increase irrigation efficiency and improve conservation of groundwater sources in the High Plains. Conservation of the High Plains aquifer, and the resulting benefits to streamflow within the Arkansas River basin, will not occur without the participation of the States. We believe voluntary conservation of the groundwater resource will be more effective in recovery efforts for the Arkansas River shiner than restricting or otherwise regulating withdrawals.

Introductions of non-indigenous species, such as the Red River shiner, will be closely monitored. Where needed, we will develop and implement measures to minimize or eliminate the accidental or intentional release of these species. Studies will be initiated to determine the feasibility of, and techniques for, eradicating or controlling Red River shiners in the Cimarron River. If control or eradication is feasible, a control program will likely be implemented.

We have already begun steps to evaluate and study captive propagation of the Arkansas River shiner using the non-native Pecos River population. And we have begun participating in a joint effort to investigate the feasibility of controlling salt cedar as a means of enhancing stream flow in western portions of the basin. The State of Texas

has also initiated similar efforts in the Canadian River. We believe such efforts will be beneficial to recovery of the species.

At the time of final listing, we prepared a recovery outline for the shiner and have begun to implement some preliminary recovery tasks identified in the outline. Recovery outlines are brief internal planning documents that are prepared within 60 days after the date of publication of the final rule. These documents are intended to direct recovery efforts pending completion of the recovery plan. We have not, to this point, completed or even begun drafting a recovery plan. Considering the first two sections of a recovery plan present information on the biology, life history, and threats to the species, the final listing determination and this document will be used in the preparation of these sections. As such, much of the work required to draft a recovery plan has been completed. However, an implementation schedule, which details estimates of the time required to complete identified tasks and costs to carry out those measures needed to achieve the plan's goal is far from complete. We hope to utilize the expertise of the many stakeholders in the completion of this section of the plan. Once a recovery plan for the Arkansas River shiner has been developed, the plan will be available for public review and comment prior to adoption.

Comments Related to Economic Impacts and Analysis—General Comments on Methodology

(28) *Comment:* A comment offers that the Draft Economic Analysis (DEA) should present results at a more disaggregated spatial level than watersheds to facilitate land exclusions by the Secretary of the Interior. The aggregated level at which impacts are presented fails to pinpoint specific areas of high economic impact.

Our Response: We believe that the level of resolution of impact estimates presented in the DEA is appropriate for this rulemaking. The Service identified five critical habitat units, which are subdivided into 18 watersheds. The watershed level is an appropriate geographic boundary for disaggregating economic impacts associated with protecting aquatic species, because it provides important information about the linkage between upstream economic activities and downstream impacts. As described in Appendix C, the DEA uses the smallest delineation of a watershed provided consistently across all States by the U.S. Geological Survey (i.e., watersheds named using an eight-digit hydrologic unit code, or ''HUC''). In addition, the eight-digit HUC is currently used by U.S. Environmental Protection Agency (EPA) and the Service as it considers which Concentrated Animal Feeding Operations (CAFOs) will be required to take additional action to protect the shiner. The State of Oklahoma has mapped smaller watersheds, naming them using 11-digit HUCs. If the analysis were to subdivide shiner habitat by 11-digit HUCs in Oklahoma, the analysis would mistakenly exclude impacts to CAFOs in 11-digit HUCs that do not intersect habitat. This erroneous exclusion of potential costs would also occur if some other, smaller geographic boundaries such as census tracts, were used. Finally, economic activity within this habitat is relatively homogenous, and much of the data used to project future economic activity is not detailed enough to allow for further, meaningful disaggregation. As a result, presentation of costs at a more disaggregated spatial level is unlikely to pinpoint smaller areas bearing disproportionate costs.

(29) *Comment:* One comment states that most oil and gas operators are not familiar with references to watersheds provided in Exhibits 5–1 and 5–2, and a list or map of counties associated with each watershed would be helpful to clarify what areas are included and which wells are encompassed.

Our Response: The information requested is available in Exhibit ES–2 of the DEA, which provides a map overlaying the watersheds on county and State boundaries in addition to the names of each.

(30) *Comment:* One commenter stated that that the DEA neglects to consider the role of risk and uncertainty about future impacts. Because future scenarios are difficult to predict, the commenter asserts that the DEA should acknowledge the effect of altering assumptions.

Our Response: The DEA provides extensive discussion of the likelihood and uncertainty about future impacts and the bias associated with key assumptions. For example, discussion of factors influencing the frequency and impact of administrative efforts is discussed in paragraph 107. The potential for impacts at Lake Meredith, other Canadian River Municipal Water Authority (CRMWA) projects, and Ute Dam, and uncertainty surrounding the quantification of costs, is discussed in paragraphs 119, 121, and 126 through 128. Key assumptions, probability of impact, and areas of uncertainty in the estimation of impacts to the oil and gas industry are discussed in paragraphs 148 through 149, 152 through 157, 162, 165, 171, 175, and 178. The likelihood and uncertainty about future impacts to CAFOs, and the effect of key assumptions are discussed in paragraphs 181, 190 through 193, and 196 through 199. The effect of major assumptions and areas of uncertainty in estimating other agricultural impacts are described in paragraphs 202 through 203, 207 through 209, 212 through 213, 217, 222, 227, 229, 233, 235 through 236, 240, 244 through 247, and 252 through 253. In the analysis of transportation-related impacts, paragraph 255 provides information about the uncertainty associated with estimated impacts. Issues related to the estimation of impacts to recreators are discussed in paragraphs 273, 275, 278, and 279. Paragraphs 283 through 285 describe the uncertainty associated with predicting impacts to utility projects. Uncertainty regarding other types of effects, such as impacts to exotic plant control, wildlife management areas, real estate development activities, and the development of management plans is discussed in paragraphs 286 through 287, 293, 295, and 297 through 298.

(31) *Comment:* One comment states that the annualizing of total cost in the CAFO section of the DEA is not consistent with the annualization method applied in other sections of the DEA.

Our Response: We disagree. The DEA uses a consistent method to calculate annualized costs for each category of impact, as described in note (a) of Exhibit ES–4b and ES–4c.

(32) *Comment:* A comment notes that in estimating the impact to row cropping activities, the DEA considers two alternate scenarios. The projected total costs for row-cropping are presented as the sum of the two scenarios, while it's more likely that either one or the other will occur.

Our Response: We provide the following clarification. Paragraph 15 notes: ''The analysis assumes that farmers may discontinue participation in Federal farm assistance programs and retire cropland/pastureland in proposed habitat from productive economic activity, but that a choice of one option or the other is more likely.'' In Exhibits ES–4a through ES–4c, the total lower bound impact estimate assumes neither of these scenarios takes place, while the high-end impact estimate assumes that they both occur. It is likely that the actual level of impact that occurs equals an amount between these two estimates, consistent with the statement in paragraph 15.

We acknowledge that the text in paragraph 15 of the Executive Summary

is incorrect, specifically under the fifth bullet point in which the DEA states: ''Therefore, the analysis does not sum costs of agricultural land retirement and non-participation in Federal farm programs.'' In fact, as stated above, the DEA does sum the costs of agricultural land retirement and non-participation in Federal farm programs for the high-end impact estimate in Exhibits ES–4a through ES–4c.

(33) *Comment:* One comment on the DEA states that the impact to water supplies and wastewater treatment in communities along these rivers is not completely addressed. The additional cost of upgrading wastewater treatment is $1,000,000 per 1,000 people. It lists 40 communities in Units 1b and 3 that would be directly impacted.

Our Response: Impacts of water management activities at dams are estimated in Section 4 of the DEA. Impacts of potential reductions in groundwater withdrawals are estimated in Section 7. The DEA estimates the impacts of wastewater management associated with CAFOs in Section 6. The impacts to small entities associated with regulating water supplies and wastewater treatment is estimated separately in Appendix A.

In addition, paragraph 282 of the DEA explains that since the shiner's listing, 77 utility-related consultations, which include projects related to wastewater treatment facility management and construction and construction of water and transmission lines, have occurred. Only eight of the consultations resulted in project modifications. Interviews with a regional engineering firm typically involved with such projects revealed that the costs associated with the project modifications were comparable to costs for the originally-designed project. Paragraphs 283 through 285 forecast the rate of future consultations for utility projects, discuss the uncertainty associated with predicting future costs for large projects, and provide a case study of potential costs for the Norman, Oklahoma Wastewater Treatment Division. This represents the best available information at this time.

(34) *Comment:* One commenter stated that the assumption that the impact to CAFO operations would be passed on to the consumer is incorrect, because cattle owners don't price the cattle but take whatever they can get for them.

Our Response: We agree with this comment. The DEA does not assume that costs are passed on to the consumer. It assumes that compliance costs are borne entirely by the CAFO operators.

(35) *Comment:* A comment states that critical habitat designation has a negative impact on the value of properties within the boundaries of the designation, regardless of whether any future regulatory action is taken by the Service in connection with the activities on those properties.

Our Response: As stated in paragraph 40 of the DEA, we agree that critical habitat designation may stigmatize properties, resulting in a decrease in property value. However, empirical data measuring the difference in property values before and after critical habitat designation in this region are not available.

Comments Related to Economic Impacts and Analysis—Clarification of Costs Attributed to Particular Consultations Or Actions

(36) *Comment:* A comment states that the DEA projects a formal consultation if the CRMWA expands its wellfield but does not make clear the costs associated with this potential consultation.

Our Response: As shown in Exhibit 3–5, the analysis assumes that the Bureau of Reclamation will undergo a formal section 7 consultation on the potential development of its wellfields. The range of administrative costs of a typical section 7 consultation are presented in Exhibit 3–1 and are applied to this project. Paragraph 120 provides information about the general costs of the wellfield project. It also notes that data to estimate the incremental cost of pipeline placement related to shiner protection were requested but not received.

(37) *Comment:* A comment notes that costs associated with consultations for brush control are not clear.

Our Response: Exotic plant control activities are discussed in Section 9.3 of the DEA; associated administrative costs are discussed in Section 3 of the report at paragraph 103 and Exhibit 3–5. Formal consultation on exotic plant control activities in Texas is anticipated. As shown in Exhibit 3–5, the costs of these consultations between the National Resources Conservation Service (NRCS) and the Service are included in future administrative costs related to shiner conservation activities and spread across all watersheds in Texas that contain shiner habitat. As stated in paragraph 286, the DEA does not estimate project modification costs associated with exotic plant control for two reasons: (1) these activities are generally not undertaken specifically for the shiner; and (2) because exotic plant control generally benefits the species, shiner-specific project modifications are typically not required by the Service. Therefore, the DEA limits future impacts to exotic plant control activities to administrative costs only.

(38) *Comment:* One comment states that the economic impact analysis references the potential for stormwater discharge permits to trigger consultation with the Service on every proposed oil and gas location. The comment requests clarification of if or how this information was used in the cost impact analysis.

Our Response: As described in paragraph 148, the DEA assumes a greater number of oil and gas development wells will be subject to consultation under the new National Pollutant Discharge Elimination System (NPDES) permit regulations. Project modification costs associated with oil and gas well development activities are estimated in Section 5 of the DEA and summarized in paragraph 162. Administrative costs of consultation associated with oil and gas well development activities are estimated in Section 3 of the DEA and summarized in paragraph 106 and Exhibit 3–9.

(39) *Comment:* A comment letter requested that the DEA explain what is included in the annualized costs presented in Exhibits 5–1 and 5–2.

Our Response: Exhibits 5–1 and 5–2 summarize impacts to oil and gas well development and pipeline activity that are explained in greater detail later in Section 5 of the DEA. Detailed information about the number of projects affected, potential types of project modifications, and associated costs are presented in paragraphs 143 through 157, 161 through 171, and 174 through 178.

(40) *Comment:* Several comments state that the DEA does not clearly identify and outline assumptions, uncertainties, scenarios considered, and best management practices required along with the cost for each requirement used in the cost impact scenarios in the analysis of impacts to the oil and gas industry. They suggest that the DEA clarify in Exhibits 5–4, 5–6, 5–8, 5–9, and 5–11 the cost associated with the highlighted project modifications and which modifications were used in the cost impact analysis.

Our Response: Key assumptions, probability of impact, and areas of uncertainty in the estimation of impacts to the oil and gas industry are discussed in paragraphs 148 through 149, 152 through 157, 162, 165, 171, 175, and 178. However, for clarification:

The project modifications described qualitatively in Exhibit 5–4 summarize available historical information about the types of project modifications requested of oil and gas drilling projects

by the Service's Ecological Services Field Office in Tulsa, Oklahoma. Based on conversations with the Service and review of information provided by the Department of Energy (DOE), costs associated with the modifications that are most likely to be required—directional drilling and erosion control measures—are provided in Exhibit 5–5. Exhibit 5–6 summarizes the results of the analysis applying project modification costs provided in Exhibit 5–5 to past oil and gas well development consultations that considered the shiner. Exhibit 5–8 applies these same costs (Exhibit 5–5) to forecasted oil and gas well development in shiner habitat, signified by the column labeled ''Total Potential Wells in CHD (critical habitat designation) (20 years).'' Note that based on new information provided in public comment, the unit cost estimates provided in Exhibit 5–5 have been revised and impacts to this industry are recalculated. These revised estimates flow through Exhibits 5–6 and 5–8 in the final economic analysis.

Exhibit 5–9 provides historical information about the types of project modification requested in Oklahoma for oil and gas pipeline construction and maintenance activities. Exhibit 5–10 provides the unit cost estimates for cost of the project modifications most likely to be requested for future projects. Exhibit 5–11 summarizes the results of the analysis applying pipeline project modification costs of approximately $17,000 to $22,000 as provided in Exhibit 5–10 to past pipeline consultations.

(41) *Comment:* One comment states that based on Exhibit 5–10, it does not appear that consideration was given to consultation costs, clearance under the Act, installation of best management practices, loss of a project, project delays, and the delay of production to market for pipeline projects.

Our Response: Consultation costs and clearance under the Act for pipeline activity are captured in Section 3 of the DEA. No information was provided during industry interviews or in public comment about shiner-related best-management practices (BMPs) on pipeline projects aside from the setback requirement described in Exhibit 5–10. Lacking data, we are unable to estimate costs associated with delay at this time.

(42) *Comment:* One commenter requested the DEA clarify what BMPs for oil and gas drilling include and what the associated costs are. In addition, the comment asserts the DEA cost estimate for soil erosion is low and that implementing basic BMPs may cost $3,500 per day for one to two days, and could be greater depending on location.

Our Response: We acknowledge that Exhibit 5–5 might be confusing to the commenter, because it suggests that BMPs other than soil erosion control have been considered in the cost analysis. In fact, the BMPs included in the cost analysis of potential project modification costs for oil and gas well development activities are limited to soil erosion control. We appreciate the submission by the commenter of more accurate data for soil erosion costs, and have incorporated this information into our revised impact estimates.

(43) *Comment:* One commenter stated that the Service needs to examine the economic impact to an individual grower within the proposed critical habitat designation.

Our Response: Underlying all of the impacts measured in the DEA are individual impacts to farmers. In particular, paragraphs 302 through 308 and 318 through 323 provide some information about the financial resources of small farmers and potential impacts to these entities. However, the scope of this analysis does not allow for complete disaggregation of impacts to every farming entity.

Comments Related to Economic Impacts and Analysis—Potential Impacts on Groundwater Withdrawals

(44) *Comment:* Several comments expressed concern that while the DEA provides some information on the value of groundwater in shiner habitat, it excludes the potential economic impact of restricting groundwater withdrawals from the analysis. One comment states that these impacts are excluded on the grounds that there is no Federal nexus for groundwater pumping by private entities, and it would be difficult for the Service to assert that individual users were violating the Act's ''take'' prohibitions. The comment notes that, in the future, it is possible for groundwater withdrawals to be subject to consultation due, for example, to new or revised NPDES permits or other Federal programs, as well as other regulatory actions to curtail groundwater withdrawals for the benefit of the shiner.

Our Response: The DEA acknowledges in paragraphs 208 and 245 the significant role groundwater plays in the economies of counties that contain shiner habitat, and the possibility that groundwater pumping may be limited where pumping leads to dewatering of streams. However, the DEA does not base the treatment of potential impacts to groundwater solely on the absence of a Federal nexus and the difficulty in attributing ''take'' on an individual groundwater pumper. Instead, the DEA also recognizes in paragraph 246 that data required to conduct such an analysis are not available. These data are: the conjunctive characteristics of surface and groundwater; the level of pumping that would allow for recovery of historic groundwater levels; and the geographic area within which users would be required to reduce pumping. Additional data that would be necessary to complete this type of analysis and that are currently unavailable include a minimum streamflow for the shiner, information on groundwater use patterns of all impacted groundwater users, and the specific quantities of water that would need to be withheld from each water user in order to reach the minimum streamflow. Overall, the hydrologic relationships between groundwater pumping and the quality of habitat for the shiner are not defined, which precludes the analysis from considering how much, if any, reduction in groundwater pumping would be required to protect the species or its habitat.

Due to limitations in data availability, the DEA utilizes available data and simplifying assumptions to bound the potential magnitude of impacts to groundwater pumping from shiner conservation activities. Paragraph 247 discusses the methodology and data used in order to estimate the total value of groundwater to potentially affected users. The resulting implied values of groundwater presented in Exhibit 7–21 serve as an upper-bound estimate of potential impacts to groundwater users for the scenario in which users halt pumping altogether and convert irrigated land to non-irrigated uses. These implied values, are not, however, included in the aggregate cost estimates presented in the Executive Summary of the report given the highly speculative nature of the vehicles through which groundwater users may be impacted and the significant uncertainty regarding the potential magnitude of pumping restrictions discussed in the previous paragraph.

(45) *Comment:* A comment provided states that, in calculating the value of groundwater resources, the DEA considers only crop irrigation and not its use in other industries and for residential consumption.

Our Response: In determining the most likely uses of groundwater in the counties that contain shiner habitat, the DEA relies on information contained within Exhibits 2–7 through 2–10. With the exception of Exhibit 2–9, which summarizes water use in Texas counties

that contain shiner habitat for both surface and groundwater combined, the exhibits demonstrate that groundwater is used predominantly for irrigation in Kansas, Oklahoma, and New Mexico. Further, Exhibit 7–19 demonstrates that in these counties, the overwhelming majority of irrigation water in counties that contain shiner habitat and overlay the High Plains Aquifer is drawn from groundwater sources. Given these data, and the predominantly rural, agricultural nature of the region that contains shiner habitat, the analysis limits the valuation of groundwater to its value as capitalized into the value of agricultural lands. To the extent that industrial or residential consumption in cities is affected, this analysis may understate the value of groundwater to these users.

(46) *Comment:* One commenter expressed concern that the rule will affect not only agricultural operations, but also water rights and water use patterns similar to the controversies regarding the Rio Grande silvery minnow and the aquatic species in the Klamath River Basin in Oregon and California.

Our Response: The DEA does not consider the need for water diverters to reduce groundwater and/or surface water use, due to uncertainty regarding the likelihood of such restrictions and data limitations. Estimating these potential impacts requires information on minimum streamflow required to maintain shiner habitat, as well as hydrological data on current and future streamflow, water consumption patterns for specific users; and conjunctive use hydrological data linking specific water users to streamflow in shiner habitat. These data and information on requirements are currently unavailable.

Comments Related to Economic Impacts and Analysis—Estimation of Potential Impacts to CAFOs

(47) *Comment:* One comment noted that the DEA assumes that each CAFO within proposed critical habitat will be required to implement general permit conditions required by the Service but does not consider the impact of more stringent regulatory requirements.

Our Response: As described in paragraphs 189 and 191, all CAFOs are assumed to implement the requirements described in Exhibit 6–3, which are applied in addition to the general permit requirements. In other words, the requirements in Exhibit 6–3 represent measures designed to protect shiner habitat that are more stringent than what is required by the general permit. The analysis applies these requirements to all States and all CAFOs, regardless of the location of the CAFO within the watershed.

(48) *Comment:* Two organizations comment that the DEA considers only costs of project modifications to CAFOs but not the possibility of production effects and/or regional impacts associated with lost revenues and jobs. For example, if acreage devoted to a vegetative buffer is taken out of production, then the requirements would reduce the total CAFO sales revenue and create regional economic impacts. The potential loss of output and accompanying distributional economic impacts should be included in the DEA and have the potential to double or triple impact estimates.

Our Response: To the extent that CAFOs may have to cease or alter operations because of burdensome regulatory costs, reduced revenues may have regional impacts. Paragraphs 302 through 307 discuss the affordability of CAFOs requirements and the potential for these requirements to cause financial stress. Because compliance costs are relatively constant across CAFOs size classes, while revenues are not, the regulation is likely to be the most burdensome for the smallest operations. The analysis predicts that 33 to 67 small CAFOs could experience financial stress; the impact of which could cause these entities to go out of business. This represents approximately 1.5 percent of all small animal feeding operations in Kansas, Oklahoma, and Texas, so regional effects in these States in terms of indirect effects and job losses may exist, but are likely to be small.

In addition, evidence suggests that the national markets for CAFOs products are unlikely to be affected by designation. In 2003, EPA promulgated a final rule revising NPDES and Effluent Limitation Guidelines (ELG) for CAFOs. Among other requirements, the new rule required CAFOs to implement a 100-foot vegetated buffer next to conduits to surface waters. Its economic analysis supporting the proposed rule, which looked at all of the new requirements including the buffer, estimated annual compliance costs two orders of magnitude greater than those estimated for CAFOs as a result of shiner critical habitat designation. EPA conducted a separate partial equilibrium analysis to determine whether market effects would result from the regulation and determined that industry-level changes in production and prices would not be significant for most sectors (*i.e.*, consumer prices were expected to rise by less than one percent for all but the hog sector, where the increase was slightly more than one percent) (68 FR 7248). Although the potential buffer requirements are more stringent in watersheds with shiner critical habitat, the number of CAFOs affected is a fraction of those affected by the NPDES requirements. The EPA analysis suggests that a partial equilibrium analysis of the effects of shiner conservation activities is unlikely to find a significant production effect.

(49) *Comment:* A commenter states that the DEA does not address the potential complexities for CAFOs caused by the confounding effects of reducing or eliminating land application areas for manure, wastewater, and sludge, and reducing the availability of groundwater for production of crops and forage necessary for nutrient utilization.

Our Response: As discussed in paragraphs 246 through 247, whether groundwater pumping by farmers will be affected is difficult to predict. No Federal nexus exists for private groundwater pumping, and it is difficult to link take, as defined by section 9 of the ESA, to individual users. In addition, the quantity of water required for shiner protection is unknown, as no minimum or maximum flow requirements are specified as primary constituent elements (PCEs). To the extent that a CAFO operator reduces or eliminates land application areas and also must reduce groundwater usage, impacts could be compounded. However, data are not available to reasonably estimate the probability and magnitude of impacts under such a scenario.

(50) *Comment:* A commenter states that the DEA does not consider costs associated with CAFO permitting and other regulatory activities that may be required prior to implementation of recommendations made by the Service, such as preparation of permitting documentation, completion of permit applications, meetings with regulatory agencies, and administrative and technical requirements.

Our Response: The DEA assumes that each CAFO within the watersheds analyzed consults with the Service once over the time period of the analysis. The administrative costs of these consultations are described in paragraphs 93 through 99 and included in Exhibit 3–9.

(51) *Comment:* A commenter states that the DEA costs of developing a spill plan include only testing and plan-related costs and not the cost of implementing mitigation measures in the event a leak is detected or a spill occurs.

Our Response: The analysis assumes that CAFOs operators are obligated to

mitigate leaks and spills, regardless of the presence of the shiner or its habitat.

Comments Related to Economic Impacts and Analysis—Estimation of Impacts to Reservoir Operations

(52) *Comment:* One organization comments that the DEA does not estimate costs to Lake Meredith for the modification of reservoir operations to provide instream flows for the shiner. The comment notes that this lack of a quantified estimate is based on the fact that no target flow is established for shiner, uncertainty regarding whether flood control would be halted as a result of any consultation, and a lack of a Federal nexus associated with the operation of Lake Meredith other than for flood control (DEA, footnote 42). The comment also notes that the DEA states that if releases were required to benefit the shiner, the CRMWA member cities may have to find a replacement water supply but does not evaluate the costs of this scenario. The DEA should either analyze the impact of requiring releases for the benefit of the shiner or determine that this is not a possibility.

Our Response: In the absence of a minimum flow requirement for the shiner, it would be highly speculative to quantify any quantity of water required to be released from Lake Meredith. In addition, paragraph 119 states: ''In addition, the analysis notes that critical habitat is not proposed directly downstream of Sanford Dam. The potential for releases from Sanford to augment flow in Unit 1b, a distance of roughly 80 miles from the dam, is unknown.'' Despite the lack of information about specific changes to reservoir operations, the DEA provides an economic valuation of water held at Lake Meredith of $14 million (see paragraph 118). Note that the cost per thousand gallons is $0.51, not $51 as stated in this paragraph (this is a typographical error and does not affect the value estimate).

(53) *Comment:* A comment notes that paragraph 118 of the DEA provides a cost estimate of $51 per thousand gallons of water to CRMWA member cities in Fiscal Year 2001–2002 whereas the correct estimate would be $0.51 per thousand gallons. Further, that time period should not be considered predictive of future costs as it was the first year of operation of the Groundwater Supply Project. Costs to member cities per thousand gallons in 2003–2004 rose to $0.62.

Our Response: As discussed in response to the previous comment, the reported $51 per 1,000 gallons is a typographical error that does not affect the estimate of the cost of water to cities served by the CRMWA. However, using the higher value provided by the commenter of $0.62 per thousand gallons, the value of water delivered to municipalities from Lake Meredith in FY 03–04 is approximately $18 million.

(54) *Comment:* One commenter expressed confusion at the DEA's inclusion of impacts related to requiring releases at Ute Dam while excluding impacts related to the same at Lake Meredith. The commenter believes that the eventuality of these impacts is equally likely at both sites.

Our Response: Two fundamental differences between Ute and Sanford Dams make the analysis of potential impacts to Ute Dam operations less speculative than those to Sanford Dam operations: (1) critical habitat for the shiner is proposed directly downstream of Ute Dam, while it is proposed 80 miles downstream of Sanford Dam; and (2) a seepage rate is available for Ute Dam that contributes to maintaining the shiner population downstream as discussed in paragraph 125. Such a seepage rate is not available for Sanford Dam.

(55) *Comment:* Two commenters state that the DEA should include economic impacts to flood control. They state that Section 4 of the DEA contains little information on the Upstream Flood Control Program. Each dam site must have an EIS completed before its construction or rehabilitation. These dams were designed to control flooding, and provide municipal and agricultural water. The DEA conclusion that they are not likely to be impacted is misleading because of the required EIS and consultation with the Service and other groups. The new effort to rehabilitate the aging flood control sites may be impacted by the proposed critical habitat designation.

Our Response: The Upstream Flood Control Program, administered by the Oklahoma Conservation Commission, constructs small flood control dams on tributaries upstream from rivers or large streams. Watershed projects are sponsored locally, and receive planning and financial assistance from the NRCS. Of 2,540 dams planned through the Program, 2,101 were constructed as of March 2005. The majority of these projects are PL–566 and PL–534 dams. Based on extensive conversation with NRCS personnel in Oklahoma, the DEA discusses potential impacts to PL–566 dams that may impact shiner habitat in Section 4.6. In paragraph 133, the DEA identifies 16 PL–566 dams that may be impacted by shiner habitat and states that ''The NRCS does not anticipate findings of adverse impact from the Service; therefore, future consultations on these projects are assumed to be informal and project modifications are not anticipated.'' The DEA estimates the administrative costs of consultation for these 16 dams in Section 3.

(56) *Comment:* One comment stated that the DEA should consider how reducing water releases at Ute Dam by 12 percent will affect the wholesale price of water.

Our Response: Because water delivery from Ute Dam has not occurred yet, estimating the potential impact on water prices would be speculative. Such an estimate requires data on the amount of water likely consumed by water communities, availability of alternate sources of water and prices of those sources, and an understanding of the relationship between delivery costs and water quantity. Data limitations make the calculation of price changes infeasible at this time.

(57) *Comment:* One commenter states that the DEA should not limit consideration of water management costs to Ute Dam. The commenter notes that, according to the NRCS, 16 PL–566 dams are scheduled for construction in Oklahoma upstream of the proposed critical habitat designation and may be affected.

Our Response: Section 4.6 of the DEA considers potential impacts to sixteen PL–566 dams scheduled for construction in Oklahoma and states that: ''The NRCS does not anticipate findings of adverse impact from the Service; therefore, future consultations on these projects are assumed to be informal and project modifications are not anticipated.'' Informal consultation costs are captured in Section 3 of the DEA, as referenced in paragraph 106 and Exhibit 3–7.

Comments Related to Economic Impacts and Analysis—Estimation of Impacts to Oil and Gas Development

(58) *Comment:* A comment updates information provided by the Oklahoma Independent Petroleum Association (OIPA) during the development of the DEA. The comments states that basic directional drilling costs range from $7,500 to $12,000 per day in addition to the daily conventional drilling costs of approximately $10,000 to $17,500 per day. Further, drilling fluids, rental equipment, supervision, and other costs can increase the cost per day to $35,000. OIPA also states that vertical hole drilling costs approximately $25,000 per day. In contrast, another comment states that an average well drilling cost for a 12,000 foot well is $5 million, not including the costs of re-routing pipelines.

Our Response: As stated in paragraph 159 of the DEA, the Service notes that directional drilling has been required twice to protect the shiner since the listing of the species in 1998 at a cost of roughly $200,000 per project. In estimating future project modification costs to oil and gas well development activities, at paragraph 162 the DEA assumes that the equivalent percentage of future oil and gas well development projects (five percent) will require directional drilling to protect the shiner at an additional cost of $200,000 per project. We assume that the daily costs provided in the comment are within the range of the $200,000 per project estimate used in the DEA.

(59) *Comment:* Two comments provided state that the assumption that oil and gas well development increases by one percent per year over the forecast period is a conservative assumption and that the DEA confuses production rates and drilling activity. OIPA asserts that the projected production rate information should not be used to infer a similar rate on the number of wells that may be drilled in the future and presents evidence that drilling rates increase when production rates decrease. One comment states that the DEA use information in the Oklahoma Corporation Commission's 2004 annual report to project future drilling activity. The comment cites information from this report suggesting that between 1994 and 2004, oil and gas approved intents to drill increased 30 percent and, therefore, a three percent annual increase should be applied to forecast annual drilling rates. Another comment suggests that the DEA should also consider alternative scenarios in which energy prices are higher in future years than in the recent past as drilling activity is positively related to the price of energy.

Our Response: We agree that applying information specific to drilling rates is more appropriate than projecting future growth in drilling rates based on production rates. Therefore, we revise our estimate of the number of wells likely to be drilled applying the three percent annual increase recommended in public comment (note that a 30 percent increase over ten years translates to an annual growth rate of approximately 2.7 percent, however we believe rounding to three is appropriate given the uncertainty inherent in this analysis). We describe the relationship between drilling activity and energy prices in paragraph 153 of the DEA and note that drilling rates are also affected by the available oil and gas reserves that underlie habitat and the maximum number of wells that could be supported in this area. Given these uncertainties, along with the uncertainty associated with forecasting oil and natural gas prices for 20 years into the future, we believe that revising our growth rate based on the three percent rate provided in comment will address this concern about the impact of future energy prices on drilling activity. We note that more significant year to year fluctuations may occur.

(60) *Comment:* Two comments state that the DEA neglects to consider additional pipelines, including flow lines and gathering lines, which are necessary for the production of crude oil and natural gas. The comment states that 76 percent of the wells (1,011 wells) drilled in the counties containing proposed critical habitat are gas wells and will require gathering lines. A cost impact scenario should be analyzed that includes the installation of more pipelines.

Our Response: The current methodology for estimating future pipelines potentially impacting habitat is described in paragraphs 171 and 174 through 176. Given the uncertainties discussed in these paragraphs, and a lack of available information about the number of pipelines supporting each well and that may impact habitat, we assume that growth in oil and gas pipeline activities will be similar to growth in drilling activities. Therefore, we adjust our impact estimates by assuming a three percent growth rate in pipeline activity, based on information provided in public comment.

(61) *Comment:* Several comments note the potential for conservation efforts to lead to reduced and/or delayed production of oil and natural gas. One comment offered that a reduction in overall production levels will result in regional impacts. A separate comment suggests that the Service consider a scenario where consultation delays or stops production, impacting gross production tax payments to the state and royalty payments to mineral owners. A third comment states that delays in drilling could result in the expiration of leases before drilling occurs or loss of the use of a rig to another site for six or more months. Finally, a comment notes that delay costs estimated in the DOE report for storm water discharge requirements should be applied in the analysis.

Our Response: The DEA includes costs associated with delaying drilling in essential habitat, as discussed in paragraphs 149 and 162, and shown in Exhibits 5–5 and 5–8. These estimates are derived from the DOE report. The DEA does not anticipate an overall reduction in drilling activity (see paragraph 150). The availability of drilling equipment is constrained, as noted in public comments which state that small delays can result in the loss of drilling equipment and labor to other locations. These comments suggest that if drilling were prevented in essential habitat, substitute sites outside of habitat are available. Individuals operating in essential habitat may be affected negatively as activity moves to other locations, resulting in distributional effects, but no net change in social welfare.

Support for the assertion that local individuals may experience losses related to lost or delayed production and lower royalties is provided in the DOE report cited in paragraph 148 of the DEA. This report estimates impacts of proposed storm water discharge requirements on the oil and gas industry nationwide. It includes cost information related to species-specific requirements of a NPDES permit, including section 7 consultation under the Act. Using information provided in the report about potential delay time (see Exhibit 5–5 of the DEA), we estimate the potential value of lost production may range from approximately $500,000 to $1.7 million (assumes a discount rate of seven percent).

(62) *Comment:* A comment expressed concern that the 1998 cost information applied in the DEA in estimating impacts to oil and gas drilling and production is outdated.

Our Response: As described in paragraph 149, project modification costs for drilling activities were obtained from a 2004 study completed by the DOE. As noted elsewhere in this response to comment, these cost estimates have been updated with information provided as part of public comment. Costs associated with pipeline activities are based on interviews conducted in 2005 with an engineering firm currently conducting this type of work (see Exhibit 5–10).

(63) *Comment:* A comment states that the consultation process would be especially burdensome on small oil and gas operators as they may not have the personnel or expertise to consult with the Service or implement best management practices.

Our Response: In Appendix A of the report, the Small Business Regulatory Enforcement Fairness Act (SBREFA) Screening Analysis estimates the level of impact of shiner conservation activities on small oil and gas operators in counties that contain shiner habitat.

(64) *Comment:* A comment states that the 2003 data applied in the DEA estimate 1,312 wells were drilled within the counties containing proposed

critical habitat. The 2004 data, however, indicate that 1,332 wells were drilled in those same Counties. These wells comprise 62 percent of the total wells drilled in Oklahoma and the Service should consider that in its assessment of impacts to the oil and gas industry.

Our Response: Information contained within Exhibit 5–3 of the DEA, to which this comment refers, provides data and information on oil and gas well activity and production levels for counties that contain shiner habitat. We agree that the counties in Oklahoma that contain shiner habitat do contain a significant percentage of total wells located within Oklahoma. The analysis of potential impacts to oil and gas well development from shiner conservation activities considers only those wells located within and adjacent to shiner habitat. Therefore, wells under consideration in the DEA reflect a smaller percentage of statewide well activity in Oklahoma.

(65) *Comment:* A comment notes that following the method outlined in the DEA, the impact of shiner conservation efforts on oil and gas pipelines should range from $4.4 million to $5.7 million. The costs presented in paragraph 177 and Exhibit 5–13 of the DEA, however, present a range of $3.8 million to $4.4 million.

Our Response: We acknowledge a mistake in the calculation of oil and gas pipeline impacts and appreciate the submission of corrected information. The cost model associated with oil and gas pipelines has been modified to correctly reflect project modification costs provided in Exhibit 5–10 of the DEA.

(66) *Comment:* A party requests that comments with corresponding footnotes 84 and 87 be removed as the discussions did not relate to national trends, which were not known at that time.

Our Response: We will remove these footnotes from the final economic analysis.

Comments Related to Economic Impacts and Analysis—Estimation of Impacts to Grazing Activities

(67) *Comment:* Two comments expressed concern that cattle currently water from the rivers and graze in the riparian area and that finding an alternative water source or additional seasonal grazing meadows would be difficult or impossible. As a result, the comments state that the value of this water and sub-irrigated meadows incalculable. The comments further note that because the river meadows are sub-irrigated, the value of lost irrigated cropland should be used to value grazing lands.

Our Response: The Service agrees that finding substitute water sources or lands for cattle could be difficult. Consistent with the comment, the DEA does not assume that cattle will be moved to other areas. Rather, it assumes that the ability to graze these areas is lost completely and values this loss based on the number of cattle supportable on habitat lands and perpetuity value of fees paid by ranchers to graze these lands (see paragraphs 234 through 238). In other words, the analysis provides an estimate of the total value of these lands to ranchers as a bound on magnitude of potential losses given significant regulatory uncertainty. Note that the value of grazing activity on these lands is derived from market prices for grazing rights, which implicitly include values for the attributes of that land, including hydrologic features such as subirrigation. Because the permit values cited in the DEA represent average prices across each State, they likely incorporate values for both subirrigated and lower quality grazing lands. To the extent that this is the case, the total value of these grazing lands may be understated.

(68) *Comment:* Two comments state that the costs of fencing for livestock and other project modification costs are not included in the DEA. In particular, the Hughes County Conservation District estimates that fencing the tributaries of the South Canadian River will cost $168,962 and that it is likely that costs will be incurred for off-site watering facilities of $80,000. The estimated original cost of implementing practices to fulfill the recommendations of the Service would be $412,960.

Our Response: The DEA estimates a total loss in value of grazing activity in proposed habitat. The analysis assumes that ranchers will only undertake project modifications if they can do so without incurring a net loss. Thus, the analysis assumes that to the extent that ranchers continue to operate, the costs of project modifications must be less than the total value of their operation. Therefore, the estimate of the total value of grazing activity presented in the DEA is the upper bound estimate of potential impacts to ranchers.

(69) *Comment:* The Hughes County Conservation District estimates that 4,000 acres in Hughes County, Oklahoma will be affected by the CHD. These acres have a total production value of $41 per acre per year.

Our Response: The DEA estimates affected acreage using USGS land coverage geographic information system (GIS) data (see paragraph 235), and its estimate of affected acres in Hughes County is consistent with this comment. It estimates the value of lost production, used to calculate regional impacts, to be $32 per animal unit month (AUM), which can be converted to an estimate of $51 per acre using information provided in paragraphs 236 and 242. As a result, the value of lost production is calculated using a higher per acre value in the DEA than reported by Hughes County.

(70) *Comment:* Two comments provided on the DEA state that the DEA should consider the impact of designation on invasive species management efforts. Water is retained in the river when efforts are undertaken to control invasive species such as salt cedar and Russian olives. One organization comments that on the Canadian River, CRMWA treats salt cedar averaging 50 acres per mile, $200 per acre. Another comment notes the potential for curtailment of invasive species management if herbicides are found to harm the shiner.

Our Response: As stated in the response to the comment regarding the impacts to ranchers of fencing and other project modification costs, the DEA estimates a total loss in value of grazing activity in habitat. This value exceeds any project modification costs, such as invasive species control, that would practicably be implemented. The analysis assumes that ranchers will only undertake project modifications if they can do so without incurring a net loss. Thus this analysis assumes that to the extent that ranchers continue to operate, the costs of project modifications must be less than the total value of their operation. Therefore, the estimate of the total value of grazing activity presented in the DEA is the upper bound estimate of potential impacts to ranchers.

(71) *Comment:* One commenter stated that the economic analysis should forecast impacts over at least 100 years as the majority of ranchers along the Cimarron River have been owned by the same families for 100 or more years.

Our Response: Forecasting economic activity in areas of habitat is speculative beyond a 20-year time horizon. However, data are provided in the DEA that can be used to calculate the lost value of farming and ranching activities in perpetuity. The value of lost farming in the DEA is calculated by multiplying the value of crop production reported in Exhibit 7–6 by the estimated crop reduction reported in the same exhibit. For grazing, the perpetuity value of grazing permits (dollars per AUM) is provided in Exhibit 7–13. This value, multiplied by the number of lost AUMs reported in Exhibit 7–14, provides the total value of lost grazing in perpetuity. For both categories, the 20-year loss is

equivalent to approximately 46 percent of the perpetuity value assuming a three percent discount rate and 65 percent of the perpetuity value assuming a seven percent discount rate.

(72) *Comment:* One commenter stated that cattle grazing is not considered in the DEA.

Our Response: Grazing related impacts are discussed in detail in the Executive Summary and Section 7 of the DEA.

Comments Related to Economic Impacts and Analysis—Estimation of Impacts to Recreation

(73) *Comment:* A comment notes that the State Departments of Agriculture, Food and Forestry, Tourism, and Wildlife Conservation are promoting agro-tourism in the region. This effort is intended to bring dollars to rural areas. The comment states that impacts to this emerging industry are tremendous.

Our Response: Without information about the type of agro-tourism (e.g., hunting, fishing, visiting working farms, ranches or vineyards) taking place within the proposed designation habitat, current and projected visitation rates, and an indication of how shiner conservation activities would impact this industry, we are unable to estimate losses associated with this activity. These data are not readily available at this time.

(74) *Comment:* One comment states that the DEA underestimates visitation to the Rosita area by two to three times, which effects the results of the analysis.

Our Response: As described in paragraph 275, the DEA relies on visitation data provided by National Park Service (NPS) staff at the Lake Meredith National Recreation Area specifically for Rosita (note that visitation to the entire National Recreation Area, which includes other areas not proposed for critical habitat designation, is greater than visitation to Rosita alone). Data were provided by month for years 2000 through 2004 for each of the two areas. Although the data indicate an overall decline in visitation over this time period, the analysis assumes future visitation remains constant at the five-year historical average rate.

(75) *Comment:* Multiple comments confirm the importance of the off-road vehicle (ORV) land along the Canadian River. They note that it is the only public ORV land within 300 miles, and related businesses would suffer if this activity was limited within the proposed critical habitat designation. One commenter estimates that 50 to 60 percent of all off-road vehicles sold in the region are used at the Canadian River and estimates lost sales in the Panhandle area to be approximately $20 million. Including parts and accessories sales, taxes, and job losses, the total economic loss could be $200 million. Another commenter estimates that for the two major motorcycle dealers in Amarillo, Texas, there would be a potential loss of $80 million in revenue over the next 20 years.

Our Response: The Service agrees that restricting ORV use in the Rosita section of the Lake Meredith National Recreation Area could negatively impact businesses in the Pan Handle supplying goods and services to recreators. Using the IMPLAN model, the DEA estimates an initial impact to the regional economy of up to $1.6 million in the first year, along with a potential for 44 lost jobs and $168,000 in lost tax revenues (see paragraphs 277 through 279). These impacts would occur once and persist for some period of time until the economy adjusts to the change. In addition, paragraph 325 summarizes information about current annual sales of ORVs provided by ORV-business owners in the Amarillo-Lubbock business area.

It is difficult to compare the impact estimates provided by these business owners and generated from the IMPLAN model with the estimates provided in public comment. It is unclear whether the comments report total sales for ORV retail businesses, or only the portion of sales that would be lost due to shiner-related restrictions. Closures in Rosita are likely to occur between July and September, and account for only 25 percent of the total trips taken to Rosita annually. In addition, another ORV area located within Lake Meredith National Recreation Area, Big Blue, is not proposed for critical habitat designation. Estimated lost trips to Rosita account for approximately 15 percent of total ORV visitors annually to Lake Meredith National Recreation Area. To the extent that recreators substitute trips to Rosita with trips to Big Blue, losses to local businesses will be less than estimated in the DEA.

Comments Related to Economic Impacts and Analysis—Estimation of Impact to Transportation Projects

(76) *Comment:* One comment states that the new Federal Highway Bill calls for additional funding for roads and bridges and inquires if these new projects may be impacted by the designation.

Our Response: Federal Highway funding allocations to State Departments of Transportation (DOTs) are subject to section 7 consultation requirements. The DEA describes interviews with State DOTs to identify reasonably foreseeable projects and potential modification costs associated with shiner protection (see paragraphs 261 through 268). In addition, Section 3 estimates the administrative costs of future section 7 consultations, including those for transportation projects (see paragraphs 105 through 106).

(77) *Comment:* The Arkansas River Shiner Coalition comments that the DEA should consider the effects on project delay to transportation projects.

Our Response: The Service acknowledges that delayed completion of transportation projects resulting from consultation with the Service may result in additional economic impacts that are not quantified in the DEA. Considering that planning for projects generally takes years, if not decades, future projects are likely to be able to incorporate consideration of the shiner into their project schedule. However, projects intersecting habitat and slated to begin construction within the next one to two years may experience delays.

Comments from States

Section 4(f) of the Act states, ''the Secretary shall submit to the State Agency a written justification for her failure to adopt regulation consistent with the agency's comments or petition.'' Comments received from States regarding the proposal to designate critical habitat for the Arkansas River shiner are addressed below.

(78) *State Comment:* A comment expressed support that the proposed rule adequately articulated that designation of critical habitat provides no substantial recovery benefit or additional measure of protection beyond that provided by the Act.

Our Response: As stated in the proposed rule and this final rule, we agree that critical habitat provides little additional protection beyond that provided by the Act.

(79) *State Comment:* A comment expressed support for exclusion of the Beaver/North Canadian River (Unit 2) from the final designation.

Our Response: As provided in this final rule, we have excluded Unit 2, the Beaver/North Canadian River, from the designation.

Summary of Changes From the Proposed Rule

In developing this final designation of critical habitat for the Arkansas River shiner, we reviewed public comments received on the proposed designation of critical habitat published on October 6, 2004 (69 FR 59859), and the draft economic analysis and draft

environmental assessment published on August 1, 2005 (70 FR 44082). In addition to minor modifications and corrections, we conducted further evaluation of lands proposed as critical habitat and excluded additional habitat from the final designation. Table 1, included at the end of this section, outlines changes in stream length for each unit. Specifically, we are making the following changes to the final rule from the proposed rule published on October 6, 2004:

(1) In the proposed rule, we stated our intent to exclude from this designation all habitats in the Beaver/North Canadian River (Unit 2) in Oklahoma and the Arkansas River (Unit 4) in Kansas. After reviewing public comment, including that provided by our peer reviewers, we have determined to exclude these areas under the authority of section 4(b)(2) of the Act. While these two river systems are important to recovery of the species, we believe conservation of the species can best be accomplished by using our authorities under section 10(j) of the Act. Therefore we have concluded that the benefits of exclusion outweigh the benefits of designating critical habitat in these two rivers (see the ''Exclusion Under Section 4(b)(2) of the Act'' section below for a more detailed discussion).

(2) We have excluded from designation the proposed critical habitat unit in the Canadian River of New Mexico and Texas between Ute Reservoir and Lake Meredith. This 255 km (158.4 mi) long stream reach area was previously identified as Unit 1a and is excluded under the authority of section 4(b)(2) of the Act. The Canadian River Municipal Water Authority (CRMWA), in cooperation with at least 23 other Federal, State, and private partners, completed a special management plan for the Arkansas River shiner within this unit. After reviewing the plan, we believe that a reasonable certainty of execution and effectiveness exists such that conservation of the Arkansas River shiner would be promoted. Therefore we have concluded that the benefits of exclusion outweigh the benefits of designating critical habitat in this area (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a more detailed discussion).

(3) Within Unit 1b, we have excluded a reach of the Canadian River approximately 204 km (127 mi) long, extending from the Oklahoma state line, downstream to the State Highway 33 bridge near Thomas, Oklahoma, from the final critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). This reach includes the Packsaddle Wildlife Management Area (WMA) and the Four Canyons Preserve. An ongoing, funded conservation program to control salt cedar and other invasive plant species exists within this reach. Funding for this program has been secured through a Private Stewardship Grant and the goal of this program is to work with private landowners to increase stream flow in this reach of the Canadian River and thus providing a clear conservation benefit to the Arkansas River shiner. Excluding these lands preserves the partnerships that we developed with the Oklahoma Farm Bureau and other stakeholders. Therefore we have concluded that the benefits of exclusion outweigh the benefits of designating critical habitat in this area (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a more detailed discussion).

(4) Within Unit 1b, we identified a 42 km (26 mi) reach of the Canadian River upstream of the Oklahoma state line and extending to the U.S. Highway 60/83 bridge near Canadian, Texas. As a result of this segment being surrounded by conservation lands and detached from a considerably larger designated reach, it is our determination that this segment no longer meets the definition of critical habitat and was removed from consideration.

Table 1 below provides the approximate area (in miles (km)) designated as critical habitat for the Arkansas River shiner and areas excluded from the final critical habitat designation by State.

State	Areas designated as critical habitat	Areas excluded from the final critical habitat designation
Kansas	62.5 (100.6)	194.1 (312.4)
New Mexico	0	38.0 (61.2)
Oklahoma	470.2 (756.7)	336.2 (541.1)
Texas	0	142.6 (229.6)
Total	532.7 (857.3)	710.9 (1,084.3)

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary. No specific areas outside the geographical area occupied by the Arkansas River shiner at the time of listing are designated as critical habitat in this final rule.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species at the time of listing 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 that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only

if the essential features located there 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 not known to be occupied at the time of listing will often contain the PCEs that are essential to the conservation of the species and, therefore, be included in the critical habitat designation for that species.

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 (P.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 designated as critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include a 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 (P.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 the best scientific data available. 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 section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the Arkansas River shiner. Our methods for identifying the Arkansas River shiner critical habitat included in this final designation are those methods we used to make our final designation for this species on April 4, 2001 (66 FR 18002) and in our subsequent proposal of critical habitat for the Arkansas River shiner, published on October 6, 2004 (69 FR 59859) as modified in accordance with our discussion in the Summary of Changes section above. These included data from research and survey observations published in peer-reviewed articles, academic theses, and agency reports, including those that were conducted by the Service; regional Geographic Information System (GIS) watershed and species coverages; and data compiled in the Oklahoma Natural Heritage Inventory Database. In addition, we used information and data received during the public comment periods on the proposed critical habitat designation, draft environmental assessment, and draft economic analysis, and communications with individuals inside and outside the Service who are knowledgeable about the species and its habitat needs.

Conservation measures described in the final listing determination (63 FR 64772) and in the Issue 8: Recovery section of the prior final critical habitat determination (66 FR 18002); and our recovery outline also were used. Although a recovery plan has not yet been prepared for this species, the areas we have designated as critical habitat represent those that currently support viable populations of the Arkansas River shiner or are areas where we have data that the Arkansas River shiner is still extant (i.e., the Cimarron River). Full recovery of the species likely will require conservation of existing populations and establishment of at least one additional viable population in an additional stream drainage within the historic range of the Arkansas River shiner.

Physical features were identified using U.S. Geological Survey (USGS) 7.5′ quadrangle maps. River reach distances, as noted in Table 1 above, were calculated from TIGER 2000 water line and water polygon GIS files.

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 designate as critical habitat, we are required to base our determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These features include, but are not limited to: space for individual and population growth and for normal behavior; food, water, light, 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 biological and physical features, referred to as the primary constituent elements, that provide for the physiological, behavioral, and ecological requirements of the Arkansas River shiner are derived from its biological needs. These features include adequate spawning flows over sufficient distances; habitat for food organisms; appropriate water quality; a natural flow regime; rearing and juvenile habitat appropriate for growth and development to adulthood; and suitable habitat (e.g., sufficient flows and lack of barriers) sufficient to allow Arkansas River shiner to recolonize upstream habitats.

Special management, such as habitat rehabilitation efforts (e.g., removal or control of non-native competitors), also may be necessary over much of the area being designated as critical habitat.

Given the large geographic range the species historically occupied, and the diverse habitats used by the various life-history stages, the specific values or conditions described for each of these habitat features may not capture all of the variability that is inherent in natural systems supporting the Arkansas River shiner. However, the identified lands provide aquatic and riparian (areas near a source of water) habitat containing the essential PCEs supporting the maintenance of self-sustaining populations throughout the range of the Arkansas River shiner. The following discussion summarizes the PCEs determined to be essential to the conservation of the Arkansas River shiner.

Space for Individual and Population Growth and for Normal Behavior

The Arkansas River shiner historically inhabited the main channels of wide, shallow, sandy-bottomed rivers and larger streams of the Arkansas River Basin (Gilbert 1980). Adult Arkansas River shiners are uncommon in quiet pools or backwaters lacking streamflow, and almost never occur in habitats having deep water and bottoms of mud or stone (Cross 1967). Cross (1967) believed that adult Arkansas River shiner prefer to orient into the current on the ''lee'' sides of large transverse sand ridges and prey upon food organisms washed downstream with the current.

Wilde *et al.* (2000) found no obvious selection for or avoidance of any particular habitat type (i.e., main channel, side channel, backwaters, and pools) by Arkansas River shiner. Arkansas River shiners did tend to select side channels and backwaters slightly more than expected based on the availability of these habitats (Wilde *et al.* 2000). Likewise, they appeared to make no obvious selection for, or avoidance of, any particular substrate type. Substrates (i.e., the river bed) in the Canadian River in New Mexico and Texas were predominantly sand; however, the Arkansas River shiner was observed to occur over silt slightly more than expected based on the availability of this substrate (Wilde *et al.* 2000).

Introductions of nonindigenous species can have a significant adverse impact on Arkansas River shiner populations under certain conditions. The morphological characteristics, population size, and ecological preferences exhibited by the Red River shiner (*Notropis bairdi*), a species endemic to the Red River drainage, suggest that it competes with the Arkansas River shiner for food and other essential life requisites (Cross *et al.* 1983; Felley and Cothran 1981). Since its introduction, the Red River shiner has colonized much of the Cimarron River and frequently may be a dominant component of the fish community (Cross *et al.* 1983; Felley and Cothran 1981). The intentional or unintentional release of Red River shiners, or other potential competitors, into other reaches of the Arkansas River drainage by anglers or the commercial bait industry is a potentially serious threat that could drastically alter habitat availability for the Arkansas River shiner in these reaches.

Food

The Arkansas River shiner is believed to be a generalized forager and feeds upon both items suspended in the water column and items lying on the substrate (Jimenez 1999; Bonner *et al.* 1997). In the Canadian River of central Oklahoma, Polivka and Matthews (1997) found that gut contents were dominated by sand/sediment and detritus (decaying organic material) with invertebrate prey being an incidental component of the diet. In the Canadian River of New Mexico and Texas, the stomach contents of Arkansas River shiner were dominated by detritus, invertebrates, grass seeds, and sand and silt (Jimenez 1999). Invertebrates were the most important food item, followed by detrital material.

Terrestrial and semiaquatic invertebrates were consumed at higher levels than were aquatic invertebrates (Jimenez 1999). With the exception of the winter season, when larval flies were consumed much more frequently than other aquatic invertebrates, no particular invertebrate taxa dominated the diet (Bonner *et al.* 1997). Fly larvae, copepods, immature mayflies, insect eggs, and seeds were the dominant items in the diet of the non-native population of the Arkansas River shiner inhabiting the Pecos River in New Mexico (Keith Gido, University of Oklahoma, in *litt.* 1997).

Water

Most plains streams are highly variable environments. These streams can have either intermittent or perennial streamflow, and typically experience periodic flooding that scours vegetation and replenishes fine sediments. Water temperatures, flow regimes, and overall physicochemical conditions (e.g., quantity of dissolved oxygen) typically fluctuate so drastically that fishes native to these systems often exhibit life-history strategies and microhabitat preferences that enable them to cope with these conditions. Matthews (1987) classified several species of fishes, including the Arkansas River shiner, based on their tolerance for adverse conditions and selectivity for physicochemical gradients. The Arkansas River shiner was described as having a high thermal and oxygen tolerance, indicating a high capacity to tolerate elevated temperatures and low dissolved oxygen concentrations (Matthews 1987). Observations from the Canadian River in New Mexico and Texas revealed that dissolved oxygen concentrations, conductivity, and pH rarely influenced habitat selection by the Arkansas River shiner (Wilde *et al.* 2000). Arkansas River shiners were collected over a wide range of conditions—water temperatures from 0.4 to 36.8° Celsius (32.7 to 98.2° Fahrenheit), dissolved oxygen from 3.4 to 16.3 parts per million, conductivity (total dissolved solids) from 0.7 to 14.4 millisiemens per centimeter, and pH from 5.6 to 9.0.

In the Canadian River in central Oklahoma, Polivka and Matthews (1997) found that Arkansas River shiner exhibited only a weak relationship between the environmental variables they measured and the occurrence of the species within the stream channel. Water depth, current, dissolved oxygen, and sand ridge and midchannel habitats were the environmental variables most strongly associated with the distribution of adult Arkansas River shiner within the channel. Similarly, microhabitat selection by Arkansas River shiner in the Canadian River in New Mexico and Texas was influenced by water depth, current velocity, and, to a lesser extent, water temperature (Wilde *et al.* 2000). Arkansas River shiners generally occurred at mean water depths between 17 and 21 centimeters (cm) (6.6–8.3 inches (in)) and current velocities between 30 and 42 cm (11.7 and 16.4 in) per second. Juvenile Arkansas River shiners selected habitat influenced strongly by current, conductivity, and backwater and island habitat types (Polivka and Matthews 1997).

Sites for Breeding, Reproduction and Rearing of Offspring

Successful reproduction by the Arkansas River shiner appears to be strongly correlated with streamflow. Moore (1944) believed the Arkansas River shiner spawned in July, usually coinciding with elevated flows following heavy rains associated with summertime thunderstorms. Bestgen *et al.* (1989) found that spawning in the non-native population of Arkansas River

shiner in the Pecos River of New Mexico generally occurred in conjunction with releases from Sumner Reservoir. However, recent studies by Polivka and Matthews (1997) and Wilde *et al.* (2000) neither confirmed nor rejected the hypothesis that elevated streamflow triggered spawning in the Arkansas River shiner.

Arkansas River shiners are in-channel, open-water, broadcast spawners that release their eggs and sperm over an unprepared substrate (Platania and Altenbach 1998; Johnston 1999). Examination of Arkansas River shiner gonadal development between 1996 and 1998 in the Canadian River in New Mexico and Texas demonstrated that the species undergoes multiple, asynchronous (not happening at the same time) spawns in a single season (Wilde *et al.* 2000). The Arkansas River shiner appears to be in peak reproductive condition throughout the months of May, June, and July (Wilde *et al.* 2000; Polivka and Matthews 1997); however, spawning may occur as early as April and as late as September. Arkansas River shiners may, on occasion, spawn in standing waters (Wilde *et al.* 2000), but it is unlikely that such events are successful.

Both Moore (1944) and Platania and Altenbach (1998) described behavior of Arkansas River shiner eggs. The fertilized eggs are nonadhesive and semibuoyant. Platania and Altenbach (1998) found that spawned eggs settled to the bottom of the aquaria where they quickly absorbed water and expanded. Upon absorbing water, the eggs became more buoyant, rose with the water current, and remained in suspension. The eggs would sink when water current was not maintained in the aquaria. This led Platania and Altenbach (1998) to conclude that the Arkansas River shiner and other plains fishes likely spawn in the upper to mid-water column during elevated flows. Spawning under these conditions would allow the eggs to remain suspended during the 10-to 30-minute period the eggs were non-buoyant. Once eggs became buoyant, they would remain suspended in the water column as long as current was present.

In the absence of sufficient streamflows, the eggs would likely settle to the channel bottom, where silt and shifting substrates would smother the eggs, hindering oxygen uptake and causing mortality of the embryos. Spawning during elevated flows appears to be an adaptation that likely increases survival of the embryo and facilitates dispersal of the young. Assuming a conservative drift rate of 3 km/hour, Platania and Altenbach (1998) estimated that the fertilized eggs could be transported 72–144 km (45–89 mi) before hatching. Developing larvae could then be transported up to an additional 216 km (134 mi) before they were capable of directed swimming movements. Bonner and Wilde (2000) speculate that 218 km (135 mi) may be the minimum length of unimpounded river that allows for the successful completion of Arkansas River shiner life history, based on their observations in the Canadian River in New Mexico and Texas.

Rapid hatching and development of the young is likely another adaptation in plains fishes that enhances survival in the harsh environments of plains streams. Arkansas River shiner eggs hatch in 24–48 hours after spawning, depending upon water temperature (Moore 1944; Platania and Altenbach 1998). The larvae are capable of swimming within 3–4 days; they then seek out low-velocity habitats, such as backwater pools and quiet water at the mouths of tributaries where food is more abundant (Moore 1944).

Evidence from Wilde *et al.* (2000) indirectly supports the speculation by Cross *et al.* (1985) that the Arkansas River shiner initiates an upstream spawning migration. Whether this represents a true spawning migration or just a general tendency in these fish to orient into the current and move upstream, perhaps in search of more favorable environmental conditions, is unknown (Wilde *et al.* 2000). Regardless, strong evidence suggested the presence of a directed, upstream movement by the Arkansas River shiner over the course of a year.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the Arkansas River shiner primary constituent elements (PCEs) are:

(1) A natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular Arkansas River shiner life-stages in appropriate seasons;

(2) A complex, braided channel with pool, riffle (shallow area in a streambed causing ripples), run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons;

(3) A suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae;

(4) Substrates of predominantly sand, with some patches of silt, gravel, and cobble;

(5) Water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH;

(6) Suitable reaches of aquatic habitat, as defined by primary constituent elements 1 through 5 above, and adjacent riparian habitat sufficient to support an abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and

(7) Few or no predatory or competitive non-native fish species present.

All areas designated as critical habitat for the Arkansas River shiner are within the historic range occupied by the species and contain one or more of the primary constituent elements essential for its conservation. These aquatic and riparian habitat PCEs form the basis of our critical habitat units. These features are essential to the conservation of the Arkansas River shiner.

Criteria Used To Identify Critical Habitat

We are designating critical habitat within portions of the Canadian and Cimarron Rivers and their associated riparian zones that we determine have the features that are essential to the conservation of the Arkansas River shiner. We considered several criteria in the selection and proposal of Arkansas River shiner critical habitat. Initially, we solicited information from knowledgeable biologists and reviewed available information pertaining to Arkansas River shiner biology and life history. The best scientific information available indicates that recovery of this species will depend on conservation of relatively long stretches of large rivers (Platania and Altenbach 1998) within Arkansas River shiner historic range. Accordingly, this critical habitat designation reflects the need for areas of sufficient stream length to provide habitat for Arkansas River shiner populations large enough to be self-sustaining over time, despite fluctuations in local conditions.

We then determined the occupancy status of the areas. Areas supporting extant populations represent the foundation for continued persistence of the species.

We considered that the preferred habitat for the Arkansas River shiner is predominantly the mainstems of larger

plains rivers. Historically, the species has also been documented from several smaller tributaries (e.g., Skeleton Creek, Wildhorse Creek, and others) to these rivers (Larson *et al.* 1991). Examination of the collection records provided in Larson *et al.* (1991) shows that about 53 percent of the reported capture dates for the Arkansas River shiner in these smaller tributaries occurred during the months of June and July, while another 18 percent occurred during the months of May and August. Consequently, we believe that these tributaries are occupied only during certain seasons associated with higher flows and do not represent optimal habitat for all life stages. However, these seasonally occupied habitats may be important feeding, nursery, or spawning areas, and all tributaries, no matter their size, are important in contributing flows to the critical habitat reaches. Federal actions that may substantially reduce these flows may adversely affect critical habitat and will be subject to consultation provisions outlined in section 7 of the Act. Because newly hatched Arkansas River shiners seek mouths of tributaries where food is more abundant (Moore 1944), this designation (see ''Lateral Extent of Critical Habitat'' section) includes small sections of the tributaries near their confluence, which are important rearing areas for larval Arkansas River shiner.

Other important considerations in selection of areas included in this critical habitat designation include factors specific to each river system, such as size, connectivity, and habitat diversity, as well as rangewide recovery considerations, such as genetic diversity and resilience to periodic extirpations in adjacent habitat patches. Each area contains stream reaches with interconnected waters so that individual Arkansas River shiners can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they have been depleted or extirpated is vital to recovery by helping to stabilize the population and better ensuring its future persistence. Some areas include stream reaches that do not exhibit optimal Arkansas River shiner habitat, but provide movement corridors or connections between adjacent segment of optimal habitat. Additionally, these reaches play a vital role in the overall health of the aquatic ecosystem and, therefore, the integrity of upstream and downstream Arkansas River shiner habitats.

We then evaluated suitable habitat as defined by the primary constituent elements discussed above to assess whether they may require special management considerations or protection (see ''Special Management Considerations or Protection'' section below). During this evaluation, we reviewed the overall approach to the conservation of the species undertaken by local, State, Tribal, and Federal agencies and private individuals and organizations since the listing of this species in 1998. For example, the Kansas Department of Wildlife and Parks has designated critical habitat for the Arkansas River shiner in accordance with Kansas State law. Portions of the mainstem Cimarron, Arkansas, South Fork Ninnescah, and Ninnescah Rivers have been designated as critical habitat for the Arkansas River shiner in Kansas. A permit is required by the State of Kansas for public actions that have the potential to destroy State-listed individuals or their State designated critical habitat. Subject activities include any publicly funded or State or federally assisted action, or any action requiring a permit from any other State or Federal agency. Violation of the permit constitutes an unlawful taking, a Class A misdemeanor, and is punishable by a maximum fine of $2,500 and confinement for a period not to exceed 1 year. However, similar habitat protections for the Arkansas River shiner do not exist in Arkansas, New Mexico, Oklahoma, or Texas.

All of the stream reaches historically known to support the Arkansas River shiner at the time of listing, including portions of the Arkansas, Cimarron, Beaver/North Canadian, and Canadian Rivers, also contain the features that are considered essential habitat for this species. These areas have the primary constituent elements described above and, as such, provide suitable habitat as defined in several recent scientific studies including Platania and Altenbach 1998, Polivka and Matthews 1997, and Wilde *et al.* 2000. However, as discussed in the ''Exclusion Under Section 4(b)(2) of the Act'' section below, we are excluding those portions of the Arkansas and the Beaver/North Canadian Rivers proposed as critical habitat for the Arkansas River shiner.

As noted below, we are excluding the Beaver/North Canadian River in Oklahoma and the lower Arkansas River in Kansas. As discussed in this rule, we believe that the Arkansas River shiner is extirpated from these river segments; however, we believe they are important for future restoration effects. As we stated in the listing rule (63 FR 64772; November 23, 1998), transplantation of the Arkansas River shiner from the Pecos River will be evaluated as a means to recover the Arkansas River shiner in unoccupied portions of its historic habitat. In addition, our recovery outline for the species identified re-establishing the Arkansas River shiner into suitable unoccupied historic habitat as a crucial component of recovery. In accordance with the outline, we have undertaken steps to develop and document captive propagation techniques for the Arkansas River shiner. In November 1999, with the assistance of the New Mexico Game and Fish Department, we collected over 300 Arkansas River shiner from the Pecos River. These fish were transported to the Tishomingo National Fish Hatchery in Oklahoma where hatchery personnel were successful in inducing spawning of the species and coaxing the juveniles to feed in captivity. Future restoration efforts will undoubtedly occur, pending completion of an approved recovery plan and genetic work to determine the suitability of using Arkansas River shiner from the Pecos River population in transplantation efforts.

Restoration of Arkansas River shiner populations to additional portions of their historical range significantly reduces the likelihood of extinction due to natural or manmade factors, such as the introduction of the Red River shiner, pollution episodes, or a prolonged period of low or no flow, that might otherwise further reduce population size. For example, in July of 2003, an unintentional but unauthorized discharge of livestock waste entered the Canadian River upstream of Oklahoma City, Oklahoma. In the ensuing fish kill, an estimated 11,000 Arkansas River shiners perished. If recovery actions fail to reverse Arkansas River shiner declines in the Canadian River, the species' vulnerability to similar catastrophic events would increase. A vital recovery component for this species likely will involve establishment of secure, self-sustaining populations in habitats from which the species has been extirpated.

We also considered the existing status of Federal, non-Federal public, and private lands in designating areas as critical habitat. This included land owned by the Texas Parks and Wildlife Department, Oklahoma Department of Wildlife Conservation, and The Nature Conservancy. We also attempted to determine the extent of Tribal land areas as part of the critical habitat designation process. We have informally coordinated with the respective Tribes on this designation under the guidance of the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, Secretarial Order 3206, and 512

DM 2, which require us to coordinate with federally-recognized Tribes on a Government-to-Government basis. All non-Federal lands designated as critical habitat meet the definition of critical habitat under 16 U.S.C.' 1532(5)(A)(i) of the Act in that they are within the geographical area occupied by the species, contain the features that are essential to the conservation of the species, and may require special management consideration or protection.

In determining critical habitat boundaries, we made an effort to avoid developed areas, such as buildings, paved areas and other similar lands that do not support the PCEs essential for Arkansas River shiner conservation. Any structures, paved areas, or otherwise developed areas inside critical habitat boundaries are specifically excluded by text and not part of the designated units.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas that contain the features 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.

As discussed in this final rule, our proposed rule published on October 6, 2004 (69 FR 59859), and our previous final designation of critical habitat (66 FR 18002, April 4, 2001), the Arkansas River shiner and its habitat are threatened by a multitude of human-related activities, including but not limited to, stream flow modification, habitat loss by inundation, channel drying by water diversion and groundwater mining, stream channelization, water quality degradation, and introduction of nonindigenous plant and animal species. While many of these threats operate concurrently and cumulatively with one another and with natural disturbances like drought, habitat loss and modification represents the most significant threat to the Arkansas River shiner. Consequently, we believe each area designated as critical habitat may require some level of management and/or protection to address current and future threats to the Arkansas River shiner, maintain the primary constituent elements essential to its conservation, and ensure the overall recovery of the species. Further discussion of the threats specific to each unit that may require special management considerations or protection are further discussed in the ''Unit Descriptions'' section below.

The range and numbers of the species has already been much reduced by these threats. Consequently, the remaining fragmented sections are more likely to be affected by influences from other factors such as drought, water withdrawals, and permitted and unpermitted wastewater discharges. Once habitats are isolated, other aggregations of Arkansas River shiner can no longer disperse into these reaches and help maintain or restore these populations. Isolation and segregation caused by habitat fragmentation can lead to a reduction in overall genetic diversity. Lande (1999) identified reduced genetic diversity as one of several factors influencing extinction in small populations. Therefore, to conserve and recover the fishes to the point where they no longer require the protection of the Act and may be delisted, it is important to maintain and protect all remaining genetically diverse populations of this species within its historic range.

Within the historic range of the Arkansas River shiner, considerable reaches of formerly occupied habitat have been inundated by reservoirs. While these losses are permanent and cannot reasonably be restored, management of water releases, such as those from Ute Reservoir, can be carried out in a manner that minimizes any adverse impacts and facilitates maintenance of Arkansas River shiner habitat. Removal of the nonnative salt cedar also can free additional water that, with management, can further provide for the habitat needs of the Arkansas River shiner. Streamflow management combined with control of salt cedar can retard the channel narrowing that often occurs following a reduction in streamflow and can improve Arkansas River shiner habitat.

In other portions of the historic range, a lack of reservoir releases and groundwater mining has drastically reduced streamflows necessary for maintenance of Arkansas River shiner habitat. In these areas, control of salt cedar and enhanced water conservation, for both municipal and agricultural uses, can help ensure adequate streamflow continues to occur. Considering the amount of free-flowing habitat required to sustain Arkansas River shiner reproduction (as discussed in the ''Primary Constituent Element'' section above), such management may be particularly beneficial in ensuring that suitable spawning, rearing, and nursery habitat persists.

Introductions of nonnative species, whether intentional or accidental, often have deleterious impacts to native species. The accidental introduction of the nonnative Red River shiner has negatively influenced the distribution and abundance of the Arkansas River shiner in the Cimarron River. A further introduction into other portions of its historic range poses a considerable threat to the Arkansas River shiner. Management efforts to eradicate the Red River shiner and eliminate or reduce the potential for additional releases of this species would be beneficial to the survival of the Arkansas River shiner.

Critical Habitat Designation

We are designating two units as critical habitat for the Arkansas River shiner. The critical habitat areas described below constitute our best assessment at this time of areas we determined to be occupied at the time of listing, to contain the primary constituent elements, and that may require special management. The river reaches designated are those most likely to substantially contribute to conservation of the Arkansas River shiner, which when combined with future management of certain unoccupied habitats suitable for restoration efforts, will contribute to the long-term survival and recovery of the species. Included in the designation are areas that contain most, if not all, of the remaining genetic diversity of the Arkansas River shiner within the Arkansas River Basin. The two segments in the Canadian River and the segment in the Cimarron River represent the largest, and perhaps only, remaining viable aggregations of Arkansas River shiner. The two areas designated as critical habitat, plus the three units that have been excluded from critical habitat designation, are shown in Table 1 above.

Lateral Extent of Critical Habitat

This designation takes into account the naturally dynamic character of riverine systems and recognizes that floodplains are an integral part of the stream ecosystem. Habitat quality within the mainstem river channels in the historical range of the Arkansas River shiner is intrinsically related to the character of the floodplain and the

associated tributaries, side channels, and backwater habitats that contribute to the key habitat features (e.g., substrate, water quality, and water quantity) in these reaches. Among other contributions, the floodplain provides space for natural flooding patterns and latitude for necessary natural channel adjustments to maintain appropriate channel morphology and geometry. Relatively intact riparian zones, along with periodic flooding in a relatively natural pattern, are important in maintaining the stream conditions necessary for long-term survival and recovery of the Arkansas River shiner.

Human activities that occur outside the river channel can have a demonstrable effect on the physical and biological features of aquatic habitats. However, not all of the activities that occur within a floodplain will have an adverse impact on the Arkansas River shiner or its habitat. Thus, in determining the lateral extent of critical habitat along riverine systems, we considered the definition of critical habitat under the Act. That is, critical habitat must contain the elements essential to a species' conservation and must be in need of special management considerations or protection. We see no need for special management considerations or protection for the entire floodplain, and we are not proposing to designate the entire floodplain as critical habitat. However, conservation of the river channel alone is not sufficient to ensure the survival and recovery of the Arkansas River shiner. For instance, the diet of the Arkansas River shiner includes many species of terrestrial insects and seeds of grasses occurring in the riparian corridor (Jimenez 1999). We believe the riparian corridors adjacent to the river channel provide a reasonable lateral extent for critical habitat designation.

Riparian areas are seasonally flooded habitats (i.e., wetlands) that are major contributors to a variety of vital functions within the associated stream channel (Federal Interagency Stream Restoration Working Group 1998; Brinson *et al.* 1981). Riparian zones are essential for energy and nutrient cycling, filtering runoff, absorbing and gradually releasing floodwaters, recharging groundwater, maintaining streamflows, protecting stream banks from erosion, and providing shade and cover for fish and other aquatic species. Healthy riparian corridors help ensure water courses maintain the primary constituent elements essential to stream fishes, including the Arkansas River shiner. Although the Arkansas River shiner cannot be found in riparian areas when they are dry, riparian areas provide habitat during high water periods and contribute to the food base utilized by the Arkansas River shiner.

The lateral extent (width) of riparian corridors fluctuates considerably between a stream's headwaters and its mouth. The appropriate width for riparian buffer strips has been the subject of several studies (Castelle *et al.* 1994). Most Federal and State agencies generally consider a zone 23–46 m (75–150 ft) wide on each side of a stream to be adequate (NRCS 1998; Moring et al. 1993; Lynch et al. 1985), although buffer widths as wide as 152 m (500 ft) have been recommended for achieving flood attenuation benefits (Corps 1999). In most instances, however, riparian buffer zones are primarily intended to reduce (i.e., buffer) detrimental impacts to the stream from sources outside the river channel. Consequently, while a riparian corridor 23–46 m (75–150 ft) in width may function adequately as a buffer, it is likely inadequate to preserve the natural processes that provide Arkansas River shiner primary constituent elements.

Generally, we consider a lateral distance of 91.4 m (300 ft) on each side of the stream beyond the bankfull width to be an appropriate riparian corridor width for the preservation of Arkansas River shiner constituent elements. The bankfull width is the width of the stream or river at bankfull discharge. Bankfull discharge is significant because it is the flow at which water begins to leave the active channel and move into the floodplain (Rosgen 1996) and serves to identify the point at which the active channel ceases and the floodplain begins. Bankfull discharge, while a function of climate and the size of the stream, is a fairly consistent feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996). Trained individuals can readily approximate the upper limits of bankfull discharge in the field using physical indicators such as depositional features, scour lines, and changes in vegetation. Bankfull discharge is generally accepted as the flow that occurs every 1 to 2 years (Leopold *et al.* 1992).

Some developed lands within the 91.4 m (300 ft) lateral extent are not considered critical habitat because they do not contain the primary constituent elements and, therefore, do not have the features that are essential to the conservation of the Arkansas River shiner. Lands located within the boundaries of the critical habitat designation, but that do not contain any of the primary constituent elements or provide habitat or biological features essential to the conservation of the Arkansas River shiner include: existing paved roads; bridges; parking lots; railroad tracks; railroad trestles; water diversion and irrigation canals outside of natural stream channels; active sand and gravel pits; regularly cultivated agricultural land; and residential, commercial, and industrial developments. However, activities funded, authorized, or carried out in these areas by Federal action agencies that may affect the primary constituent elements of the critical habitat, may require consultation pursuant to section 7 of the Act.

In summary, the riparian zone included in the lateral extent of critical habitat for the Arkansas River shiner serves several functions vital to ensuring the aquatic habitat continues to provide the primary constituent elements needed by the shiner. As stated above, a proper functioning riparian zone helps ensure that the aquatic habitat continues to function ecologically and riparian areas can provide habitat during high water periods. Plains rivers are primarily located in areas with soils predominated by sands. These soils are extremely susceptible to wind and water erosion. Once erosion starts, channel characteristics, such as hydraulics, depths, velocity and related features can change considerably and large volumes of sediment can become suspended and transported in the channel. The riparian vegetation is crucial to holding soils in place and avoiding stream bank erosion. Riparian vegetation also provides shade vital during summer time low flow events. During these times, stream flows begin to decline and fishes are often isolated to pools near the margins of the river. The overhanging vegetation helps shade these pools. Without the shade, temperatures in these pools can quickly become lethal as they exceed the thermal capacity of the fish. The riparian zone also provides seeds and terrestrial invertebrates that form a component of the diet of the Arkansas River shiner. In addition, vegetative material from the riparian zone, along with instream production, drives the nutrient/energy cycle of the stream. Aquatic invertebrates utilize this terrestrial vegetative material as food. The Arkansas River shiner in turn feeds on the invertebrates. The riparian vegetation is an important component of the food web that everything else depends upon for energy and nutrients. The riparian zone also serves to buffer the stream from impacts that occur within the floodplain but outside of the riparian zone. However, in determining the lateral extent for the Arkansas River

shiner, we believe that the riparian zone is capable of supporting most of these important processes and functions, not just serving as a buffer zone.

Unit Descriptions

Critical habitat and habitat that has been excluded includes Arkansas River shiner habitat in five reaches of four different rivers within the Arkansas River basin in Kansas, New Mexico, Oklahoma, and Texas. Lands we considered for critical habitat are largely under private, State, and Federal ownership. We are designating critical habitat in two reaches (i.e., units) and excluding the remaining three units for various reasons, as described in the ''Exclusion Under Section 4(b)(2) of the Act'' section below. For those areas that have been excluded, the unit description is provided only to define the unit. Although all of the units are within the geographic range of the species, we are not designating all of the areas known to be occupied by the Arkansas River shiner. A brief description of each unit, reasons why it contains the features essential for the conservation of the Arkansas River shiner, and the special management considerations particular to each unit, are presented below.

Unit 1a. Canadian River, Quay County, New Mexico, and Oldham and Potter Counties, Texas

The Canadian River from near Ute Dam in New Mexico to the upper reaches of Eufaula Reservoir in Oklahoma, except for those areas rendered unsuitable for Arkansas River shiner by Lake Meredith in Texas, is currently occupied by the Arkansas River shiner. These are the largest, remaining viable aggregations of Arkansas River shiner, and are considered to represent the ''core'' of what remains of the species. Smaller tributary streams, with the exception of Revuelto Creek in New Mexico and small sections of the tributaries near their confluence, may be seasonally occupied by the Arkansas River shiner.

We have excluded all areas in Unit 1a from the final critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). Unit 1a consists of approximately 248 km (154 mi) of the Canadian River extending from U.S. Highway 54 bridge near Logan, New Mexico, downstream to the confluence with Coetas Creek, Texas. Seepage from Ute Reservoir, inflow from Revuelto Creek, and several springs help sustain perennial flow in most years. There are occasional periods of no flow, and prior to 1956, low flows in the lower section were historically maintained by effluent from the Amarillo, Texas, wastewater treatment plant. This segment of the Canadian River, despite flows having been modified by Conchas and Ute reservoirs, still supports a largely intact plains river fish fauna. Within New Mexico, this reach is predominantly in private ownership, although the State of New Mexico owns scattered tracts. The reach in Texas is in private ownership, except for a small segment on the extreme lower end that is owned by the National Park Service as part of the Lake Meredith National Recreation Area.

We did not consider including the following additional areas in this designation because we determined that these areas do not meet the definition of critical habitat. Upstream of Ute Reservoir, the Canadian River was substantially modified following the construction of Conchas Reservoir and likely provides little suitable habitat. A small portion of Arkansas River shiner historical range occurs upstream of Conchas Reservoir, but the suitability of that reach for Arkansas River shiner is unknown. No extant aggregations of the Arkansas River shiner are known from these reaches. Arkansas River shiners persist in portions of the 3.2 km (2 mi) reach between the U.S. Highway 54 bridge and Ute Dam.; however, we did not consider this section of the stream to have the features essential to the conservation of the species because it rarely contains suitable habitat due to the influence of Ute Reservoir.

Unit 1b. Canadian River, Hemphill County, Texas, and Blaine, Caddo, Canadian, Cleveland, Custer, Dewey, Ellis, Grady, Hughes, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Roger Mills, and Seminole Counties, Oklahoma

This reach is predominantly in private ownership, with limited areas of State and tribal ownership (see ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' section). The Oklahoma Department of Wildlife Conservation owns a small section near Roll, Oklahoma (Packsaddle WMA). The Nature Conservancy also owns a small tract near Roll, Oklahoma (Four Canyons Preserve). Small tracts of tribal lands are located near Oklahoma City.

Essential lands in Unit 1b consist of approximately 600 km (373 mi) of river extending from the Oklahoma state line, downstream to the Indian Nation Turnpike bridge northwest of McAlester, Oklahoma. This segment of the Canadian River is the longest unfragmented reach in the Arkansas River Basin that still supports the Arkansas River shiner. Arkansas River shiner abundance in this reach varies from rare to common, with the species generally becoming more abundant in a downstream direction.

Of these essential areas, we have excluded a portion of lands in Unit 1b, extending from the Oklahoma state line, downstream to the State Highway 33 bridge near Thomas, Oklahoma, from the final critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). This 204 km (127 mi) long reach includes the Packsaddle WMA and the Four Canyons Preserve. As a result, the final designation of critical habitat within Unit 1b encompasses a 396 km (246 mi) stretch from the State Highway 33 bridge near Thomas, Oklahoma, downstream to the Indian Nation Turnpike bridge northwest of McAlester, Oklahoma.

Within Unit 1b, we identified a 42 km (26 mi) reach of the Canadian River upstream of the Oklahoma state line and extending to the U.S. Highway 60/83 bridge near Canadian, Texas. This area was proposed as essential habitat for the Arkansas River shiner; however, as a result of this segment being surrounded by conservation lands, detached from a considerably larger designated reach, and too small to support successful completion of Arkansas River shiner life history (i.e., less than 218 km (135 mi)), it is our determination that this segment does not meet the definition of critical habitat and was removed from consideration.

We did not consider including the following areas in Unit 1b because we determined that these areas do not meet the definition of critical habitat. The Canadian River upstream of the community of Canadian, Texas, to Sanford Dam at Lake Meredith, frequently supported Arkansas River shiners prior to the construction of Lake Meredith. However, habitat in this segment is currently degraded and generally unsuitable. Some aggregations of Arkansas River shiner may still persist upstream of Canadian, Texas, although primarily on a seasonal basis and in extremely small numbers. Altered flow regimes will continue to affect habitat quality in this reach. Aggregations of Arkansas River shiner also persist in the 49 km (30 mi) section of the Canadian River from the Indian Nation Turnpike bridge downstream to the upper limits of Eufaula Reservoir. However, the downstream distributional limit of these populations frequently fluctuates. Management of water surface

elevations in Eufaula Reservoir for flood control and the resultant backwater effects routinely alter stream morphology at the downstream extent of the population. Under elevated surface water conditions, the lower reaches of this segment are degraded or may be entirely unsuitable for Arkansas River shiner.

Unit 2. Beaver/North Canadian River, Beaver, Ellis, Harper, Major, Texas, and Woodward Counties, Oklahoma

We have excluded all lands in Unit 2 from the final critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). Unit 2 consists of 340 km (211 mi) of river extending from Optima Dam in Texas County, Oklahoma, downstream to U.S. Highway 60/281 bridge in Major County, Oklahoma. Almost the entire Beaver/North Canadian River mainstem and at least one of the major tributaries (Deep Fork River) in Oklahoma were historically known to support Arkansas River shiner aggregations. At present, aquatic habitats in large areas of the drainage are degraded or unsuitable, either because of reservoirs, reduced stream flow, or water quality impairment. A small aggregation of Arkansas River shiners may still persist between Optima Dam and the upper reaches of Canton Reservoir, based on the collection of four individuals since 1990. However, an assessment of fish communities and aquatic habitat was conducted at 10 sites within this unit during 2000 and 2001 (Wilde 2002). During this assessment, Arkansas River shiners were not encountered and available habitat was considered marginal (Wilde 2002). While habitat quality in this reach appears marginal, all of the primary constituent elements are present. However, we are uncertain if the Arkansas River shiner still inhabits this reach. The segment between Optima Dam and the upper reaches of Canton Reservoir offers an opportunity for recovery of the Arkansas River shiner in the Beaver/North Canadian River. Reestablishing Arkansas River shiner in this reach would involve some habitat restoration to achieve more optimal conditions for the Arkansas River shiner. Recovery activities will likely include augmenting existing aggregations of the Arkansas River shiner and may involve reestablishing additional populations in this system.

Land ownership for Unit 2 is predominantly private, with limited areas of State owned lands. The Oklahoma Department of Wildlife Conservation owns small sections near Beaver, Oklahoma (Beaver River WMA) and near Fort Supply, Oklahoma (Cooper WMA). The Oklahoma Department of Parks and Tourism owns a small section near Woodward, Oklahoma (Boiling Springs State Park).

Unit 3. Cimarron River, Clark, Comanche, Meade, and Seward Counties, Kansas, and Beaver, Blaine, Harper, Kingfisher, Logan, Major, Woods, and Woodward Counties, Oklahoma

Lands in Unit 3 consist of approximately 460 km (286 mi) of river extending from U.S. Highway 54 bridge in Seward County, Kansas, downstream to U.S. Highway 77 bridge in Logan County, Oklahoma. Historically, almost the entire Cimarron River mainstem, including the type locality for the species (the area from which the specimens that were used to first describe the species were taken), and several of the major tributaries were inhabited by the Arkansas River shiner. Between 1985 and 1992, only 16 specimens of the Arkansas River shiner were collected from the Cimarron River. Arkansas River shiner specimens where not reported again until 2004 when eight Arkansas River shiners were collected near Guthrie, Oklahoma, by SWCA Environmental Consultants (Stuart Leon, U.S. Fish and Wildlife Service, in litt. 2004). Although this population is by no means secure, it continues to persist over time and appears to be at least marginally viable despite low numbers being captured over the last 13 years.

The diminished distribution and abundance of the Arkansas River shiner in the Cimarron River is due, in part, to the introduction of the Red River shiner and continuing habitat loss and degradation (Cross *et al.* 1983; Felley and Cothran 1981). The Red River shiner, a small minnow endemic to the Red River, was first recorded from the Cimarron River in Kansas in 1972 (Cross *et al.* 1985) and from the Cimarron River in Oklahoma in 1976 (Marshall 1978). Since that time, the nonindigenous Red River shiner has essentially replaced the Arkansas River shiner throughout much of the Cimarron River. While reduced streamflow in the upper reaches and the presence of Red River shiners will likely complicate recovery efforts in the Cimarron River, increased management efforts would enhance the survival of the Arkansas River shiner in this river system. Suitable habitat for the Arkansas River shiner appears to exist throughout most of the system, although detailed studies have not yet been conducted.

The Cimarron River is included in the designation because it contains all of the primary constituent elements, except for the presence of a competitive nonnative species, which we intend to address during recovery planning efforts for the Arkansas River shiner. This long, unimpounded reach is occupied by the Arkansas River shiner, based on the captures in 2004, and maintains adequate stream flows to support an intact prairie stream fish community. Although site specific capture information is missing in some areas, the lack of such information does not confirm the Arkansas River shiner has been extirpated from this area. The low numbers of Arkansas River shiners within this unit make frequent capture of specimens extremely unlikely. The protection of this area is important to maintaining the complete genetic variability of the species and the full range of ecological settings within which the Arkansas River shiner is found, and therefore maintaining the ability of the species to adapt to changing environmental conditions.

The reach designated as critical habitat reflects the need for lengths of stream sufficient to provide habitat for successful completion of Arkansas River shiner life cycle (see ''Primary Constituent Elements'' section) and to support populations of Arkansas River shiner large enough to be self-sustaining over time, despite fluctuations in local conditions. Based upon the limited number of Arkansas River shiner collection records from the Cimarron River, we are uncertain if this population is self-sustaining over time. Although we specifically solicited information on the status of Arkansas River shiners in the Cimarron River, we did not receive information from any knowledgeable fishery scientist which confirms the reach encompassing the Oklahoma/Kansas State boundary is unoccupied.

Land ownership for Unit 3 is predominantly private. Private lands in this reach are primarily used for livestock grazing and other types of agriculture.

We did not include the Cimarron River downstream of the U.S. Highway 77 bridge near Guthrie to Keystone Reservoir in the proposal or designation because we have no evidence supporting that this reach is occupied. We believe sufficient habitat for the Arkansas River shiner to complete its life cycle exists within the reach designated as critical habitat, as discussed above. The lower most reach of the Cimarron River, including its confluence with the Arkansas River, was inundated when Keystone

Reservoir was impounded in 1964. This area, including Keystone Reservoir, does not provide suitable habitat because the Arkansas River shiner would not be able to persist within the inundated portions of the River.

Unit 4: Arkansas River, Barton, Cowley, Pawnee Reno, Rice, Sedgwick, and Sumner Counties, Kansas

We have excluded all lands in Unit 4 from the final critical habitat designation under section 4(b)(2) of the Act (see ''Exclusion Under Section 4(b)(2) of the Act'' section below for a detailed discussion). Unit 4 consists of 313 km (194 mi) of river extending from the confluence of the Pawnee River near Larned, Kansas, downstream to the Kansas/Oklahoma State line in Cowley County, Kansas. This distance does not include a 20 km (12.4 mi) reach of the Arkansas River within the City of Wichita metropolitan area, extending from the westbound lane of Kansas State Highway 96 crossing downstream to the Interstate 35 crossing. Stream flows downstream of the confluence of the Pawnee River near Larned are more reliable and habitats are characteristic of those used by Arkansas River shiner in other portions of its current range. This stream segment contains one or more of the primary constituent elements, and recovery activities for the Arkansas River shiner likely will include reestablishing additional populations in this reach.

The Arkansas River in Kansas contains a significant portion of the species' historical range. The Arkansas River shiner historically inhabited the entire mainstem of the Arkansas River, but had begun to decline by 1952 due to the construction of John Martin Reservoir 10 years earlier on the Arkansas River in Bent County, Colorado (Cross *et al.* 1985). Typically, releases from John Martin Reservoir and irrigation return flows from eastern Colorado maintain streamflow in the Arkansas River as far east as Syracuse, Kansas; however, the river often ceases to flow between Syracuse and Dodge City, Kansas, due to surface and groundwater withdrawals. Surface flow then resumes near Larned and Great Bend, Kansas. Lack of sufficient streamflow and ongoing water quality degradation renders much of the Arkansas River west of Larned largely unsuitable for the Arkansas River shiner. As stated in the proposed rule, we did not include the reach upstream of Larned, Kansas, in this designation because it lacks several of the primary constituent elements and no longer meets the definition of critical habitat.

Lands in Unit 4 are entirely in private ownership except for a small area near the Kansas/Oklahoma State line owned by the U.S. Army Corps of Engineers (Kaw Wildlife Area). This area is managed by the State of Kansas (Kansas Department of Wildlife and Parks).

Effects of Critical Habitat Designation

Section 7 Consultation

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Arkansas River shiner or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers 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.

Each of the areas designated in this rule have been determined to contain sufficient PCEs to provide for one or more of the life history functions of the Arkansas River shiner. In some cases, the PCEs exist as a result of ongoing federal actions. As a result, ongoing federal actions at the time of designation will be included in the baseline in any consultation conducted subsequent to this designation.

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 also may jeopardize the continued existence of the Arkansas River shiner. Federal activities that, when carried out, may adversely affect critical habitat for the Arkansas River shiner include, but are not limited to:

(1) Actions that significantly and detrimentally alter the natural flow regime of any of the designated stream segments, including activities that cause barriers or deterrents to dispersal, inundate or drain habitat, or significantly convert habitat. Possible actions would include groundwater pumping, impoundment, water diversion, and hydropower generation. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering, or growth of Arkansas River shiners. We note that such flow reductions that result from actions affecting tributaries of the designated stream reaches also may destroy or adversely modify critical habitat.

(2) Actions that significantly and detrimentally alter the characteristics of the riparian zone in any of the

designated stream segments. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, prescribed fire, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development. These activities could eliminate or reduce the habitat necessary for the reproduction, sheltering or growth of Arkansas River shiners. Some of these activities, when planned and implemented appropriately, can prove beneficial to the species and its habitat.

(3) Actions that significantly and detrimentally alter the channel morphology of any of the stream segments listed above. Possible actions would include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, discharge of dredged or fill material and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances.

(4) Actions that significantly and detrimentally alter the water chemistry in any of the designated stream segments. Possible actions would include intentional or unintentional release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Introducing, spreading, or augmenting nonnative aquatic species in any of the designated stream segments. Possible actions would include fish stocking for sport, aesthetics, biological control, or other purposes; release of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

All units are within the geographic range of the species, all are occupied by the species (based on observations made within the last 20 years), and are likely to be used by the Arkansas River shiner, whether for foraging, breeding, growth of larvae and juveniles, intra-specific communication, dispersal, migration, genetic exchange, or sheltering. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, please contact the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Threatened and Endangered Species, P.O. Box 1306, Albuquerque, New Mexico 87102 (telephone 505/248–6920; facsimile 505/248–6922).

Exclusion Under Section 4(b)(2) of the Act

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 the provision outlined in section 4(b)(2) of the Act to evaluate those specific areas that contain the features essential to the conservation of the species to determine which areas to propose and subsequently finalize (i.e., designate) as critical habitat. On the basis of our evaluation, we have determined that the benefits of excluding certain lands from the designation of critical habitat for the Arkansas River shiner outweigh the benefits of their inclusion, and have subsequently excluded those lands from this designation pursuant to section 4(b)(2) of the Act as discussed below.

Areas excluded pursuant to section 4(b)(2) may include those covered by the following types of plans/programs if the plans/programs provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative Habitat Conservation Plans (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/programs that cover the species; (4) State conservation plans/programs that cover the species; (5) National Wildlife Refuges with Comprehensive Conservation Plans (CCPs) or other applicable programs that provide assurances that the conservation measures for the species will be implemented and effective, and; (6) Partnerships, conservation plans/easements, or other type of formalized relationship/agreement on private lands. The relationship of critical habitat to these types of areas is discussed in detail in the following paragraphs.

After consideration under section 4(b)(2), the following areas of habitat have been excluded from critical habitat for the Arkansas River shiner: Units 2 (Beaver/North Canadian River) and 4 (Arkansas River), private lands within Unit 1a covered by the Canadian River Municipal Water Authority management plan (CRMWA Plan), and some private lands within Unit 1b encompassed by a portion of a plan developed by the Oklahoma Farm Bureau Legal Foundation where a partnership/commitment with the Service for the Arkansas River shiner exists. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act is provided in the paragraphs that follow.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where there is a Federal nexus—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat,

with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot*, the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing management plans is typically greater than would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project and they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, any management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the Gifford Pinchot decision.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat in that it provides the framework for the consultation process.

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the Arkansas River shiner. In general the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, habitat conservation plans have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit; in that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

However, we believe that there would be little additional informational benefit gained from the designation of critical habitat for the exclusions we are making in this rule because these areas were included in the proposed rule as having essential Arkansas River shiner habitat. Consequently, we believe that the informational benefits are already provided even though these areas are not designated as critical habitat. Additionally, the purpose normally served by the designation of informing State agencies and local governments about areas which would benefit from protection and enhancement of habitat for the Arkansas River shiner is already well established among State and local governments, and Federal agencies in those areas which we are excluding in this rule on the basis of other existing habitat management protections.

The information provided in this section applies to all the discussions below that discuss the benefits of inclusion and exclusion of critical habitat.

Units 2 and 4

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that all habitat in the Beaver/North Canadian River in Oklahoma (Unit 2) and the Arkansas River in Kansas (Unit 4) will not be designated as critical habitat in this final rule. We have reached this determination because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat.

At the time of the final listing determination (63 FR 64772), we prepared a recovery outline for the Arkansas River shiner and we have begun to implement some preliminary recovery tasks identified in the outline. Recovery outlines are brief internal planning documents that are prepared within 60 days after the date of publication of the final listing rule. These documents are intended to direct recovery efforts pending completion of the recovery plan. Although a recovery plan has not yet been prepared, recovery activities for Arkansas River shiner likely will include augmenting and reestablishing Arkansas River shiner populations in the Beaver/North Canadian River and/or the Arkansas River. We believe that the best way to achieve this objective will be to use the authorities under section 10(j) of the Act to reestablish experimental populations of Arkansas River shiner within additional areas of its historic range. Considering that the Arkansas River shiner in these reaches may be extirpated or existing occurrences so small they may not be viable, and that natural repopulation appears unlikely without human assistance, we believe that designation of the area to be repopulated using section 10(j) of the Act is the appropriate tool to utilize in future restoration efforts.

(1) Benefits of Inclusion

As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat requires consultation pursuant to section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. However, consultation on critical habitat will only address those activities associated with a Federal nexus. Much of the lands within both units are in private ownership with only limited opportunities for consultation under section 7 of the Act. Since April 4, 2001, some 25 consultations have been conducted on the Beaver/North Canadian River but none of those consultations reached the point of adverse modification. On the Arkansas River in Kansas, only nine informal consultations have been conducted within that timeframe and none of those reached the point of adverse modification.

In the environmental assessment conducted for this designation under NEPA, it states that the primary conservation value of the proposed critical habitat in Units 2 and 4 would be to facilitate full consideration of impacts to recovery of the Arkansas River shiner. Recovery of the species will likely require repatriation of the fish to areas of suitable unoccupied habitat. In these unoccupied areas, a critical habitat designation may aid the

Service in addressing longer-term, more subtle impacts to recovery, such as continuing habitat degradation and loss. These benefits could accrue to other rare or sensitive species, including the peppered chub (*Macrhybopsis aestivalis*) and Arkansas darter (*Etheostoma cragini*). At the same time, opposition to designation of critical habitat could create controversy and hostility towards recovery where it would not otherwise exist.

With regard to the effects of Federal actions within these two units, designation of critical habitat may not provide substantial habitat protection due to the predominance of private lands and paucity of Federal actions in these areas. Federal water resource projects in the two units are very rare. Although the beginning point of the proposed designation for Unit 2 begins below Optima Dam, a project of the U.S. Army Corps of Engineers, the reservoir has never filled due to insufficient inflows. As stated in the previous final designation (66 FR 18002), pumping from the High Plains Aquifer has considerably reduced streamflow in the Beaver River upstream of Optima Reservoir. Water levels in Optima Reservoir, in over 27 years of operation, have never risen to the conservation pool elevation and are currently some 0.9 m (3 ft) below the top of the inactive pool. Lacking significant streamflow events of sufficient magnitude to raise water surface elevations into the conservation pool, securing beneficial releases from this reservoir would not be possible. We doubt future conditions would improve under the designation to ever secure such releases. There are no existing or proposed Federal water resource development projects within Unit 4. Designation of critical habitat in Units 2 or 4, with respect to water resources, is not likely to provide a benefit since there is a rarity of Federal involvement in water resource projects in this area.

Agricultural practices in Units 2 and 4 primarily involve livestock production on native rangeland and in confined feeding operations, and irrigated and dryland crop production. As noted in the environmental assessment, there have not been any section 7 consultations on cultivation or irrigation activities and there have only been eight informal consultations on livestock grazing since the species was listed in 1998. Most agricultural activities in the vicinity of these units are conducted almost entirely on private lands. With the exception of CAFOs, there is little or no Federal involvement in livestock or crop production and these activities are not generally subject to section 7 consultation. In Unit 4, the Environmental Protection Agency (EPA) has delegated the National Pollutant Discharge Elimination System (NPDES) permitting authority for CAFOs to the State of Kansas, a non-Federal entity. Within Unit 4, this program would not be subject to the section 7 consultation requirements unless the program undergoes another review by EPA.

However, within Unit 2 and the rest of Oklahoma, EPA is considering but has not yet delegated this program to the State. Because the best available scientific information indicates Unit 2 is not likely occupied by the Arkansas River shiner, NPDES permitting of CAFO waste discharge would not likely be triggered under the jeopardy standard for the species. Accordingly, exclusion of Unit 2 from critical habitat would eliminate consideration of potential effects of Federal agriculture-related actions on critical habitat. Within the 6 counties encompassed by Unit 2, there are some 2,620 existing animal feeding operations. However, only a small subset of these operations are CAFOs. The DEA estimated that there are some 74 CAFOs within the watersheds encompassed by Unit 2 (see exhibit 6–5 of DEA). The majority of these (51) occur within the uppermost watershed unit, which includes a large, but unknown number of CAFOS located upstream of Optima Reservoir. The CAFOs located upstream of Optima Reservoir would not be subject to section 7 consultation requirements because the reach is unoccupied and does not contain any essential habitat. Consequently, we expect the benefit of including this area in critical habitat would be minimal due to the small number of CAFOs within Unit 2.

As noted in the environmental assessment, oil and gas production and transmission is an important activity in Units 2 and 4, with production exceeding 5 million barrels of oil in Unit 2 and 4 million barrels in Unit 4. Natural gas production exceeded 209 million Mcf (thousand cubic ft) in Unit 2 and 4 million Mcf in Unit 4. Some 126 informal section 7 consultations involving oil and gas production and transmission actions have been conducted since the species was listed in 1998. To date, no oil and gas or pipeline projects have resulted in formal consultations involving the Arkansas River shiner. However, exclusion of Units 2 and 4 from critical habitat designation would eliminate consideration of potential effects of oil and gas production and pipeline projects having a Federal nexus on critical habitat. Oil and gas drilling operations typically result in removal of all vegetation prior to initiation of drilling activities. Such vegetation removal can have short-term adverse impacts due to erosion of bare soil. However, oil and gas drilling operations are required to utilize BMPs designed to reduce or eliminate erosion. Once drilling operations are complete, the sites are then revegetated in accordance with the landowners wishes. When conducted in accordance with existing regulations, oil and gas drilling operations should have minimal long-term impacts on Arkansas River shiner habitat. Because substrates in the Beaver/North Canadian and Arkansas rivers are predominantly sand, pipeline trenching activities tend not to have lasting impacts on the stream bed. The stream bed generally will return to preexisting conditions following an occurrence of bankfull discharge.

Transportation activities in Units 2 and 4 consist largely of Federal or State highway or railway line crossings over the Beaver/North Canadian and Arkansas River, respectively. Collectively the two units have 21 Federal or State highway or railway line crossings. Exclusion of Units 2 and 4 would eliminate consideration of potential effects of transportation related actions on critical habitat. As stated in the environmental assessment, critical habitat considerations in section 7 consultations are not likely to result in substantial changes, modifications or additional costs to Federal transportation actions in Units 2 or 4. However, there would be no section 7 trigger under the destruction or adverse modification standard for Arkansas River shiner critical habitat in these units. Since 1999, we have conducted 10 consultations on transportation projects which were located in critical habitat. Of those 10, four were formal consultations, one of which is ongoing. None of the consultations on those projects reached the destruction or adverse modification threshold and none of those formal consultations occurred in Units 2 or 4. While bridge and railroad construction projects can result in substantial disturbance within the project site, almost all of these impacts are anticipated to be of short duration. As indicated above, the stream beds in these two units are predominantly sand. Streamflows equivalent to bankfull discharge, due to bed load movement, generally result in restoration of the streambed to preexisting conditions. Although the placement of piers and support columns associated with bridge projects permanently eliminates habitat once the piers are in place, it is not likely that

placement of such piers will reach the destruction or adverse modification threshold.

There are no known recreational activities involving a Federal nexus within either Unit 2 or Unit 4. Because of the lack of Federal involvement in recreational activities, designation of critical habitat is not likely to provide any benefits to species conservation with respect to such activities within either the Beaver/North Canadian or Cimarron River.

As discussed above, we expect that little additional educational benefits would be derived from including these two units as critical habitat. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this and prior critical habitat designations.

(2) Benefits of Exclusion

As stated above, recovery activities for the Arkansas River shiner likely will include augmenting and reestablishing Arkansas River shiner populations in the Beaver/North Canadian River and/or the Arkansas River. We believe that the best way to achieve this objective will be to use the authorities under section 10(j) of the Act to reestablish experimental populations of Arkansas River shiner within additional areas of its historic range. We believe that designation of the area to be repopulated using section 10(j) of the Act is the appropriate tool to utilize in future restoration efforts. An overview of the process to establish an experimental population under section 10(j) of the Act is described below.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from nonexperimental populations of the same species (e.g., the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the status of the species elsewhere in its range. In situations where we have experimental populations, portions of the statutory section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to all endangered species and most threatened species may no longer apply, and a special rule can be developed that contains the specific prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and that the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with us on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands. Experimental populations determined to be ''essential'' to the survival of the species would remain subject to the consultation provisions of section 7(a)(2) of the Act.

In order to establish an experimental population, we must issue a proposed regulation and consider public comments on the proposed rule prior to publishing a final regulation. In addition, we must comply with NEPA. Also, our regulations require that, to the extent practicable, a regulation issued under section 10(j) of the Act represent an agreement between us, the affected State and Federal agencies, and persons holding any interest in land that may be affected by the establishment of the experimental population (see 50 CFR 17.81(d)).

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

We strongly believe that, in order to facilitate recovery for the Arkansas River shiner, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of augmenting and reestablishing Arkansas River Shiner populations in the Beaver/North Canadian River and/or the Arkansas River. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Because critical habitat is often viewed negatively by the public, we believe it is important for recovery of this species that we have the support of the public when we develop and implement a recovery plan for the Arkansas River shiner. It is critical to the recovery of the Arkansas River Shiner that we reestablish the species in areas outside of its current occupied range.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We believe the Beaver/North Canadian River in Oklahoma and the Arkansas River in Kansas offer the greatest potential for repatriating the species within an area of its historic range and that the reaches encompassed by Units 2 and 4 have the greatest potential for the development of an experimental population under section 10(j) of the Act. In order for a reintroduction to be successful, the support of local stakeholders, including the States of Oklahoma and Kansas, private landowners, and other potentially affected entities, is crucial. The management or regulatory flexibility provided by the establishment of a nonessential experimental population under section 10(j) of the Act would enhance recovery opportunities for the Arkansas River shiner. Exclusion allows us to utilize our flexibility to enhance the partnership efforts focused on long-term recovery of the Arkansas River shiner within these reaches and encourages other stakeholders to become a part of this cooperative effort. Inclusion of these two units would only allow us to address relatively short-term habitat alterations that generally do not reach the destruction or adverse modification

threshold. In light of this, we find that significant benefits result from excluding these units from designation of critical habitat.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in extinction of the species, as they are considered unoccupied habitat based on the most recent information available to us. Designating critical habitat in the Beaver/North Canadian River or Arkansas River would not reduce the likelihood of extinction of the species from occupied reaches. Critical habitat designation is not a process to reestablish additional populations within areas outside of the current known distribution. On the contrary, reestablishing the Arkansas River shiner to formerly occupied reaches would reduce the likelihood of extinction by ensuring several viable populations exist throughout the former range of the species.

Unit 1a

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that all habitat in the Canadian River upstream of Lake Meredith to near Ute Reservoir in New Mexico (Unit 1a) will not be designated as critical habitat in this final rule. We have reached this determination because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat.

For several months we have been assisting the CRMWA and other partners in the development of a management plan/program for the Arkansas River shiner within this unit. A final approved version of the CRMWA Plan was provided to us during the second comment period. The following entities signed a Memorandum of Understanding (Planning Agreement) to govern the implementation of the CRMWA Plan: Canadian River Municipal Water Authority, New Mexico Interstate Stream Commission, Texas Parks and Wildlife Department, Texas Natural Resources Conservation Service, New Mexico Natural Resources Conservation Service, National Park Service, Oklahoma Farm Bureau, Texas Off Roaders Association, and U.S. Fish and Wildlife Service-Southwest Region. Other entities, such as the Texas Department of Transportation and New Mexico Department of Agriculture also submitted letters in support of the CRMWA Plan.

The overall goal of the CRMWA Plan is to maintain and enhance habitat integrity within this reach. The primary mechanisms to accomplish this goal are: the removal of invasive plant species, such as salt cedar, that reduce the amount of water available to support stream flow and to encourage the implementation of conservation programs that provide for preservation and protection of riparian zones. The plan includes a population monitoring and a public outreach/education component. The plan will reduce threats to the PCEs for Arkansas River shiner by maintaining habitat quality through control of invasive plants, ensuring seepage flows from Ute Dam continue, managing the amount and timing of releases from Ute Reservoir to benefit spawning conditions, and encouraging implementation of appropriate erosion control measures in the riparian zones. The plan commits to working with the off-road vehicle industry to minimize impacts from these activities on Arkansas River shiner habitat, particularly during the critical summer low flow conditions.

The CRMWA Plan clearly provides conservation benefits to the species. A number of entities have signed the plan demonstrating their willingness to fund and implement the actions presented in the plan. Several efforts related to control of non-native salt cedar have already been initiated. For example, the State of New Mexico has initiated a Non-native Phreatophyte Eradication Control Program targeting the control of salt cedar growth in the tributaries and mainstem of the Canadian River. Funds have already been expended to treat 1,407 hectares (3,476 acres) in Colfax, Mora, and Harding Counties at a cost of $800,000. The total program proposed for the Canadian River Basin in New Mexico involves treatment of some 12,843 hectares (ha, 31,734 acres).

Within the upper Canadian River watershed of Texas, the CRMWA has initiated a program to provide financial assistance to landowners, using the continuous sign-up provisions of the Conservation Reserve Program (CRP), for treatment of salt cedar infestations. In 2004, the CRMWA facilitated the treatment of 346 ha (855 acres (ac)) downstream of Ute Reservoir. To date 11 landowners have signed agreements to treat salt cedar on areas under their ownership totaling some 847 ha (2,094 ac). Contracts for an additional 1,295 ha (3,200 ac) of salt cedar downstream of Ute Reservoir remains to be signed. Initial treatment of these areas are expected to be complete by 2007.

Control of phreatophytes (i.e., a deep rooted plant that obtains water from a permanent source such as groundwater) like salt cedar can free additional water that, with appropriate management, can provide for the habitat needs of the Arkansas River shiner. Salt cedar has been found to utilize as much as 7,398 cubic meters (six ac-ft) of water for each 0.4 ha (1 ac) of heavily infested growth (Mooney and Hobbs 2000). Considering large areas (e.g., thousands of acres) of the Canadian River basin have been invaded by these shrubs, control of these plants could release significant quantities of water that would improve stream flow conditions and provide benefits to the Arkansas River shiner.

Additionally, streamflow management, combined with control of salt cedar, can retard the channel narrowing that often occurs following impoundment and subsequent reductions in streamflow. Under natural flood regimes, frequent bank to bank flooding helped maintain wide, braided stream channels preferred by Arkansas River shiner. However, as flood regimes were altered over time by impoundments, the reduced flows often facilitated the encroachment of woody vegetation into formerly unvegetated portions of the stream channel. Once established, this woody vegetation may become resistant to the influence of flood flows, particularly when the duration and magnitude of the flood flows are diminished. The result is a modified stream channel that is much narrower than that which previously existed prior to impoundment. The overall outcome is a reduction in the amount of suitable Arkansas River shiner habitat. When releases are required from Ute Reservoir in adherence to the Canadian River Compact, CRMWA coordinates with us and other partners to seek releases that would be beneficial to the Arkansas River shiner. Because an increase in streamflow is known to trigger spawning in Arkansas River shiners, releases from Ute Reservoir during the June through August spawning period would likely encourage and sustain spawning efforts. Such releases, although infrequent, when made in concert with salt cedar control efforts are anticipated to further enhance the quality of habitat for the Arkansas River shiner.

(1) Benefits of Inclusion

As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation pursuant to section 7 of the Act. Consultation in this unit could be triggered by federal actions that affect the shiner. The potential for

federal actions to affect the shiner are discussed below.

The environmental assessment found that relatively little groundwater use occurs in Unit 1a as most of the adjacent area is used as rangeland for livestock grazing. With respect to Lake Meredith, located on the Canadian River near the downstream limit of proposed critical habitat in Unit 1a, there is a possibility for a Federal nexus with the U.S. Army Corps of Engineers for flood control operations when the level of the lake is at or above an elevation of 2,941.3 ft are under the discretion of the U. S. Army Corps of Engineers. A portion of proposed Unit 1a extends into the flood pool. If pool levels reach this elevation, flood storage operation would be subject to section 7 consultation. However, the highest pool level recorded over the 40 year history of the project was 2,914.8 ft, which occurred in 1973. The downstream end of Unit 1a, the mouth of Coetas Creek, has an elevation of 2,950 ft and has never been inundated by Lake Meredith. Unless rainfall patterns change considerably, we believe it is unlikely that pool levels in Lake Meredith will inundate any portion of Unit 1a or trigger section 7 consultation.

As discussed above, a program of salt cedar control is currently being implemented in Unit 1a (Canadian River from Ute Dam to Lake Meredith). Salt cedar removal and control efforts in this unit are being conducted in order to achieve substantial water savings in the basin, as well as for the benefit of Arkansas River shiner and other species. Ongoing salt cedar control is funded by Federal entities and therefore triggers consultation pursuant to section 7. It is not expected, however, that consultations on salt cedar control would result in any substantial changes to projects based on their impacts on critical habitat, as these projects are beneficial to shiners.

We conclude that a designation of critical habitat in Unit 1a with respect to water resources is not likely to provide a benefit since there is limited Federal involvement in water resource projects in this area. In addition, salt cedar control programs would not likely reach the threshold of adverse modification since they can provide benefits to Arkansas River shiner habitat.

With regard to agricultural practices in Unit 1a, activities include livestock production on native rangeland and irrigated crop land. As noted in the environmental assessment, there have not been any section 7 consultations on cultivation or irrigation activities and there have only been eight informal consultations on livestock grazing since the species was listed in 1998. The environmental assessment concludes that the exclusion of Unit 1a from critical habitat would eliminate consideration of potential effects of Federal agriculture-related actions on critical habitat, which would not be considered under the jeopardy standard. However, no change is expected because agricultural activities in the vicinity of the Canadian River are conducted almost entirely on private lands with little or no Federal involvement and are therefore not subject to section 7 consultation.

Oil and gas production and transmission is an important activity in Unit 1a, with production exceeding 248,000 barrels of oil and 19 million Mcf of natural gas. As stated in the environmental assessment, there have been about 126 informal section 7 consultations on oil and gas production and transmission since the species was listed in 1998. The majority of those consultations occurred in Texas and primarily involved new wells and pipeline construction and maintenance. Benefits from critical habitat designation may occur to the species for these projects, if they are found to adversely modify critical habitat. However, it is unlikely that would be the case, since recommendations on these action normally would include only measures to minimize or prevent the likelihood of pollutants entering surface waters inhabited by the species. With regard to pipeline crossings of stream channels occupied by the species, we have recommended directional boring of pipelines under the stream bed in order to protect the Arkansas River shiner and its habitat.

Transportation activities in Unit 1a consist largely of Federal or State highway or railway line crossings over the Canadian River. However, Unit 1a has only two U.S. Highway crossings and three railroad crossings, the fewest number of any of the units. Because bridge construction projects often involve stream channel alteration, bridge construction projects have been the subject of three of the four formal consultations involving the species. We would likely required revegetation of disturbed areas following completion of construction activities. The environmental assessment concludes that the exclusion of Unit 1a from critical habitat would eliminate consideration of potential effects of Federal transportation related actions on critical habitat, which would not be considered under the jeopardy standard. Designation of critical habitat might result in the identification of additional discretionary conservation measures related to transportation projects which might not be identified if Unit 1a is excluded from the designation. However, the benefit should be relatively insignificant considering the limited number of transportation related projects in this unit and the fact that Unit 1a is occupied by the Arkansas River shiner, thus section 7 consultation and analysis of effects to habitat already occur and we would likely continue to make the same or similar discretionary recommendations as noted above.

Recreational activities involving a Federal nexus are rare within any of the units and occur primarily within Unit 1a. Off-road vehicle (ORV) use is allowed in two areas within the Lake Meredith National Recreation Area: The Big Blue Creek and the Rosita ORV areas. The Big Blue Creek ORV area is not located within Unit 1a and should not be influenced by the designation of critical habitat. However, the National Park Service is contemplating restrictions within the Rosita ORV area to prevent potential adverse impacts to the Arkansas River shiner under the jeopardy standard. The primary adverse impacts involve use of the river channel during the spawning season and during summertime low-flow periods when fish are concentrated in isolated pools. The Arkansas River shiner occurs within the Rosita ORV; therefore, this restriction is being considered regardless of the critical habitat designation and thus, we do not believe that critical habitat will provide additional benefit to this area.

As discussed above, we believe that the additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, as evidenced by the various agencies and community members who have come together in order to develop the CRMWA Plan.

(2) Benefits of Exclusion

The economic analysis conducted for this proposal estimates that the costs associated with designating this unit of the proposed critical habitat would be about $2.5 to $2.7 million annually. Almost all of this cost is related to any water releases and/or modified operation from Ute Reservoir required for conservation of the Arkansas River shiner. Excluding this reach could allow some or all of these costs to be avoided. However, considering that this area is currently occupied by the species, consultation for activities which might adversely impact the species, including

possible habitat modification, would be required even without the critical habitat designation, thus the possible economic benefits might not materialize.

Another benefit of excluding Unit 1a from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. However, because critical habitat is only proposed for occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

The CRMWA Plan provides conservation benefits to the species through implementation of on-the-ground actions undertaken by partnership effort and promotes an ecosystem approach to conservation. The plan provides assurances that the conservation efforts will be implemented and helps ensure the long-term conservation of the Arkansas River shiner. The stakeholders have demonstrated a willingness to cooperatively facilitate recovery of the Arkansas River shiner. By excluding this area from the designation, we maintain this cooperative spirit and encourage future partnerships with similarly situated industry, communities, and landowners within this reach. Recovery of listed species is often achieved through partnerships and voluntary actions. Such cooperative efforts are expected to lead to greater conservation success than would be achieved strictly through regulatory approaches, such as critical habitat designation or multiple section 7 consultations. Collaborative approaches built upon a foundation of mutual trust and understanding are often the most successful. Excluding this area from critical habitat would promote and honor that trust, reinforcing their commitment to Arkansas River shiner conservation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Arkansas River shiner in Unit 1a are small in comparison to the benefits of exclusion. Exclusion would enhance the partnership efforts focused on recovery of the Arkansas River shiner within this reach and encourage other stakeholders to become a part of this cooperative effort. Excluding this area also would reduce some of the administrative costs during consultation pursuant to section 7 of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands from the critical habitat designation will not result in extinction of the species. Because this unit is occupied by the Arkansas River shiner which is protected from take under section 9 of the Act, any actions that might adversely affect the Arkansas River shiner, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. This exclusion leaves these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, the CRMWA Plan and partnership address specific threats, such as invasion by salt cedar and impacts from ORV activities within the unit, that cannot be adequately addressed by the section 7 consultation process. This is because section 7 consultations for critical habitat only consider listed species in the project area evaluated and Federal agencies are only committed to prevent adverse modification to critical habitat caused by the particular project and are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Furthermore, the willingness of the CRMWA to secure releases from Ute Reservoir, although infrequent, in a manner that maximizes benefits to Arkansas River shiner spawning efforts likely would not occur outside this partnership. Such efforts provide greater conservation benefit than would result for designation as critical habitat since the reservoir is not federally operated and, as noted above, does not trigger consultation. There is no reason to believe that these exclusions would result in extinction of the species.

Unit 1b

As discussed in the ''Summary of Changes from the Proposed Rule'' section above, we have determined that habitat in the Canadian River downstream of the Oklahoma state line to near Thomas, Oklahoma (a portion of Unit 1b), will be excluded from the final designation of critical habitat. We have reached this determination because we believe the benefits of excluding this portion of Unit 1b from this final critical habitat designation outweigh the benefits of designating the units as critical habitat.

During the second comment period, we received a draft management plan from the Oklahoma Farm Bureau Legal Foundation (OFB Plan) for the Arkansas River shiner within the entirety of Units 1b and 3. This plan was prepared by a coalition of state, industry, and Federal conservation interests in Kansas, Oklahoma, and Texas. While the OFB Plan included several actions that work towards conservation of the Arkansas River shiner, the plan was still in draft form and implementation had not begun. Accordingly, the Service was unable to accept the benefits of the conservation plan in lieu of critical habitat. We understand it is the intention of the coalition to finalize and implement the plan. Once the OFB Plan has been finalized and is being implemented, we will review the need to have designated critical habitat for the Arkansas River shiner in the subject areas. If we find this conservation plan provides sufficient benefits to the species and the habitat, the Service will propose to exclude appropriate areas from the designation.

A portion of the OFB Plan referred to an ongoing program to control salt cedar within Dewey and Ellis counties of Oklahoma. Funding for this program has been secured through a Private Stewardship Grant in the amount of about $160,000. The goal of this program is to work with private landowners to control invasive plant species, which should increase stream flow in this reach of the Canadian River, and thus provides a clear conservation benefit to the Arkansas River shiner. Excluding these lands pursuant to section 4(b)(2) is based upon the partnerships that we developed with the Oklahoma Farm Bureau and other stakeholders and the conservation benefit being provided to this area via the grant issued to private landowners to control invasive species.

(1) Benefits of Inclusion

As noted above, the primary regulatory benefit of any designated critical habitat is that federally funded or authorized activities in such habitat require consultation pursuant to section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. However, the area is predominantly rural and there is little or no Federal involvement throughout much of this reach. Therefore, very few actions would be subject to section 7 consultation.

Some limited groundwater use occurs in this reach but no major Federal water resource projects exist or have been

proposed for this reach. As indicated for Unit 1a, salt cedar control programs would not be expected to reach the threshold of adverse modification because they generally provide benefits to Arkansas River shiner habitat. Agricultural activities in this reach are conducted almost entirely on private lands with little or no Federal involvement and would rarely be subject to section 7 consultation. Some oil and gas production and transmission occurs within the counties encompassed by this reach, with production exceeding 2.8 million barrels of oil and 340 million Mcf of natural gas. However, very little production occurs in close proximity to the river. There are only five U.S. and State Highway crossings and three railroad crossings, including the crossings at Canadian, Texas and Thomas, Oklahoma. Federal recreational opportunities, with the exception of public hunting and fishing, which would not impact critical habitat, do not exist in this reach.

As discussed above, we believe that the additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple notice and comments which accompanied the development of this regulation, as evidenced by the various agencies and community members who have come together in order to develop and support the OFB Plan.

(2) Benefits of Exclusion

Excluding the 204 km (127 mi) long reach will enhance our ability to work with stakeholders in the spirit of cooperation and partnership. The conservation program for this area will be conducted under a Private Stewardship Grant that provides conservation benefits to the species within this reach through implementation of on-the-ground actions undertaken by partnership efforts. This invasive control program should be effective and there is a high level of certainty that the conservation efforts will be implemented since funding is secured through a grant. Such efforts help ensure the long term conservation of the Arkansas River shiner. The stakeholders have demonstrated a willingness to cooperatively facilitate recovery of the Arkansas River shiner. By excluding this area from the designation, we maintain this cooperative spirit and encourage future partnerships with similarly situated industry, communities, and landowners within this reach and perhaps the remainder of Units 1b and 3. Recovery of listed species is often achieved through partnerships and voluntary actions. Such cooperative efforts are expected to lead to greater conservation success than would be achieved strictly through regulatory approaches, such as critical habitat designation or multiple section 7 consultations. Collaborative approaches built upon a foundation of mutual trust and understanding are often the most successful. Excluding this area from critical habitat would promote and honor that trust, reinforcing their commitment to Arkansas River shiner conservation.

Excluding these privately owned lands from critical habitat may, by way of example, provide positive legal, economic, and other social incentives to other non-Federal landowners having lands that could contribute to listed species recovery if voluntary conservation measures, such as salt cedar control and similar activities, are implemented.

Another benefit of excluding this reach of Unit 1b from the critical habitat designation includes relieving additional regulatory burden and costs associated with the preparation of portions of section 7 documents related to critical habitat. While the cost of adding these additional sections to assessments and consultations is relatively minor, there could be delays which can generate real costs to some project proponents. Because critical habitat is only proposed for occupied areas already subject to section 7 consultation and a jeopardy analysis, it is anticipated this reduction would be minimal.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We find that the benefits of designating critical habitat for the Arkansas River shiner in this reach of Unit 1b are small in comparison to the benefits of exclusion. Exclusion would enhance the partnership efforts focused on recovery of the Arkansas River shiner within this reach and encourage other stakeholders to become a part of this cooperative effort. Excluding this area also would reduce some of the administrative costs during consultation pursuant to section 7 of the Act.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands from the critical habitat designation will not result in extinction of the species. Because this unit is occupied by the Arkansas River shiner which is protected from take under section 9 of the Act, any actions which might adversely affect the Arkansas River shiner, regardless of whether a Federal nexus is present, must undergo a consultation with the Service under the requirements of section 7 of the Act or receive a permit from us under section 10 of the Act. The exclusion leaves these protections unchanged from those which would exist if the excluded areas were designated as critical habitat. In addition, this partnership provides opportunities for improved streamflow and habitat conditions over a large, unfragmented stream reach which would not otherwise be available. Considering a Federal nexus for water resource projects and management does not exist within this reach, avenues to secure conservation benefits through section 7 consultation are rare. The water management benefits provided through this partnership provide greater conservation benefit than would result from designation as critical habitat. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate potential economic effects of the proposed Arkansas River shiner critical habitat designation (Industrial Economics 2004). The draft analysis was made available for public review on August 1, 2005 (70 FR 44078). We accepted comments on the draft analysis until August 31, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Arkansas River shiner. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive

with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline. The total conservation costs from reported efficiency effects associated with the designation of critical habitat in this rule are approximately $17 to $36 million on an annualized basis.

A copy of the final economic analysis and description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting the Oklahoma Field Office (see **ADDRESSES** section).

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 this analysis to determine whether to exclude any area from critical habitat pursuant to section 4(b)(2), if we determined that the benefits of exclusion outweigh the benefits of including an area as 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 (5 U.S.C. 601 *et seq.*, 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 Regulatory Flexibility Act (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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this designation of critical habitat for the Arkansas River shiner would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

When this critical habitat designation is effective, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in five categories: concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. The following summary of the information contained in Appendix A of the draft economic analysis provides the basis for our determination.

Concentrated Animal Feeding Operations (CAFOs)

Arkansas River shiner conservation activities have the potential to affect approximately 67 of the 4,125 small animal feeding businesses (roughly 1.6 percent) located within States that contain proposed shiner habitat and impacted CAFOs (Oklahoma, Texas, and Kansas). The watersheds with highest potential impacts to small CAFOs are the Lower Canadian (Unit 1b) and the Lower Cimarron-Skeleton (Unit 3). Impacts are possible in the form of additional compliance costs related to a number of potential requirements, including increased storage capacity in wastewater retention structures and various monitoring and testing activities. These compliance costs may lead to financial stress at up to 33 facilities. Upper-bound estimates of

potential impacts result from conservative assumptions (that is, assumptions that are intended to overstate rather than understate costs) regarding the number and type of project modifications required of CAFO facilities as summarized in Section 6 of the draft economic analysis.

Oil and Gas Production Activities

Project modifications to oil and gas activities resulting from Arkansas River shiner conservation activities will have minimal effects on small oil and gas and pipeline businesses in counties that contain proposed Arkansas River shiner habitat. Impacts are expected to be limited to additional costs of compliance for oil and gas projects. Assuming that each potentially impacted well and pipeline represent individual well and pipeline businesses, annual compliance costs are roughly 1.1 percent of estimated 1997 revenues for potentially impacted small oil and gas well production businesses and 0.12 percent of estimated 1997 revenues for potentially impacted small pipeline businesses in these counties. As noted in the draft economic analysis, 1997 revenue data is the most current available data from the United States Economic Census.

Agriculture

While Arkansas River shiner conservation activities have not impacted private crop production since the listing of the species in 1998, the draft economic analysis considers that farmers may make decisions that lead to reductions in crop production within proposed critical habitat. Section 7 of the draft economic analysis presents a scenario in which farmers choose to retire agricultural land from production in order to avoid section 9 take of the species (''take'' means to harass, harm, pursue, or collect, or attempt to engage in any such conduct). The screening analysis estimates that up to 14 small farms in States that contain proposed Arkansas River shiner habitat could be impacted under this scenario. This represents a small percentage (less than one percent) of total farm operations in these States.

Livestock Grazing

Limitations on livestock grazing may impact ranchers in the region. As discussed in Section 7 of the draft economic analysis, Arkansas River shiner conservation activities could result in a reduction in the level of grazing effort within proposed Arkansas River shiner habitat on non-Federal lands. On non-Federal lands, however, impacts are uncertain, because maps describing the overlap of privately grazed lands and the proposed designation are not available (*i.e.*, that portion of each ranch which could be impacted by the designation). If each affected ranch is small, then approximately 20 to 43 ranches annually could experience losses in cattle grazing opportunities as a result of Arkansas River shiner conservation activities on non-Federal lands. This represents a small percentage (less than one percent for the upper-bound estimate) of beef cow operations in those States where habitat is proposed for designation.

Recreation

As detailed in Section 9 of the draft economic analysis, limitations on off road vehicle (ORV) use at the Rosita ORV area within Lake Meredith National Recreation Area in Hutchinson County, Texas, during the months of July to September may result in up to 23,299 lost visitor days annually. These lost visitor days represent 2.4 percent of the three-year average of total visitor trips to Lake Meredith National Recreation Area (2002 to 2004), and roughly 25 percent of annual ORV visitor trips to Rosita from 2000 to 2004. Recreation-related sales generated by small businesses in Hutchinson County, Texas, are estimated at $88.5 million. Thus, the total annual impact of reduced consumer expenditure ($897,00 to $1.3 million annually) is equivalent to 1.0 to 1.5 percent of small business revenues of affected industries in Hutchinson County. While small business impacts are likely to be minimal at the county level, some individual small businesses may experience greater impacts. However, data to identify which businesses will be affected or to estimate specific impacts to individual small businesses are not available. In addition, the entirety of Unit 1a, including Lake Meredith National Recreation Area, has been excluded from the final critical habitat designation, thus no impacts to small business would be expected in this area.

Based on this data, and the additional exclusions of units made in this final rulemaking, we have determined that this designation would not affect a substantial number of small businesses involved in concentrated animal feeding operations, oil and gas, agriculture, livestock grazing, and recreation. Further, we have determined that this designation also would not result in a significant effect to the annual sales of those small businesses impacted by this proposed designation. As such, we are certifying that this designation of critical habitat would not result in a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the Arkansas River shiner is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a detailed discussion and analysis of this determination. Specifically, three criteria were determined to be relevant to this analysis: (1) Reductions in crude oil supply in excess of 10,000 barrels per day (bbls); (2) reductions in natural gas production in excess of 25 million Mcf per year; and (3) increases in the cost of energy production in excess of one percent. The draft economic analysis determined that the oil and gas industry is not likely to experience ''a significant adverse effect'' as a result of Arkansas River shiner conservation activities. 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; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance, or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) The economic analysis discusses potential impacts of critical habitat designation for the Arkansas River shiner including administrative costs, water management activities, oil and gas activities, concentrated animal feeding operations, agriculture, and transportation. The analysis estimates that annual costs of the rule could range from $17 to $36 million per year. Oil and gas production, CAFOs, and water management activities are expected to experience the greatest economic impacts related to shiner conservation activities, in that order of relevant impact. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to CAFOs would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the Arkansas River shiner will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Arkansas River shiner in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Arkansas River shiner does not pose significant takings implications.

Federalism

In accordance with E.O. 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policies, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Kansas, New Mexico, Oklahoma, and Texas. The designation of critical habitat in areas currently occupied by the Arkansas River shiner 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 the States and local resource agencies in that the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements 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 local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Endangered Species Act. This rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Arkansas River shiner.

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

This rule does not contain new or revised information collection for which OMB approval is required 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

Our position is 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). However, when the range of the species includes States within the Tenth Circuit (the States of Colorado, Kansas, Nebraska, New Mexico, Oklahoma, Utah, and Wyoming), such as that of the Arkansas River shiner, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. Accordingly, we completed an environmental assessment and finding of no significant impact on the designation of critical habitat for the Arkansas River shiner.

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, Secretarial Order 3206, and the Department of the Interior's manual at 512 DM 2, we have coordinated with federally-recognized Tribes on a Government-to-Government basis. We attempted to carry out our responsibilities under the Act in a manner that harmonizes the Federal trust responsibility to Tribes and Tribal sovereignty while striving to ensure that Native American Tribes do not bear a disproportionate burden for the

conservation of listed species. This designation of critical habitat for the Arkansas River shiner includes tribal lands. Tribal lands within the designation primarily exist as scattered, fragmented tracts that are generally held privately by the individual tribal member or are held in trust for the tribe by the Bureau of Indian Affairs.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Oklahoma Ecological Services Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the staff of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.95(e) by revising critical habitat for the Arkansas River Basin population of the Arkansas River shiner (*Notropis girardi*) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Arkansas River Shiner (*Notropis girardi*)

(1) Critical habitat units are depicted for Clark, Comanche, Meade, and Seward Counties, Kansas; and Beaver, Blaine, Caddo, Canadian, Cleveland, Custer, Grady, Harper, Hughes, Kingfisher, Logan, Major, McClain, McIntosh, Pittsburg, Pontotoc, Pottawatomie, Seminole, Woods and Woodward Counties, Oklahoma, on the maps and as described below.

(2) Critical habitat includes the stream channels within the identified stream reaches indicated on the map below, and includes a lateral distance of 91.4 m (300 ft) on each side of the stream width at bankfull discharge. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain and generally occurs with a frequency of every 1 to 2 years.

(3) Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following—(i) a natural, unregulated hydrologic regime complete with episodes of flood and drought or, if flows are modified or regulated, a hydrologic regime characterized by the duration, magnitude, and frequency of flow events capable of forming and maintaining channel and instream habitat necessary for particular Arkansas River shiner life-stages in appropriate seasons; (ii) a complex, braided channel with pool, riffle (shallow area in a streambed causing ripples), run, and backwater components that provide a suitable variety of depths and current velocities in appropriate seasons; (iii) a suitable unimpounded stretch of flowing water of sufficient length to allow hatching and development of the larvae; (iv) a river bed of predominantly sand, with some patches of gravel and cobble; (v) water quality characterized by low concentrations of contaminants and natural, daily and seasonally variable temperature, turbidity, conductivity, dissolved oxygen, and pH; (vi) suitable reaches of aquatic habitat, as defined by primary constituent elements (i) through (v) above, and adjacent riparian habitat sufficient to support an abundant terrestrial, semiaquatic, and aquatic invertebrate food base; and (vii) few or no predatory or competitive non-native fish species present.

(4) Developed areas, such as buildings, roads, bridges, parking lots, railroad tracks, other paved areas, and the lands that support these features are excluded from this designation. They are not designated as critical habitat and Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect protected or restricted habitat and one or more of the primary constituent elements in adjacent critical habitat.

(5) Kansas (Sixth Principal Meridian (SPM)) and Oklahoma (Indian Meridian (IM)): Areas of land and water as follows (physical features were identified using USGS 7.5′ quadrangle maps; river reach distances were derived from digital data obtained from USGS National Atlas data set for river reaches, roads, and county boundaries.

(6) Critical habitat units for the Arkansas River shiner are described below.

(i) Unit 1b. Canadian River—approximately 396 km (246 mi), extending from the State Highway 33 bridge near Thomas, Oklahoma (IM T.15 N., R. 14 W., SW¼ SE¼ Sec. 15) downstream to Indian Nation Turnpike bridge northwest of McAlester, Oklahoma (IM T.8N., R.13E., SE¼ SW¼ SE¼ Sec. 23).

(ii) Unit 3. Cimarron River—approximately 460 km (286 mi), extending from U.S. Highway 54 bridge in Seward County, Kansas (SPM, T. 33 S., R. 32 W., Sec. 25) downstream to U.S. Highway 77 bridge in Logan County, Oklahoma (IM, T. 17 N., R. 2 W., Sec. 29).

(iii) **Note:** Map of critical habitat units follows:

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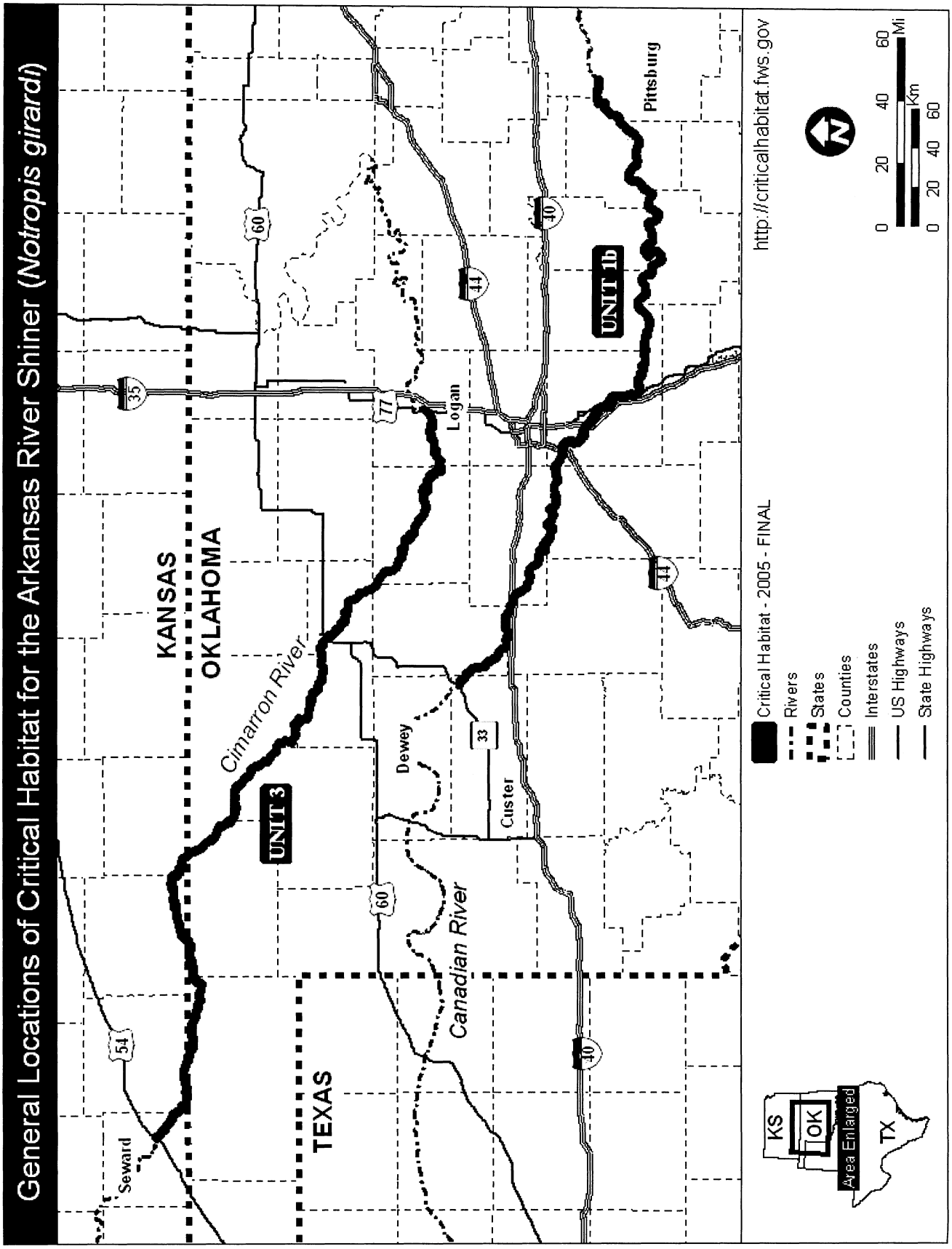
General Locations of Critical Habitat for the Arkansas River Shiner (Notropis girardi)
KANSAS
OKLAHOMA
TEXAS
Cimarron River
Canadian River
UNIT 3
UNIT 1b
Seward
Logan
Dewey
Custer
Pittsburg
35
77
60
54
33
40
44
http://criticalhabitat.fws.gov
Critical Habitat - 2005 - FINAL
Rivers
States
Counties
Interstates
US Highways
State Highways
KS
OK
TX
Area Enlarged
0 20 40 60 Mi
0 20 40 60 Km

* * * * *

Dated: September 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20048 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
October 13, 2005

Part III

Environmental Protection Agency

40 CFR Parts 3, 9, 51 et al.
Cross-Media Electronic Reporting; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 3, 9, 51, 60, 63, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745 and 763

[FRL–7977–1]

RIN 2025–AA07

Cross-Media Electronic Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is establishing the framework by which it will accept electronic reports from regulated entities in satisfaction of certain document submission requirements in EPA's regulations. EPA will provide public notice when the Agency is ready to receive direct submissions of certain documents from regulated entities in electronic form consistent with this rulemaking via an EPA electronic document receiving system. This rule does not mandate that regulated entities utilize electronic methods to submit documents in lieu of paper-based submissions. In addition, EPA is not taking final action on the electronic recordkeeping requirements at this time.

States, tribes, and local governments will be able to seek EPA approval to accept electronic documents to satisfy reporting requirements under environmental programs that EPA has delegated, authorized, or approved them to administer. This rule includes performance standards against which a state's, tribe's, or local government's electronic document receiving system will be evaluated before EPA will approve changes to the delegated, authorized, or approved program to provide electronic reporting, and establishes a streamlined process that states, tribes, and local governments can use to seek and obtain such approvals.

DATES: This rule shall become effective January 11, 2006.

ADDRESSES: The public record for this rulemaking has been established under docket number OEI–2003–0001 and is located 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. (See **SUPPLEMENTARY INFORMATION** below.)

FOR FURTHER INFORMATION CONTACT: For general information on this final rule, contact the docket above. For more detailed information on specific aspects of this rulemaking, contact David Schwarz (2823T), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1704, *schwarz.david@epa.gov*, or Evi Huffer (2823T), Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 566–1697, *huffer.evi@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Affected Entities

This rule will potentially affect states, tribes, and local governments that have been delegated, authorized, or approved, or which seek delegation, authorization, or approval to administer a federal environmental program under Title 40 of the Code of Federal Regulations (CFR). For purposes of this rulemaking, the term ''state'' includes the District of Columbia and the United States territories, as specified in the applicable statutes. That is, the term ''state'' includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of Northern Marina Islands, and the Trust Territory of the Pacific Islands, depending on the statute.

The rule will also potentially affect private parties subject to any requirements in Title 40 of the CFR that require a document to be submitted to EPA. Affected Entities include, but are not necessarily limited to:

Category	Examples of affected entities
Local government	Publicly owned treatment works, owners and operators of treatment works treating domestic sewage, local and regional air boards, local and regional waste management authorities, and municipal and other drinking water authorities.
Private	Industry owners and operators, waste transporters, privately owned treatment works or other treatment works treating domestic sewage, privately owned water works, small businesses of various kinds, sponsors such as laboratories that submit or initiate/support studies, and testing facilities that both initiate and conducts studies.
Tribe and State governments.	States, tribes or territories that administer any federal environmental programs delegated, authorized, or approved by EPA under Title 40 of the CFR.
Federal government	Federally owned treatment works and industrial dischargers, and federal facilities subject to hazardous waste regulation.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware can potentially be affected by this action. Other types of entities not listed in the table can also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OEI–2003–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Cross-Media Electronic Reporting Rule (CROMERR) 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 Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. You may have to pay a reasonable fee for copying.

An electronic version of the public docket is available through EPA's

electronic public docket and comment system, EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials. After selecting the ''Using EDOCKET'' icon, select ''quick search,'' then key in the appropriate docket identification number. Double click on the document identification number to bring up the docket contents.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Organization of This Document

Information in this Preamble is organized as follows:

I. Overview

A. Why does the Agency seek to provide electronic alternatives to paper-based reporting and recordkeeping?

In the **Federal Register** of August 31, 2001 (66 FR 46162), EPA published a notice of proposed rulemaking, announcing the goal of making electronic reporting and electronic recordkeeping available under EPA regulatory programs. The Agency believes that the submission and storage of electronic documents in lieu of paper documents can:

- Reduce the cost and burden of data transfer and maintenance for all parties to the data exchanges;
- Improve the data and the various business processes associated with its use in ways that may not be reflected directly in cost-reduction, e.g., through improvements in data quality, and the speed and convenience with which data may be transferred and used; and
- Maintain the level of corporate and individual responsibility and accountability for electronic reports and records that currently exists in the paper environment.

Recent federal policy and law are also strong drivers of electronic alternatives to traditional reporting and recordkeeping. The Government Paperwork Elimination Act (GPEA) of 1998, Title XVII of Public Law 105–277, requires the Director of the Office of Management and Budget (OMB) to ensure that executive agencies provide for the option of the electronic maintenance, submission, or disclosure of information as a substitute for paper when practicable, and for the use and acceptance of electronic signatures, when practicable. See GPEA section 1704. Given the enormous strides in data transfer and management technologies, particularly in connection with the Internet, replacing paper with electronic data transfer now promises increased productivity across almost all facets of business and government.

In seeking to make electronic alternatives available that were not contemplated when most existing EPA regulations were written, EPA was mindful of the need to maintain our ability to carry out our statutory environmental and health protection mission, in part through ensuring the integrity of environmental compliance documents. Accordingly, the intended

effect of the proposed regulation was to permit and encourage the use of electronic technologies in a manner that is consistent with EPA's overall mission and that preserves the integrity of the Agency's compliance and enforcement activities.

The Agency believes that it is essential to ensure that electronic reports can play the same role as their paper counterparts in providing evidence of what was reported and to what identified individuals certified with respect to the report. Otherwise, electronic reporting places at risk the continuing viability of self-monitoring and self-reporting that provides the framework for compliance under most of our environmental programs. The purpose of today's final rule is therefore twofold. Today's rule is intended to provide regulated industry, EPA, and state, tribe, and local governments with electronic reporting alternatives that improve the efficiency, the speed, and the quality of regulatory reporting. At the same time, the rule is intended to ensure the legal dependability of electronic documents submitted under environmental programs. This includes, among other things, ensuring that individuals will be held as responsible and accountable for the electronic signatures, which they execute, and for the documents to which such signatures attest as they currently are in cases of documents where they execute handwritten signatures.

B. What does the electronic reporting rule do?

EPA is announcing today the final regulatory provisions in a new part 3 of Title 40 of the CFR for electronic reporting to EPA and under authorized state, tribe, and local government programs. ''Authorized program'' is shorthand for a federal program that EPA has delegated, authorized, or approved a state, tribe or local government to administer under other provisions of title 40 of the CFR, where the delegation, authorization, or approval has not been withdrawn or expired. Section 3.3 of the rule codifies this usage in the regulatory text. This use of ''authorized'' does not mean that EPA is precluded from an enforcement action by a prior enforcement action being taken by a state, tribe, or local government under its authorized program. The final rule incorporates changes made after publication of the proposed rule that are discussed in detail in section IV of this Preamble. This rule establishes electronic reporting as an acceptable regulatory alternative across a broad spectrum of EPA programs, and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts.

The requirements in Subpart B of the rule apply to entities that choose to submit electronic documents for direct reporting to EPA, including state, tribe, and local government facilities that choose to submit electronic documents to EPA to satisfy requirements that apply to them under other provisions of title 40 of the CFR. However, the scope of this final rule excludes any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data. The requirements in Subpart D of the rule provide for electronic reporting under authorized state, tribe, and local government programs and apply to the governmental entities administering the authorized programs. Under the final rule, states, tribes, and local governments have the choice of using electronic submission rather than paper for reporting under their authorized programs. Comments on the proposed rule indicated that some states and local governments are now requiring electronic reporting under those programs. Existing electronic document receiving systems must receive EPA approval in accordance with Subpart D in order to meet the requirements of part 3.

This rule does not require that any document be submitted electronically, and it does not require any state, tribe, or local authorized program to receive electronic documents. Public access to environmental compliance information is not affected by today's action.

Additionally, the scope of the final rule specifically excludes the submission of any electronic document via magnetic or optical media—for example via diskette, compact disk (CD), digital video disc (DVD), or tape—as well as the transmission of documents via hard copy facsimile or ''fax.'' The exclusion of magnetic or optical media submissions from the scope of this rule in no way indicates EPA's rejection of these technologies as a valid approach to paperless reporting. Magnetic and optical media submissions fulfill the goal of providing alternatives to submission on paper. EPA has already successfully implemented a paperless reporting alternative that utilizes magnetic and optical media submissions to fulfill many regulatory reporting requirements. Such instances include reporting related to the hazardous waste, Toxic Release Inventory, and pesticide registration programs. EPA expects these magnetic and optical media approaches to paperless reporting to continue, and nothing in today's rule should be interpreted to proscribe or discourage them.

For entities that report to EPA directly and do so by submitting electronic documents, today's action requires that these documents be submitted either to the Agency's centralized electronic document receiving system, called the ''Central Data Exchange'' (CDX), or to alternative systems designated by the Administrator as described herein and in a separate **Federal Register** notice. Entities that submit electronic documents directly to EPA will satisfy the requirements in today's rule by successfully submitting their reports to one of these systems. While we do not intend to codify any of the details of how CDX operates or how it is constructed, the characteristics of the CDX and the submission scenarios are described later in this Preamble. In addition, the CDX design specifications are included as a part of this rulemaking docket.

Many facilities submit documents directly to states, tribes, or local governments under authorized programs. For currently authorized programs that receive or wish to begin receiving electronic documents in lieu of paper, this rule requires EPA approval of program revisions or modifications that address their electronic reporting implementations. For programs initially seeking authorization, this rule requires EPA approval of any electronic reporting components of the programs. In both cases, EPA approval will be based largely on an assessment of the program's ''electronic document receiving system'' that is or will be used to implement electronic reporting. For this purpose, this rule includes performance-based standards that EPA will use to determine that an electronic document receiving system is acceptable. To implement electronic reporting under currently authorized programs, EPA is creating a streamlined procedure that states, tribes, and local governments may use to revise or modify their authorized programs to incorporate electronic reporting. Today's rulemaking also includes special provisions for authorized programs' electronic document receiving systems that exist at the time of publication of this final rule.

It is worth noting that EPA can approve changes to authorized state, tribe, or local programs that involve the use of CDX to receive data submissions from their reporting communities, and EPA is exploring opportunities to

leverage CDX resources for use by states, tribes, and local governments. As currently implemented, CDX provides the major systems infrastructure components necessary to achieve electronic reporting consistent with the standards in this rule for assessing state, tribe, or local government electronic document receiving systems. Additionally, EPA has set the goal of making CDX operations fully consistent with the requirements in today's rule within two years.

While today's rule establishes electronic reporting as a regulatory alternative, EPA will make the electronic submission alternative available for specific reports or other documents only as EPA announces its readiness to receive them through CDX or another designated system. EPA will publish announcements in the **Federal Register** as CDX and other systems become available for particular environmental reports. These elements are discussed in more detail in section V of this Preamble.

In a notice published concurrently with today's rule, EPA clarifies the status of electronic reporting directly to EPA systems that exist as of the rule's publication date. In accordance with 40 CFR 3.10, EPA is designating for the receipt of electronic submissions, all EPA electronic document receiving systems currently existing and receiving electronic reports as of the date of the notice. This designation is valid for a period of up to two years from the date of publication of the notice. During this two-year period, entities that report directly to EPA may continue to satisfy EPA reporting requirements by reporting to the same systems as they did prior to CROMERR's publication unless EPA publishes a notice that announces changes to, or migration from, that system. Any existing system continuing to receive electronic reports at the expiration of this two-year period must receive redesignation by the Administrator under § 3.10. Notice of such redesignation will be published in the **Federal Register.**

C. What is the status of the proposed electronic recordkeeping provisions?

At this time, EPA is only finalizing the provisions for electronic reporting to EPA and under authorized programs. The August 31, 2001, proposal, however, also addressed records that EPA or authorized programs require entities to maintain under any of the environmental programs governed by Title 40 of the CFR or related state, tribe, and local laws and regulations. For such records, EPA proposed specific provisions for administering the maintenance of electronic records under these environmental regulations. EPA proposed criteria under which the Agency would consider electronic records to be trustworthy, reliable, and generally equivalent to paper records in satisfying regulatory requirements. For entities that choose to keep records electronically, the proposal would have required the adoption of best practices for electronic records management. For facilities maintaining records to satisfy the requirements of authorized programs, the proposal would have allowed for EPA approval of changes to the authorized programs to provide for electronic recordkeeping. Under the proposal, approval would have been based on a determination that the authorized program would require best practices for electronic records management, corresponding to EPA's provisions for electronic records maintained to satisfy EPA recordkeeping requirements.

Further, EPA proposed that once the rule took effect, any records subject to the rule that were maintained to satisfy the requirements of EPA programs could only be maintained electronically after EPA announced in the **Federal Register** that EPA was ready to allow electronic records maintenance to satisfy the specified recordkeeping requirements. Also under the proposal, records maintained under an authorized state, tribe, or local government program could only be maintained electronically once EPA had approved the necessary changes to the authorized program.

Based on the comments received on the proposed electronic recordkeeping provisions, EPA reconsidered its approach to electronic recordkeeping and is not issuing final recordkeeping rules at this time. The Agency is conducting additional analysis and intends to publish a supplemental notice or re-proposal to solicit additional comments before a final rule on electronic recordkeeping is issued. We will be reviewing provisions related to the methods used to ensure accuracy, accessibility and the ability to detect alterations of records stored electronically, as well as other possible controls for electronic recordkeeping. The Agency intends to utilize this review to engage states, tribes, local governments, and industry in meaningful consultation to ensure that the EPA has the best available information on which to base its decisions. In conjunction with these consultations—and before issuing any notice or re-proposal—EPA will conduct additional analysis on the costs and benefits of alternative approaches, and the technical feasibility of various options, with a focus on impacts to small businesses. Today's rule does not authorize the conversion of existing paper documents retained to comply with existing recordkeeping requirements under other provisions of Title 40 of the CFR to an electronic format for record-retention purposes.

D. How were stakeholders consulted during the development of today's final rule?

This final rule reflects more than ten years of interaction with stakeholders that included states, tribes, and local governments, industry groups, environmental non-government organizations, national standard setting committees, and other federal agencies. As detailed in the proposal, many of our most significant interactions involved electronic reporting pilot projects conducted with state agency partners, including the States of Pennsylvania, New York, Arizona, and several others. In May, 1997, work began with approximately 35 states on the State Electronic Commerce/Electronic Data Interchange Steering Committee (SEES) convened by the National Governors' Association (NGA) Center for Best Practices (CBP). Also, EPA sponsored a series of conferences and meetings, beginning in June, 1999, with the explicit purpose of seeking stakeholder advice before drafting the proposal. Reports of these conferences and meetings are available in the docket for this rulemaking, along with the product of the SEES effort, a document entitled, ''A State Guide for Electronic Reporting of Environmental Data,'' and reports on some of the more recent state/EPA electronic reporting pilots.

For the proposal, EPA provided a 6-month public comment period, which closed on February 27, 2002. During that time, we received 184 sets of written comments on the proposed rule. The commenters represented a broad spectrum of interested parties: States, local governments, specific businesses, trade associations, and other federal agencies. Substantive changes to the electronic reporting provisions based on public comments are discussed in detail in section IV of this Preamble. In addition, EPA received comments at four public meetings held around the country and at two meetings with states held in Washington, DC. The comments and meeting summaries can be found in the docket to this rulemaking. Today's final rule reflects many of the comments and concerns raised by commenters on the proposal. (A complete discussion of the options considered by EPA and other background information on the Agency's policy on electronic reporting

can be found in the proposed rule.) The majority of comments focused on the costs and burden of the proposed Subpart D electronic recordkeeping provisions. EPA's response to public comments to the proposal can be found in the rulemaking docket, in the Response to Comments document.

E. What alternatives to today's final rule did EPA consider?

EPA considered both a more stringent and a less stringent alternative to the regulatory approach taken in this rule. The more stringent alternative is reflected in the electronic provisions published, August 31, 2001, in the Notice of Proposed Rulemaking for CROMERR. The proposed version of CROMERR was more stringent by virtue of setting much more prescriptive, detailed requirements that electronic document receiving systems would have to satisfy. For example:

- Proposed § 3.2000(d) contained very specific requirements for submitter identity management that a system would have to satisfy, including detailed requirements for renewal of registration and revocation of registration under specified circumstances;
- Proposed § 3.2000(e) contained very detailed requirements for the signature/certification scenario that a system would have to provide for, specifying the exact sequence of steps to be followed in electronically signing a submission, and requiring such features as on-screen, scroll-through presentation of the data to be submitted for review of the signatory prior to signing.

EPA received significant public comment on this approach, both from states and from regulated companies, and there were at least three closely related themes. The first was that such prescriptive requirements would greatly limit the flexibility of states to implement electronic reporting in a cost-effective way. The second theme was that many of the requirements—especially those specifying the signature/certification scenario—were not appropriate to many cases where electronic reporting would occur. Third and finally, many of these commenters expressed skepticism that these very detailed requirements represented the only possible approach to ensuring the legal dependability of electronic submissions and signatures. These themes are discussed in detail in section IV.B of this Preamble.

EPA also considered a less stringent alternative that would have refrained from specifying requirements to establish the identity of an individual to whom a signature device or credential (e.g. a PIN, password, or PKI certificate) is issued. This less stringent alternative would have omitted the provision for identity-proofing in the final § 3.2000(b)(5)(vii). In terms of regulatory impact, this would be a significant reduction in stringency. Most of the burden on regulated entities imposed by today's rule is associated with the registration process involved in obtaining a signature device or credential, and any requirement to establish the registrant's identity raises the aggregate burden substantially.

EPA rejected this less stringent alternative, because we believe that it would seriously undermine the rule's ability to assure the legal dependability of electronic submissions. It is a basic principle of electronic authentication (E-authentication) that individuals being authenticated are who they say they are. E-authentication depends critically on the degree of trust we can place in the credential the individual presents, and such trust depends heavily on the process of establishing the individual's identity (or ''identity-proofing'') when he or she first registers for the credential. If the identity-proofing process is not sufficiently stringent and credible, then it may be uncertain who is using the credential in a specific instance where it is presented. Where the credential is used to create an electronic signature, inadequate identity-proofing may create uncertainty as to who the signatory is, as a result, the signature may be rendered undependable for any legal purpose. Accordingly, EPA believes that, notwithstanding the cost, it is necessary to specify that identity-proofing be conducted. The § 3.2000(b)(5)(vii) identity-proofing requirement is explained in detail in section VI.E.12 of this Preamble.

II. Background

A. What has been EPA's electronic reporting policy?

On September 4, 1996, EPA published a document entitled ''Notice of Agency's General Policy for Accepting Filing of Environmental Reports via Electronic Data Interchange (EDI)'' (61 FR 46684) (hereinafter referred to as 'the 1996 Policy'), where ''EDI'' generally refers to the transmission, in a standard syntax, of unambiguous information between computers of organizations that may be completely external to each other. This notice announced EPA's basic policy for accepting electronically submitted environmental reports, and its scope was intended to include any regulatory, compliance, or informational (voluntary) reporting to EPA via EDI.

For purposes of the 1996 policy, the standard transmission formats used by EPA were to be based on the EDI standards developed and maintained by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. By linking our approach to the ANSI X12 standards, we hoped to take advantage of the robust ANSI-based EDI infrastructure already in place for commercial transactions, including a wide array of commercial off-the-shelf (COTS) software packages and communications network services, and a growing industry community of EDI experts available both to EPA and to the regulated community. At the time EPA was writing this policy, ANSI-based EDI was arguably the dominant mode of electronic commerce across almost all business sectors, from aerospace to wood products, at least in the United States. (A complete discussion of EPA's 1996 policy can be found in the preamble to the proposed rule.)

With this final rule, EPA is making changes to the 1996 policy for three primary reasons. First, and most important, the technology environment has changed substantially since the 1996 policy was written. Web-based electronic commerce and public key infrastructure (PKI) are two examples. While both were available and in use for some purposes in 1996, they had not yet achieved the level of acceptance and use that they enjoy today. We could not have anticipated in 1996 that this evolution would occur as rapidly as it has. Clearly, these developments require that we extend our approach to electronic reporting beyond EDI and Personal Identification Numbers (PINs). In addition, they teach us that it is generally unwise to base regulatory requirements on the existing information technology environment or on assumptions about the speed and direction of technological evolution.

Second, we believe that technology-specific provisions would be very complex and unwieldy. The resulting regulation would likely place unacceptable burdens on regulated entities trying to understand and comply.

Third, and finally, an electronic reporting architecture that makes a centralized EPA or state system the platform for such functions as electronic signature/certification is now quite viable—and quite consistent with the standard practices of Web-based electronic commerce. Given the state of technology six years ago, we could not

have considered this approach in the 1996 policy.

B. How does today's final rule change EPA's electronic reporting policy?

For practical purposes, the most important change that today's rule makes is in our technical approach to electronic reporting. In contrast to the 1996 policy, today's rule does not generally specify or limit the range of allowable electronic submission technologies and formats. Under today's rule, complaint electronic reporting approaches can include user-friendly 'smart' electronic forms to be completed on-line or downloaded for completion off-line at the user's personal computer, as well as data transfers via the Internet or secure email in a variety of standard and common off-the-shelf, application-based formats. Similarly, in terms of electronic signature technology, the rule allows for a range of approaches, including various implementations of PINs and passwords, the use of private or personal information, digital signatures based on PKI certificates, and other signature technologies as they become viable for our applications. As EPA or authorized programs implement electronic submission for specific reports, the rule allows them to select one or more of the available submission and signature approaches according to their circumstances and the program-specific requirements.

EPA's goals are to make this electronic reporting alternative as simple, attractive and cost-effective as possible for reporting entities, while ensuring that electronically submitted documents are as legally dependable as their paper counterparts. We believe that today's rule achieves these goals, but—unlike the 1996 policy—without requiring specific technologies or setting detailed procedural steps for the submission of electronic documents. Our strategy—as initially set out in the August 31, 2001, notice of proposed rulemaking, and as finalized today—is to impose as few specific requirements as possible on reporting entities, and to generally keep requirements neutral with respect to technology. As a consequence, today's rule enables EPA, the states, tribes, and local governments to offer regulated companies diverse approaches to electronic reporting that can be tailored to their technical capabilities and to the level of automation they wish to achieve. In addition, the strategy gives EPA, the states, tribes, and local governments the flexibility to adapt electronic reporting systems to evolving technologies without requiring that regulations be amended with each technological innovation.

However, this regulatory strategy does not mean abandoning any control over how electronic documents are submitted. In place of specific technologies or detailed procedural steps, today's rule requires that electronic submissions be made to CDX or other designated EPA systems, or to state, tribe, or local government systems that are determined to satisfy a certain specified set of technology-neutral performance standards. As a practical matter, the use of these systems (e.g., CDX or others that meet the specified performance standards) will involve submission procedures that we believe are sufficient to ensure the legal dependability of electronic reports so that they meet the needs of our compliance and enforcement programs. In addition, while the specified performance standards may be technology-neutral, agency electronic reporting systems that implement the standards will incorporate suites of very specific technologies that will further determine the process for actual electronic submission. Sections V.B and V.C of this Preamble describe these requirements and the associated technologies in some detail for the case of reporting directly to EPA via CDX.

III. Scope of the Electronic Reporting Rule

EPA is today promulgating a new Part 3 in Title 40 of the CFR. The new Part applies to all persons who submit reports or other documents to EPA under Title 40, and to state, tribe, and local programs that administer or seek to administer authorized programs under Title 40. The new part 3 does not address contracts, grants or financial management regulations contained in Title 48 of the CFR.

A. Who may submit electronic documents?

Any entity that submits documents addressed in this rule (see section III.B., below) directly to EPA can submit them electronically as soon as EPA announces that CDX or a designated alternative system is ready to receive these reports. (See section V of this Preamble for a discussion on requirements for electronic reporting to EPA, and section V.B for a discussion of the status of electronic reporting directly to EPA systems that exist as of the rule's publication date.) Under this rule, the affected entities may elect to utilize the electronic reporting alternative. These entities are not required by this final rule to report electronically; however, they may be required to report electronically under other Title 40 regulations, and nothing in today's rule limits EPA's ability to require electronic reporting under other parts of Title 40.

In general, entities may submit documents electronically as provided for under authorized state, tribe, or local government programs. Nothing in this rule prohibits state, tribe, or local governments from requiring electronic reporting under applicable state, tribe, or local law.

B. Which documents can be filed electronically?

This rule addresses document submissions required by or permitted under any EPA or authorized state, tribe, or local program governed by EPA's regulations in Title 40 of the CFR. Nonetheless, EPA will need time to develop the hardware and software components required for each individual type of document. Similarly, states, tribes, and local governments will need time to evaluate their electronic document receiving systems to ensure that they meet the standards promulgated in today's final rule. Accordingly, once this rule takes effect, specific documents submitted directly to EPA that are not already being submitted electronically to existing EPA systems can only be submitted electronically after EPA announces in the **Federal Register** that CDX or an alternative system is ready to receive those specific documents. (See section V.B of this Preamble for a discussion of the status of electronic reporting directly to EPA systems that exist as of the rule's publication date.) Documents may be submitted electronically under the provisions of an authorized state, tribe, or local program.

C. How does this final rule implement electronic reporting?

The new 40 CFR part 3 consists of four (4) Subparts. Subpart A provides that any requirement in Title 40 to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions (specified in Subpart B) once the Agency publishes a notice that electronic document submission is available for that requirement. Subpart A also provides that electronic reporting can be made available under EPA-authorized state, tribe, or local environmental programs. In addition, Subpart A makes clear: (1) that electronic document submission, while permissible under the terms of this rule, is not required by any provision of this rule; and (2) that this rule confers no right or privilege to submit data electronically and does not obligate EPA or states, tribes, or local

agencies to accept electronic data. Subpart A also contains key definitions and discusses compliance and enforcement.

Subpart B sets forth the general requirements for acceptable electronic documents submitted to EPA. It provides that electronic documents must be submitted either to CDX or to other EPA designated systems. It also includes general requirements for electronic signatures. The requirements in Subpart B apply to entities that submit electronic documents for direct reporting to EPA, including states, tribes, and local governments that submit electronic documents to EPA to satisfy requirements that apply to them under Title 40 of the CFR. Subpart B does not apply to any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data. Additionally, Subpart B does not apply to the submission of any electronic document via magnetic or optical media—for example via diskette, compact disk, or tape—or to the transmission of documents via hard copy facsimile or ''fax.''

Subpart C is reserved for future EPA electronic recordkeeping requirements.

Finally, Subpart D sets forth the process and standards for EPA approval of changes to authorized state, tribe, and local environmental programs to allow electronic reporting to satisfy requirements under these programs. Again, for purposes of Subpart D, ''electronic reporting'' entails submission via telecommunications, and Subpart D requirements do not apply in cases of submission via magnetic or optical media or hard copy ''fax.'' With respect to electronic reporting, Subpart D includes simplified performance-based standards for acceptable state, tribe, or local agency electronic document receiving systems against which EPA will assess authorized program electronic reporting elements. It also provides a streamlined process for approving applications for revisions to authorized programs for electronic reporting.

Given the provisions of Subpart A, a regulated entity wishing to determine whether electronic reporting directly to EPA was available under some specific regulation will have to verify that EPA has published a **Federal Register** notice announcing their availability and will have to locate any additional provisions or instructions governing the electronic alternative for the particular reporting requirement. To facilitate this determination, EPA intends to maintain an easily accessed list of EPA reports for which electronic reporting has been implemented—cross-referencing the applicable **Federal Register** notices—on the Exchange Network and Grants webpage at *www.epa.gov/exchangenetwork.*

IV. Major Changes From Proposed Electronic Reporting Provisions

A. How does the rule streamline the approval of electronic reporting under authorized state, tribe, and local government programs?

1. *Review of the proposal.* EPA proposed that states, tribes, and local governmental entities would use the procedures for program revision or modification provided in existing program-specific regulations governing state, tribe, or local authorized programs.

In the Preamble to the proposed rule, we noted that our approach raised certain administrative concerns, especially in cases where a governmental entity wished to use a single system to accept electronic submissions across a number of authorized programs, corresponding to EPA's use of CDX to receive reports across EPA programs. To receive EPA approval for such implementations, the governmental entity would have to apply for revision or modification under each authorized program affected, using procedures that might vary substantially from program to program. While these procedures might vary, each substantive review would still refer to the same proposed part 3 criteria, and—in the case of a single system implementation—would apply these criteria to the same system. EPA intended this approach to facilitate an administrative streamlining of the approval process, by allowing a single EPA review of all cross-program applications associated with a particular electronic document receiving system, which would enable EPA to make a single decision to approve or disapprove all the associated applications. While this approach would not eliminate multiple applications, it would at least simplify the interactions between the applicant and EPA during substantive review, and would speed EPA action on the applications themselves.

EPA also considered more radical streamlining alternatives, including a centralized approval process provided for by regulation, and the proposal requested comment on whether any of these alternatives would be preferable to the administrative approach to streamlining.

2. *Comments on the proposal.* In comments on the provisions for electronic reporting under authorized programs, a recurring theme was the complexity of the proposed requirements for EPA approval of program revisions or modifications to allow electronic reporting. The comments in many cases seemed directed equally to the approval process and to the proposed criteria for approval. Comments on the criteria are discussed in more detail in section IV.B.2 of this Preamble.

As for the comments that clearly addressed the process, there were two major concerns. The first was that the process, due to the various current program authorization regulations, is inherently complicated, time-consuming and resource-intensive. In a few cases, commenters noted the particular worry that having to seek EPA approval for each program implementing electronic reporting would be especially burdensome, and that EPA's proposed approach of streamlining the internal review component of the program revision process would be of little help.

The second concern was the impact of the rule on electronic reporting that was already underway. Commenters noted that many authorized programs are already accepting electronic submissions, or would be by the time the final rule is published, and they worried about the timing of the requirement that the electronic document receiving systems they use for this purpose be approved by EPA under associated program revision or modification procedures. Under the proposed provisions, such systems would have to be EPA-approved as soon as the rule became effective, which was not practicable. Given the need to address the criteria for approval, such applications could only be initiated once the rule was finalized, and they might take months to complete and get approved, or substantially longer in cases where the revision or modification required state legislative or regulatory changes. During the months or years that the revision or modification was in process, the authorized program would either have to shut down their electronic document receiving systems or, of necessity, operate them out of compliance with the rule. Commenters were particularly concerned with the disruptive impacts of having to shut these systems down. They pointed out that reversion to paper-based submissions in such cases may be difficult and expensive, both for the agencies and for the submitting entities that are affected, and that resuming

system operation after a long hiatus may require resources more typically associated with system start-up. Additional comments on program revision or modification and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *Revisions in the final rule.* To address the concern that the proposed program revision or modification to accommodate electronic reporting was too complicated and burdensome, the final rule provides streamlined procedures for adding electronic reporting to existing authorized programs. These are optional procedures that a state, tribe, or local government may use if it chooses, in place of the applicable program-specific procedures, to seek EPA approval for revisions or modifications that provide for electronic reporting. EPA believes that in most cases these optional procedures will be substantially simpler and quicker than their program-specific alternatives. These new procedures are discussed in detail in section VI.C of this Preamble.

To address the concern that the required program revisions or modifications may disrupt authorized programs that already have electronic reporting underway, the final rule provides for a two-year delayed compliance date—in effect, a two-year ''grace period''—before such programs have to submit their applications for revision or modification. Programs will be allowed this grace period where they have systems that fit the definition of ''existing electronic document receiving system,'' explained in section VI.B.2 of this Preamble. In addition, these provisions allow the grace period to be extended, on a case-by-case basis, where an authorized program may need to wait for legislative or regulatory changes before a complete application can be submitted.

B. How has EPA revised the requirements that state, tribe, and local government electronic reporting programs must satisfy?

1. *Review of the proposal.* EPA proposed a detailed set of criteria that would have to be met by any system that is used to receive electronic documents submitted to satisfy document submission requirements under any EPA-authorized state, tribe, or local environmental program. The proposed criteria addressed the capabilities that EPA believed a state, tribe, or local government's electronic document receiving system must have regarding six function-specific categories: (1) System security, (2) electronic signature method, (3) submitter registration, (4) signature/certification scenario, (5) transaction record, and (6) system archives.

These criteria were based upon EPA's consideration of the roles that many electronically submitted documents will likely play in environmental program management, including compliance monitoring and enforcement, and the need to ensure that such roles were not compromised by the transition from paper to electronic submission. In many respects electronic submission enhances a document's utility for environmental programs: it significantly reduces the resources and time involved in making the content available to its users, and can greatly facilitate data quality assurance and analysis. Nonetheless, electronic submissions may also be open to challenge, primarily with respect to their authenticity, and particularly where they are used to establish the actions and intentions of the submitters. We normally consider such uses in the case of environmental reporting, especially where electronic submissions are made to report on an entity's compliance status and where the submission includes a responsible individual's certification to the truth of what is reported. For such cases, EPA identified a programmatic need to be able to authenticate the submission content and the certification—for example, to be able to address issues of fraud or false reporting where they arise—and it is primarily this need that was addressed by the six proposed criteria.

The point of the proposal's six function-specific categories was to ensure the authenticity of electronic documents submitted in lieu of paper reports, so that they will be able to play the same role as their paper counterparts in providing evidence of what was reported and to what an identified individual certified with respect to the report. For example, in the case of paper submissions, the evidence surrounding a handwritten signature is normally sufficient to demonstrate that the signature is authentic and rebut any attempt by the signatory to repudiate it and EPA intends the standards in today's rule to provide evidence for electronic signatures that has a corresponding level of non-repudiation. Since these evidentiary issues typically arise in the context of judicial or other legal proceedings, electronic documents need the same ''legal dependability'' as their paper counterparts. The over-arching standard in the concept of ''legal dependability'' is that any electronic document that may be used as evidence to prosecute an environmental crime or to enforce against a civil violation should have no less evidentiary value than its paper equivalent. For example, where there is a question of deliberate falsification of compliance data—it must be possible to establish the signatory's identity beyond a reasonable doubt no matter whether the submission was electronic or paper.

A seventh, more general proposed criterion, entitled ''Validity of Data,'' addressed the standard of legal dependability directly. The idea, in general, was that a system used to receive electronic documents must be capable of reliably generating evidence for use in private litigation, in civil enforcement proceedings, and in criminal proceedings in which the standard for conviction is proof beyond a reasonable doubt that the electronic document was actually signed by the individual identified as the signatory and that the data it contains was not submitted in error. The six more detailed, function-specific criteria represented the requirements for satisfying this more general ''Validity of Data'' criterion. Taken together, the seven proposed criteria were intended to ensure the legal dependability of electronically submitted documents by providing:

- Standards for valid electronic signatures and authentic electronic documents to be admitted as evidence in a judicial proceeding;
- Assurance that electronic documents can be authenticated to provide evidence of what an individual submitted and/or attested to; and
- Assurance that electronic signatures resist repudiation by the signatory.

By providing for these and other facets of an electronic document's legal dependability, proposed CROMERR was intended to preserve the ability of EPA and its authorized programs to hold individuals accountable when they certify, attest or agree to the content of compliance reports under environmental laws and statutes. By the same token, proposed CROMERR was also intended to ensure that EPA and its authorized programs will have the documentary evidence they need to bring actionable cases of false or fraudulent reporting into court.

2. *Comments on the proposed criteria for electronic document receiving systems.* EPA received a substantial number of comments on the proposed criteria for state, tribe, and local electronic document receiving systems, both in written submissions and at meetings with the public and with state and local government officials. While a

few of these comments questioned the ''Validity of Data'' criterion, the great majority dealt with the detailed function-specific criteria. There were at least three recurring and closely related themes. First, the criteria were too prescriptive and inflexible, and would prevent state, tribe, and local agencies from adapting their electronic reporting approaches to their needs and changing circumstances, and foreclose new and creative ways to achieve legal dependability. Second, the criteria would make electronic reporting unnecessarily complex, costly, and burdensome. Third, while the criteria might be appropriate for some cases, the ''one size fits all'' approach was not workable for all reports in all programs.

Commenters tended to associate these three themes with certain misperceptions about the proposed requirements for signature method and the signature/certification scenario. Concerning signature method, a common concern was that the criteria would require states to implement PKI-based digital signatures. Commenters generally appear to have inferred this from proposed § 3.2000(c) Electronic Signature Method, together with EPA's own choice of PKI for some submissions to CDX, as discussed in the Preamble. Whatever EPA's plans for CDX, state, tribe, and local government systems do not have to conform to the CDX model. Implementing a particular system of necessity requires the choice of specific technologies. To make those choices does not imply that these are the only possible choices that would satisfy whatever requirements the rule places on electronic reporting systems. Concerning § 3.2000(c), commenters tended to focus on paragraph (5) of this section, which stated that the signature method had to ensure ''that it is impossible to modify an electronic document without detection once the electronic signature has been affixed.'' EPA did not intend for this provision to establish PKI-digital signature as the required signature method. Given current technology, approaches to satisfying the § 3.2000(c)(5) requirement frequently involve the computation of a number—called a ''hash''—that has a unique relation to the content of the electronic document such that any change to the document content would change the computed hash. Given the hash, the associated document can be confirmed as unmodified at any time by calculating a new hash and showing that the new and original hashes are identical. Using such a hash-based approach, it is important to ensure that the hash has been secured from tampering, and encryption is probably the most straightforward way to do this. Encryption can be accomplished in a number of ways. Approaches include PKI-based digital signature, digital signature where the asymmetric key-pair is not associated with a PKI certificate, and various forms of symmetric-key cryptography. Additionally, it may be possible to avoid cryptography altogether by storing the hash value in a system with appropriately controlled access. Thus, a solution using PKI-based digital signatures represents only one among a number of possible approaches to satisfying the proposed §3.2000(c)(5) requirement.

A number of commenters also misinterpreted the criteria under proposed § 3.2000(e) Electronic signature/certification scenario (especially the provisions for signatory's review of data under § 3.2000(e)(1)(i)) as requiring signatories to scroll through their submissions on-screen before they affix their electronic signatures, and requiring state systems to enforce this required ''scroll-through''. However, the proposal provided not that the signatory must review the data on-screen, but rather that he or she be given the opportunity to do so. The example of the enforced on-screen ''scroll-through'' then envisioned for CDX, and provided in the CDX section of the proposal's preamble, was in error. EPA did not intend to require this ''scroll-through'' of submitted data prior to signature. EPA certainly does expect and encourage reporting entities to review data intended for electronic submission prior to signature, but does not mandate this or any other particular mode or method of signatory review in today's rule.

Returning to the three comment themes—of prescriptiveness, cost and burden, and a ''one size fits all'' approach—commenters who raised the prescriptiveness issue generally argued that, even supposing that there were no specific objections to the detailed § 3.2000 provisions, EPA had failed to make the case that every single requirement under these provisions is necessary to ensure the legal dependability of electronic submissions. Commenters who argued that the proposed rule would be too costly and burdensome generally focused on § 3.2000(c)(5) and § 3.2000(e)(1)(i), discussed above, or on the proposed § 3.2000(d) registration and signature agreement provisions. There were many comments to the effect that the complex § 3.2000(d) registration and re-registration requirements would pose substantial barriers to regulated company participation in electronic reporting and involve unacceptable expenses for implementing agencies. Commenters also noted that the required § 3.2000(e)(1)(i) would be difficult to integrate with company workflow practices in many cases. Finally, there is the ''one size fits all'' issue. Some of the comments raised this as another version of the ''prescriptiveness'' issue, but adding that the proposal developed just one model of electronic reporting and attempted to make it fit the differing circumstances of the various state, tribe, and local agencies that would have to comply. Other comments emphasize the point that the proposal takes requirements apparently tailored to assuring an electronic document's authenticity and applies them to all cases of electronic reporting, whether or not the question of authenticity is likely to arise.

EPA has considered these and related comments in writing today's rule. We do not wish to set overly prescriptive requirements and so foreclose acceptable electronic reporting alternatives that could offer equivalent or better assurance of legal dependability while, perhaps, being easier for a state, tribe, or local agency to implement. We do not wish to set requirements that impose unnecessary costs or burdens. And, while we do not see a ''bright line'' around the universe of cases where document authenticity might be of concern, we also do not wish to address authenticity with requirements that leave states, tribes, and local governments with too little flexibility in how they may adapt their electronic reporting implementations to their particular circumstances. Accordingly, EPA has decided to finalize criteria for electronic document receiving systems that directly articulate the underlying goal of assuring the legal dependability of electronic documents authenticity, and to add more specific requirements only to the extent that they are needed to achieve this underlying goal. Accordingly, the provisions of today's rule have been clarified as general performance standards necessary to ensure the legal dependability of the electronic documents they receive. Additional comments on the proposed criteria and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *Revisions to the criteria in the final rule.* In today's final rule, we intend to fulfill the underlying goal of the proposed § 3.2000 criteria for electronic document receiving systems. This is to assure the authenticity and non-

repudiation of electronic documents submitted in lieu of paper reports, so that they are as legally dependable—that is, as admissible in evidence and accorded the same evidentiary weight—as their paper counterparts. As noted earlier, this goal was expressed most directly in the proposed § 3.2000(b) ''Validity of Data'' criterion. Accordingly, for the final rule, we started with the proposed § 3.2000(b) and then clarified the remaining proposed § 3.2000 criteria as general performance standards for electronic document receiving systems, which were incorporated as needed to assure the legal dependability of the electronic documents such systems receive. The resulting § 3.2000(b) in the final electronic reporting rule reflects the requirements discussed in the table below. The citation for the corresponding language in the proposed rulemaking is also provided.

Citation/subject area in proposed rule	Citation/requirement in final section 3.2000(b)
Proposed § 3.2000(g), addressing system archives	Section 3.2000(b)'s leading clause requires that the system be able to generate the required data as needed and in a timely manner.
Proposed §§ 3.2000(e)(3) and 3.2000(f), addressing signature/certification scenarios and transaction record.	Section 3.2000(b)'s leading clause and § 3.2000(b)(4) require that the system be able to generate a ''copy of record'' that is made available to the submitters and/or signatories for review and repudiation.
Proposed §§ 3.2000(c) and 3.2000(d), addressing the electronic signature method and submitter registration process.	Section 3.2000(b)(5)(i) requires that the system be able to show that any electronic signature on an electronic document was created by an authorized signatory with a device that the identified signatory was uniquely entitled and able to use.
Proposed § 3.2000(c)(5), addressing requirement that it be impossible to modify an electronic document without detection once it has been electronically signed.	Section 3.2000(b)(5)(ii) requires that the system be able to show that the electronic document cannot be altered without detection once it has been electronically signed.
Proposed § 3.2000(e), addressing the signature/certification scenario	Sections 3.2000(b)(5)(iii)—(iv) require that the system be able to show that, before signing, any signatory had the opportunity to review what he or she was certifying to in a human-readable format, and to review the certification statement including any provisions relating to criminal penalties for false certification.
Proposed § 3.2000(d), addressing the submitter registration process	Section 3.2000(b)(5)(v) requires that the system be able to show that the signatory signed an ''electronic signature agreement'' or a ''subscriber agreement'' acknowledging his or her obligations connected with preventing the compromise of the signature device.
Proposed § 3.2000(e)(2), addressing acknowledgment	Section 3.2000(b)(5)(vi) requires that the system be able to show that it automatically sent an acknowledgment of any electronic submission it received that bears an electronic signature; the acknowledgment must identify the electronic document, the signatory and the date and time of receipt, and be sent to an address that does not share the access controls of the account used to make the submission.
Proposed § 3.2000(d)(1)–(3), addressing submitter registration.	Section 3.2000(b)(5)(vii) requires, for each electronic signature device used create an electronic signature on documents that the system receives, that the system be able to establish the identity of the individual uniquely entitled to use that device and his or her relation to the entity on whose behalf he or she signs the documents.

The requirements in § 3.2000(b)(5)(iii)–(iv) of today's rule, concerning ''opportunity to review,'' do not place the responsibility for providing an opportunity, or for showing whether or not an opportunity was actually taken, on the state, tribe, or local government electronic document receiving system. What is required is that the system provide evidence sufficient to show that an opportunity was provided; this point is explained in greater detail in sections VI.E.8 and VI.E.9 of this Preamble.

EPA believes that the standards in § 3.2000(b) of today's rule, as developed from the proposed ''Validity of Data'' criterion, together with other proposed criteria clarified as general performance standards, represent the minimum set of requirements for electronic document receiving systems necessary to ensure the legal dependability of the electronic documents such systems receive. For example, the requirement for a copy of record is necessary to ensure that there is an authoritative answer to the question of what information content a signatory was certifying to or attesting to. The related requirement that the system be able to provide timely access to copies of record and related data reflects a practical concern that the data be accessible in time and in a format to serve the purposes for which it is needed.

Concerning the requirement that signature devices be uniquely assigned to, and held by individuals, EPA believes that an acceptable electronic document receiving system must be able to attribute a signature to a specific individual, to help assure that the signatory cannot repudiate responsibility for the signature. Non-repudiation is also strengthened by the signed electronic signature agreement, which establishes that the signatory was informed of his or her obligation to keep the signature device from compromise by ensuring that it is not made available to anyone else. Requiring the signature agreement, as well as the opportunity to review what they are signing, helps establish that where signatures appear on electronic documents, the signatories had the requisite intent to certify. That is, these requirements help ensure that the signatories knew what they were signing, knew what signing meant, and understood the legal implications of false certification. As for the requirement that document content cannot be altered without detection after signature, an acceptable electronic document receiving system must provide evidence sufficient to allow a court to attribute the intention to certify to the document's current content to the signatory, so that he or she cannot repudiate this content.

Finally, today's § 3.2000(b)(5)(vii) requirement that the system be able to establish the identity of the individual who is assigned a signature is based on proposed § 3.2000(d). Proposed § 3.2000(d) logically entails today's § 3.2000(b)(5)(vii), because satisfying the

provisions of the former guarantees compliance with the latter. However, today's § 3.2000(b)(5)(vii) limits the scope of the proposed § 3.2000(d)(3) requirement that, in registering for their signature devices, registrants must execute their electronic signature agreements on paper with handwritten signatures. In today's § 3.2000(b)(5)(vii), this requirement is limited to a special class of ''priority report'' submittals. (See section VI.E.12 of this Preamble.) In addition, today's § 3.2000(b)(5)(vii) offers alternatives to this handwritten signature requirement, to allow electronic reporting solutions that are completely free of paper transactions. The alternative provisions, found in today's § 3.2000(b)(5)(vii)(A)–(B), are elaborations of the proposed § 3.2000(d)(1) requirement for ''evidence [of identity] that can be verified by information sources that are independent of the registrant and the entity or entities'' for which the registrant will submit electronic documents. The elaborations are necessary to assure that individuals' identities can be established without being able to rely on their handwritten signatures—and, in the final rule, the requirements apply only to ''priority report'' submittals, and only where the choice is made to not use paper in the execution of electronic signature agreements. Section VI.E.12 of this Preamble outlines all of today's § 3.2000(b)(5)(vii) provisions in much more detail. In any event, we have made these changes to the proposed § 3.2000(d) approach to help address commenters' concerns with ''one size fits all'' provisions, as well as to allow states, tribes, and local government as much flexibility as possible as they implement their electronic reporting systems.

In sum, the overall approach to the standards for electronic document receiving systems in today's rule reflects a balancing of the concerns raised by the public comments, especially those relating to the proposal's burden on states, tribes, local governments and regulated entities, against the need to ensure the legal dependability of electronic documents submitted under authorized programs. Finally, EPA notes that to date the Agency has had limited experience with the practical application of electronic signatures and electronic reporting generally. With the benefit of practical experience accepting electronic reports under this rule, EPA may determine that this rule needs to be revisited, to either add or eliminate certain safeguards. In addition, while EPA has sought to write this rule so that its provisions are technology-neutral, it remains possible that revisions will be required to reflect technological changes or changes in prevailing industry norms and practices. If these or other circumstances require it, EPA thus reserves the right to revisit the issues addressed in this rule.

C. How has EPA accommodated electronic submissions with follow-on paper certifications?

Currently there are EPA and state programs that take electronic submissions where the requirements for a signed certification statement are met with a follow-on paper submission with handwritten signatures. A number of commenters suggested that such an approach be recognized and allowed to continue under the electronic reporting rule. EPA has no wish to proscribe such an approach, and does not judge whether or not follow-on paper signature/certification is to be preferred to the approach where the signature/certification is electronic. To make this clear in the final rule, we have added a clause to § 3.10(b) that allows follow-on handwritten signatures to substitute for electronic signatures on submissions to EPA where ''EPA announces special provisions'' for this purpose. A corresponding clause in § 3.2000(a)(2) of today's rule makes a similar allowance for electronic reporting under authorized state, tribe, or local programs, again, where ''the program makes special provisions to accept a handwritten signature on a separate paper submission.''

Among other things, these ''special provisions'' would allow follow-on paper signature submission only if it were reliably linked or cross-referenced with the associated electronic document. The linking or cross-referencing is necessary in part to ensure that we can always determine which signature submissions belong with which electronic documents. Paper signature submissions must also provide sufficient evidence that the signatory intended to certify to or attest to the content of the electronic document as this content is recorded in the copy of record for the submission. There are various approaches to cross-referencing or linking that would meet these needs, most of which involve the inclusion of extra data elements in the signature submission that reference the associated electronic document. Such data elements might include summary data from the electronic document, the date and time of the electronic submission, or even the calculated hash value of the electronic document. EPA may use these and other alternatives if a decision is made to provide for direct electronic reporting to EPA with follow-on paper signatures. For such submissions to authorized programs, we have added to § 3.2000(a)(2) of today's rule the requirement that authorized program provisions for follow-on paper signature submissions ''ensure that the paper submission contains references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or agree to the content of that electronic document.''

D. How has EPA changed proposed definitions of terms?

The ''Definitions'' section of the final rule, § 3.3, provides new definitions for ''copy of record,'' ''electronic signature agreement,'' and ''valid electronic signature,'' as well as the revisions to the definition for ''electronic signature device,'' to help articulate the final § 3.2000(b) standards for electronic document receiving systems. These terms are explained in more detail in section VI, below. (See especially, sections VI.E.2., VI.E.10. and VI.E.6.) Similarly, in section VI.B.2 of this Preamble we note the role of the new definition for ''existing electronic document receiving system;'' and, in section VI.E.12 we discuss the new definitions for ''agreement collection certification,'' ''disinterested individual,'' ''information or objects of independent origin,'' ''local registration authority,'' ''priority reports,'' and ''subscriber agreement.'' Section 3.3 also reflects a number of clarifying and/or simplifying changes for definitions of terms, as follows.

1. *Definition of ''acknowledgment.''* This definition has been added in conjunction with § 3.2000(b)(5)(vi) of today's rule, to make clear that in the context of this rule, acknowledgment means a confirmation of electronic document receipt.

2. *Definition of ''electronic document.''* This definition has been revised from the proposed version in several ways. First, the use of ''communicate'' has been eliminated, thereby eliminating the need for a separate definition of that term. Second, the exclusion of magnetic and optical media and facsimile submissions has been eliminated. We believe it is clearer to exclude such submissions from the scope of CROMERR under § 3.1, entitled ''Who does this part apply to?'' Today's rule now provides this exclusion in §§ 3.1(b) and 3.1(c). Third, the definition has also been revised so that it explains what a ''document'' is in an electronic medium. Instead of saying that an ''*electronic document* means a

document. * * *,'' the final version says that ''*electronic document* means any information in digital form. * * *,'' where *information* is explained as potentially including ''data, text, sounds, codes, computer programs, software or databases.'' Fourth, this definition clarifies that in this context, ''data,'' is used in its normal sense as denoting a delimited set of data elements, each of which is a unit of meaning in a document and consists of a content or value together with an understanding of what the meaning and/or context of the content or value is. Finally, the definition stipulates that where an electronic document includes data, the understanding of what the data content or value means must either be explicitly included in the electronic document or be readily available through such sources as an applicable data element dictionary, or a form or template that specifies what each data element means when it is presented in the specific file format used for the electronic document's submission.

A consequence of this approach is that the identity of an electronic document consisting wholly of data is independent of the format in which it is presented or submitted. That is to say, rearranging or reformatting the data elements in an electronic document does not change it into a different one, at least so long as the signatory's intention and understanding of what the data elements each mean is preserved in the process. This does not conflict with the ordinary understanding of the term ''document,'' since we speak quite often of ''reformatting a document,'' with the clear understanding that what results will be the same document in a new format. Correspondingly, under the definition of ''copy of record,'' a ''true and correct'' copy of an electronic document does not necessarily have to reflect the format in which the document was submitted, provided that the document consists wholly of data. This independence of document identity from format may not always hold where other kinds of information are included in the electronic document, e.g. text or images; in such cases a copy of record may have to include format or formatting information.

3. *Definition of ''electronic signature.''* This definition has been revised by substituting ''information in digital form'' for ''electronic record,'' to avoid problems with defining ''electronic record.'' The definition has also been revised to make clear that the electronic signature for an electronic document need not always be ''included'' within that document; in some cases it may just be ''logically associated'' with it. This point is explained further in section VI.E.2 of this Preamble, in discussing the copy of record requirement.

4. *Definition of ''electronic signature device.''* The definition of ''electronic signature device'' has been revised to clarify that where a device is used to create an individual's electronic signature, then the device must be unique to that individual, and he or she must be uniquely entitled to use it at the time that the signature is created. Correspondingly, the device is compromised if it is available for use by any other individual, that is, if some other individual is able to use the device to create signatures if he or she wishes. To the extent that §§ 3.10(b) and 3.2000(b)(5)(i) of the final rule prohibit the acceptance of signatures created with compromised devices, via the definition of ''valid electronic signature,'' the element of compromise rules out the sharing of electronic signature devices or delegating their use to create individuals' electronic signatures. Additionally, the definition includes the element that an individual needs to be entitled to use the electronic signature device; that is, the individual needs to be the ''owner'' of the device. The nature of the device itself will determine the way in which an individual comes to own it. In the case of personal identification numbers or certificate-based private/public key pairs, there is normally some process of formally assigning the device to the individual, often through a trusted third party. In other cases, for example password or personal information-based signature devices, the process may have the individuals invent and assign the devices to themselves '' the basis for their ownership of the devices being determined by the circumstances or context within which they do this.

5. *Definition of ''transmit.''* In the proposed rulemaking the term ''submit'' was defined as the ''means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system.'' However, the term ''submit'' is used more widely in the rule in ways that are not consistent with this definition. Accordingly, in the final rule the function of successful and accurate conveyance of an electronic document is now termed ''transmit.''

6. *Definition of ''valid electronic signature.''* Beyond its role in § 3.2000(b), this definition has also been added to help clarify and simplify the signature requirements associated with electronic reporting, both directly to EPA, in § 3.10, and under authorized programs, in § 3.2000(a)(2). The definition specifies three main conditions for validity. The first refers to features of the signature that are intrinsic to the items of information of which it consists: The signature must consist of the kind of information that has been established as appropriate for the signing of the document in question, and the specific information content must pass the validation tests which the system uses to determine that the signature belongs uniquely to the identified signatory. The second condition refers to the status of the electronic signature device used to create the signature, and ensuring that the device was not compromised at the time it was used to create the signature. This ties validity to the element of *compromise* within the definition of ''electronic signature device.'' That is, at the time of signature, the device must not have been made available to someone other than the individual who is entitled to use it. The third condition refers to the signatory's status at the time of signature as someone who is authorized to sign the document in question by virtue of his or her legal status and/or relationship to the entity on whose behalf the signature is executed. In the context of environmental reporting, this condition would make invalid electronic signatures on company compliance reports created by individuals who do not work for or in any way represent the company. Generally, in the context of environmental reporting, individuals who sign submissions to environmental agencies are explicitly authorized to do so, by their management and/or by the agency to which they report. However, in some cases the authorization may be implicit in the signatory's legal status and relationship to the regulated entity. For example, an owner or operator of a company is generally authorized to sign notifications or letters to an environmental agency whether or not this is explicitly provided for by law or regulation.

As ''valid electronic signature'' is used in §§ 3.10 and 3.2000(a)(2), the validity of an electronic signature is necessary for the signatory's electronic submission to satisfy a federal or authorized program reporting requirement. Additionally, as the term is used in § 3.2000(b), it also refers to a performance requirement for an electronic document receiving system, namely that the system must not accept and must be able to detect submissions with signatures that are not valid. These requirements in terms of ''validity'' are

meant to provide a form of insurance for electronic signatures to protect against the risks of repudiation. Nonetheless, a signatory may be legally bound by a signature even where not all the requirements for its validity have been met, *e.g.*, where the signature has been executed with a compromised electronic signature device. The signatory of an electronic submission cannot avoid responsibility for its contents by pointing to a technical flaw or other defect in the signature process.

V. Requirements for Direct Electronic Reporting to EPA

A. What are the requirements for electronic reporting to EPA?

Under the final rule, the requirements for electronic reporting to EPA remain essentially unchanged from those in the proposal. Section 3.10 provides, first, that electronic documents must be submitted to an appropriate EPA electronic document receiving system. Generally this will be EPA's Central Data Exchange (CDX), although EPA can also designate additional systems for the receipt of electronic documents and is doing so in a separate **Federal Register** notice. Second, where a paper document must bear a signature under existing regulations, an electronic document that substitutes for the paper document must be signed (by the person authorized to sign under the current applicable provision) with a valid electronic signature.

Only electronic submissions that meet these two requirements will be recognized as satisfying a federal environmental reporting requirement, although failure to satisfy these requirements will not preclude EPA from bringing an enforcement action based on the submission or otherwise relying on the submission. A new compliance and enforcement section has been added to the final rule to clarify certain compliance and enforcement issues related to electronic reporting. Section 3.4 makes clear that EPA can seek and obtain any appropriate federal civil or criminal penalties or other remedies for failure to comply with an EPA reporting requirement if a person submits an electronic document to EPA under this rule that fails to comply with the provisions of § 3.10. Similarly, § 3.4 makes clear that EPA can seek and obtain any appropriate federal civil or criminal penalties or other remedies for failure to comply with a state, tribe, or local government reporting requirement if a person submits an electronic document to a state, tribe, or local government under an authorized program and fails to comply with the applicable provisions for electronic reporting. Section 3.4 also contains provisions originally published under § 3.10(d) and (e) of the proposal, stipulating that the electronic signature will make the person who signs the document responsible, bound, or obligated to the same extent as he or she would be signing the corresponding paper document by hand.

The § 3.10 requirement that there be an electronic signature applies only where a paper document would have to bear a signature were it to be submitted, either because this is required by a statute or regulation, or because a signature is required to complete the paper form. The rule does not impose any new or additional signature requirements for documents that are submitted in electronic form. In addition, as noted in section IV.C of this Preamble, § 3.10(b) of today's rule also allows EPA to make special provisions, in specific cases, for accepting handwritten signatures in follow-on paper submissions in lieu of the required electronic signatures. In such cases, it is critical that the special provisions ensure that the electronic document cannot be altered without detection and is reliably linked to the handwritten signature.

As in the proposal, this final rule does not specify any required hardware or software. Accordingly, the rule text does not include any detail about CDX per se or about what will be required of regulated entities who wish to use it. Nonetheless, as stated in the proposal, our goals include the sharing of detail on how CDX implements direct electronic reporting to EPA. Section V.C.4 of this Preamble explains how CDX has changed since we described it in the proposal, especially in relation to the many comments we received on CDX-related issues.

B. What is the status of existing electronic reporting to EPA?

In a notice published concurrently with today's rule, EPA clarifies the status of electronic reporting directly to EPA systems that exist as of the rule's publication date. In accordance with 40 CFR 3.10, EPA is designating for the receipt of electronic submissions, all EPA electronic document receiving systems currently existing and receiving electronic reports as of the date of this notice. This designation is valid for a period of up to two years from the date of publication of this notice. During this two-year period, entities that report directly to EPA may continue to satisfy EPA reporting requirements by reporting to the same systems as they did prior to CROMERR's publication unless EPA publishes a notice that announces changes to, or migration from, that system. Any existing systems continuing to receive electronic reports at the expiration of this two-year period must receive redesignation by the Administrator under § 3.10. Notice of such redesignation will be published in the **Federal Register**.

EPA's goal is that all its systems for receiving electronic reports be consistent with the CROMERR standards for electronic document receiving systems, set forth in § 3.2000(b) of today's rule. EPA generally hopes to achieve this consistency within a two-year transition period for existing EPA systems; however, EPA is not bound by the § 3.2000(b) standards of today's rule or the two-year period. This two-year period is similar to the two-year transition period provided under § 3.1000(a)(3) for systems operated under EPA-authorized programs. In a number of cases, EPA may work toward this goal by migrating existing electronic reporting to CDX or to other, new CROMERR-consistent systems. As we change or migrate existing electronic reporting programs to achieve consistency with the CROMERR standards, we intend to provide sufficient advance notice to reporting entities so that any new requirements can be accommodated without causing significant disruption to their electronic reporting activities.

C. What is EPA's Central Data Exchange?

1. *Overview of general goals.* The proposal described EPA's ''Central Data Exchange'' as a system to be developed and maintained by EPA's Office of Environmental Information (OEI) that would serve as EPA's gateway or ''portal'' for receiving documents electronically from our reporting community. The goal of CDX was to augment, and, where appropriate, streamline and consolidate EPA's environmental reporting functions by offering our reporting community faster, easier, and more secure submission options through a single venue for electronic submission of environmental data. As a cornerstone of EPA's efforts to advance electronic government, CDX would support the electronic submission needs of thousands of regulated entities submitting data to EPA for certain air, water, waste, and toxic substances programs. Ultimately, EPA planned to offer, wherever practicable, all regulated entities that report directly to EPA, an option to file their specific environmental documents

electronically through CDX. Regulated entities that submit reports under an authorized program would also be able to file their documents through CDX in cases where the state, tribe or local government that administered the program chose to use CDX as a gateway for electronic data submissions from its reporting community.

The reporting community using CDX would be able to access web ''reporting'' forms with built-in data quality checks, and/or submit standard file formats through common, user-friendly interfaces that allowed them to electronically submit data across vastly different environmental programs. Both the reporting community and EPA would benefit by gaining access to environmental reports more quickly and with fewer errors, and by avoiding the inefficiencies of having to keystroke data from paper reports. CDX was also being developed to support a newly emerging Environmental Information Exchange Network (EIEN) that would facilitate the electronic exchange of environmental data between EPA and state, tribe, and local environmental agencies. However, in keeping with the scope of the proposed rule the description of CDX features and functions in this section apply only to electronic submissions to CDX from regulated entities; the description doesn't apply to EIEN exchanges with CDX in which states, tribes, or local governments participate as a part of their authorized programs or as a part of administrative arrangements with EPA to share data.

The Concept of Uniformity. The proposal also characterized CDX as providing an environment that would promote a uniformity of technologies and processes. By adopting CDX to support the electronic reporting needs across various EPA programs, EPA hoped to avoid the proliferation of program-specific electronic reporting approaches that could lead to duplicative investments in electronic document receiving systems and possibly conflicting requirements for submitters.

The CDX Functions and Building Blocks. As described in the proposed rule, CDX was being designed with the goal of fully satisfying the criteria that the proposal specified for state, tribe, and local electronic document receiving systems; similarly, EPA would ensure that other systems the Administrator designated to receive electronic submissions satisfied the criteria as well. The proposal discussed how CDX would implement CROMERR-compliant electronic reporting by describing the primary CDX functions and the system building blocks that would support these functions. The functions described in the proposal included: (1) Access management, (2) data interchange, (3) signature/certification management, (4) submitter and data authentication, (5) transaction logging, (6) copy of record provisions and acknowledgment, (7) archiving, (8) error checking, (9) translation and forwarding, and (10) outreach. The proposal then described five building blocks that would support CDX functions, which were: (1) Digital signatures based on PKI, where CDX would rely predominately on a third party vendor under the General Services Administration (GSA) Access Certificates for Electronic Services (ACES), (2) a process for registering users and managing their access to the CDX, (3) a client server-architecture, (4) EDI standards, as the primary format for exchanging environmental data, and (5) a consistent user interface for making electronic submissions.

2. *Comments on the proposal.* EPA received more than 100 comments on the CDX concept as described in the proposal. A number of these comments were related to one of four main subject areas, as follows.

Comments on Uniformity of Approach. Several comments expressed concern about the proposed characterization of CDX as promoting ''uniformity of process and technology''. The phrase was used to highlight the benefits of CDX, which included EPA's plans to avoid the costly proliferation of redundant systems. However, comments pointed out that this ''uniformity'' implied an inflexible and overly prescriptive set of CDX technical and security requirements, which would discourage CDX use. Such comments were similar to those discussed in section IV.B.2 of this Preamble, raising concerns about the prescriptiveness and ''one size fits all'' approach of the proposed criteria for electronic document receiving systems.

EPA understands that ''uniformity of process and technology'' could imply inflexibility, and this is not generally how we intended to develop CDX. In fact, CDX is currently using a wide range of technologies and processes to address CDX's functions that are tailored to individual EPA program submission requirements, including the technical capabilities of the reporting community for the particular program. EPA recognizes that, for example, permitting, compliance monitoring, and the conduct of studies involve fundamentally different business processes, and that the associated submission of electronic documents may have to be handled differently in each case. In some instances CDX may support a more interactive ''workflow'' environment for submitting data; in others, CDX may accept batch transmissions of user-formatted files. It is also true that the technical capabilities of a particular reporting community vary considerably, so CDX will offer more than one electronic submission option in many cases. CDX currently provides support for web-forms, file, and record-level submissions in various formats including flat file and XML and EPA plans to continue this flexible approach.

Comments on registration process. Comments from regulated entities raised concerns about the costs and time required to register individuals in each company, and EPA's failure to address the increasingly common cases where the preparer of an environmental report and the certifying official are different individuals.

Because electronic submission is being offered as an option to the reporting community, EPA recognizes the need to design CDX registration to be as user-friendly as practicable, in part by taking account of the flow of work, or ''workflow'' involved in meeting a particular environmental reporting requirement. For example, since proposal, EPA has developed approaches to register both preparers and certifying officials for at least two reporting programs. Changes to the CDX registration process are discussed in more detail in section V.C.4.

Comments on digital signatures based on PKI. Comments pointed out that reliance on PKI for all cases of electronic signature may violate the GPEA directive to vary electronic signature approaches with the circumstances of their use. Several comments underlined this concern by pointing to PKI's costs and burdens. The comments objected that registering through CDX and acquiring digital signature certificates would be overly complicated, and would require that registrants provide private or personal information. Some comment also expressed concern about the incompatibility of a PKI-based approach with workflow, given that environmental reports were frequently prepared by staff and then signed by the facility owner, with staff turnover being frequent. Another concern was the implications of CDX PKI software for company system security, for example, given the need to download CDX software through the company firewall.

EPA agrees that it should generally minimize the complexity and cost of electronic signatures or this will deter potential users of CDX from submitting

electronic documents. In implementing CDX, EPA has revised the initial plan for electronic signatures to include non-PKI electronic signatures. Section V.C.4 discusses how we are changing the ''digital signature based on PKI building block.''

Comments on EDI Standards. Comments expressed both encouragement and concern over CDX's prospective implementation of standards-based exchange formats for data submissions. An exchange format is a predefined file structure, including data elements and higher level syntax that describes how the data extracted from a system must be arranged in a file for transmission to another system. A standards-based format adheres to certain widely-accepted industry, national, or international file structure definitions. Several comments expressed concern about the costs of configuring their systems to generate a CDX-specified standard format; others expressed concerns about the costs of potential changes to the format once it is implemented on their systems. By contrast, other comments strongly supported requiring standards-based formats—even recommending that we require such formats by rule for EPA and EPA-authorized state, tribe, and local electronic document receiving systems.

CDX's approach to standards-based formats has changed considerably since the proposal, in large part because of the emergence of Internet-based approaches, most notably Extensible Mark-up Language (XML). These changes are discussed in more detail in section V.C.4. EPA believes that the use of standard formats can be encouraged without requiring this by rule. Additional comments on CDX and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

3. *The aspects of CDX that have not changed since proposal.*

General Goals. EPA's continues its efforts to establish CDX as the gateway or ''portal'' for receiving documents electronically from the Agency's reporting community. In so doing, EPA's goal—to augment, and where appropriate, to streamline and consolidate EPA's environmental reporting functions through CDX—remains unchanged. The functions that comprise CDX operations continue to remain the same though the range of technologies and processes used to support these functions has considerably broadened. CDX continues to implement electronic reporting capabilities for EPA's many environmental programs, while advancing the efforts of EIEN in coordination with state, territorial, tribes, and other partners.

General Approach to Electronic Reporting Implementation. In general, current instructions for client-side access of CDX suggest Internet access and a system that uses both Microsoft Windows and Microsoft Internet Explorer (IE). EPA acknowledges that the Government Paperwork Elimination Act (GPEA) directs OMB to develop procedures for agencies to follow in using and accepting electronic documents and signatures and these procedures ''may not inappropriately favor one industry or technology.'' Consistent with this GPEA directive, EPA is committed to considering ways to allow other vendors' technologies to access CDX. Accordingly, over the six months following the publication of today's rule, EPA intends to assess the full range of issues that affect CDX's ability to support multiple platforms and browsers. These issues include the technical requirements for the electronic signature options, form entry options, data upload options, network interface options, current capabilities of the CDX hardware/software platform, and potential impacts of new client-side platforms on the CDX life cycle management, technical support requirements, and help desk training and support. Based on this assessment, EPA intends to determine the target universe of client-side platforms and browsers that CDX can feasibly accommodate, and will identify the actions and timeline necessary to build out CDX support for this target universe.

As described in the proposal, CDX users will need to:

- Register with CDX, during which time they may need to supply information used to identify themselves, their company, and the EPA documents they wish to submit electronically;
- Verify and/or correct registration information; and
- Access their CDX web account through a secure website, and agree to the terms and conditions of using the site, which include safeguarding their self-generated password, before using web forms or uploading files to submit electronic documents or data to EPA.

These are the minimum steps for gaining access to CDX at this time. Additional steps are involved in acquiring an electronic signature device, although these steps have changed somewhat since the proposal and are discussed in section V.C.4. CDX also offers at least two general methods for reporting electronically for many programs it supports, either through file submission or through a ''smart web form''. However, the types of formats and approaches for submitting data through CDX have broadened, and these too are discussed in section V.C.4.

4. *The major changes that EPA has made to CDX since proposal.* Over the last two years, CDX has evolved from a prototype system to a fully operational electronic document receiving system. CDX supports tens of thousands of registered users providing data to dozens of environmental reporting programs across the major EPA media offices. CDX registered users include representatives from state, tribe, and local agencies, industries, laboratories, and other federal agencies. While CDX continues to provide a secure, single point of registration, access, and exchange between reporting entities and EPA programs, the building blocks supporting the CDX functions have changed substantially. These changes reflect EPA's experience operating CDX over the past two years, evolving trends in Internet technologies, and comments received on the proposed rule from potential CDX users.

Digital signatures based on PKI. The proposal described the CDX approach to electronic signatures in terms of digital signatures and PKI. Since proposal, EPA has come to appreciate the complexity and costs of implementing PKI, and to recognize that non-PKI electronic signatures, as described in section IV.B.2 of the preamble today's rule, may be acceptable in many cases. Thus, for electronic reports currently submitted to CDX, only in one case is PKI used for electronic signature. The other cases involve PIN-based electronic signatures or other non-PKI electronic signature approaches. As an example of the latter, this year we anticipate implementing electronic signatures for an EPA reporting requirement by having signatories use a password that is self-generated during CDX registration in combination with certain items of information that are unlikely to be available to anyone except the signatory. This is a ''knowledge-based'' approach, which is being used extensively by commercial software vendors supporting the United States Internal Revenue Service (IRS) for electronic tax filings or ''e-filings', and is being adopted by other agencies. EPA expects that these non-PKI-based approaches to signature will continue to dominate CDX implementations of electronic reporting. We currently intend to use PKI where such needs as security or assuring very robust non-repudiation of signature make this the most appropriate approach.

In addition, EPA's approach to PKI itself—described in the proposal as relying on ACES—is also undergoing change. Changes with respect to the role and method of identity proofing for those persons who apply for PKI certificates is being further evaluated. As proposed, the identity proofing was to be conducted by the third party ACES vendor; currently, CDX identity proofing is conducted for the most part by EPA's own contractor staff, who are able to issue digital certificates to members of the reporting community with less cost and in less time than the ACES vendor. EPA has also begun to explore alternatives to ACES for PKI certificates, partly because ACES-provided certificates do not support message encryption, which EPA may need for certain environmental reporting applications. In addition, EPA is considering its use of ACES in the light of recent federal advances in establishing interoperability across federal PKI domains, which may allow EPA to eventually leverage PKI's of other federal agencies or institute an in-house PKI.

CDX Registration. Since the proposed rule, CDX has broadened it approach to registration to better accommodate the workflow involved in specific environmental reporting programs. While CDX still requires registration, there are three distinct areas where the registration process has changed since proposal. First, the proposal described CDX registration as the first step toward the issuance of a PKI-based digital signature, and it was implied that all persons opting to use CDX would need a digital signature. As noted above, this is no longer the case. Second, in the proposal, CDX registration began when a person received an EPA invitation letter that contained a temporary code and instructions on how to access the CDX registration website. CDX has adopted additional approaches to initiating registration for certain EPA programs, for example, embedding a link to CDX registration in reporting software that is distributed to the program's reporting community, or providing a public website where prospective CDX users can submit initial registration data EPA. While CDX continues to register persons by invitation letter for reporting under certain environmental programs, registration options will continue to broaden as the number of environmental programs supported by CDX expands.

Finally, in the proposal, CDX registration was completed when the registrant printed out a ''signature holder'' agreement from the CDX registration website, signed this agreement and mailed it to EPA's CDX. CDX will continue this approach for reports where electronic signatures are required, although EPA is exploring the use of an entirely paperless signature agreement process for at least some of these cases. CDX registration to submit reports that do not include electronic signatures will not involve a ''signature holder'' agreement.

EDI Standards. The proposal described EPA's plans to use EDI as the basis of standards-based formats for exchanging data between reporting entities and CDX. Since proposal, CDX development has reflected a significant evolution in formatting standards to accommodate the Internet—away from EDI and toward the use of XML. XML consists of a set of predefined tags and message structures that, like EDI, allows machine-to-machine exchange of data in a mutually agreed upon format, enabling exchange of data across different systems. However, unlike EDI, XML is tailored to Internet-based communications and security protocols. Additionally, an XML formatted file in combination with a style sheet can be displayed in a Web browser. Such features would allow CDX to use the same standard format both for exchanging data files and for designing web forms. The structure of XML also addresses some of the challenges in archiving data received, because the XML tags that accompany the data in an XML file can be used to interpret the data's context without the aid of additional software. This could facilitate the recovery of data from archived files, and reduces the need to maintain the versions of the software originally used to generate the files.

CDX and specific EPA programs may address the question of which (if any) standards-based format to use for a particular report on a case-by-case basis, and EPA intends to develop appropriate technical instructions for CDX submitters as program-specific reporting formats are adopted. These instructions normally will be distributed to the affected reporting communities via links on the CDX website and/or through program and CDX outreach efforts. EPA is working with authorized state, tribe, and local programs to develop standards-based reporting formats to meet their shared needs. In many instances, CDX contemplates a long transition period between file formats currently used to exchange data with regulated entities and any new, standards-based formats. During this transition, CDX may offer submitters several electronic submission options; these may include an existing data format familiar to submitters, one or more new standards-based formats, and some other approach such as a smart-form hosted on a secure website.

Client-side architecture and transaction environment. The proposal described a downloaded ''client'' that would generally supplement the browser to support the signature and security for CDX; such ''client side'' software is no longer needed for all cases of electronic reporting to CDX. However, in some cases CDX now uses various technologies to transparently insert routines into browsers during a user session to support special functions—for example to support the creation of a PKI-based electronic signature with an ACES business class certificate.

D. How will EPA provide notice of changes to CDX?

As noted in the proposal, the fully-implemented CDX will be subject to change over time, to take advantage of opportunities offered by evolving technologies, as well as to improve the system. EPA's decision to avoid codifying technology-specific or detailed procedural provisions for electronic reporting is meant, in part, to accommodate changes to CDX without requiring that we amend our regulations. Nonetheless, EPA recognizes that such changes can affect regulated entities that participate in electronic reporting; therefore, the final rule provides for advance notice when EPA intends to make changes to CDX. As discussed in the proposal, we distinguish four categories of changes:

- ''Significant'' changes that are likely to affect the kinds of hardware, software or services involved in transmitting electronic reports (§ 3.20(a)(1));
- ''Other'' changes that will affect the process or the timing of transmitting electronic reports to CDX, but without affecting the kinds of hardware, software or services involved in making the transmissions (§ 3.20(a)(2));
- ''Emergency'' changes necessary to protect the security or operational integrity of CDX (§ 3.20(b)).
- ''*De minimis* or transparent'' changes that will have minimal or no impact on the process or the timing of transmitting electronic reports to CDX.

''Significant'' changes include changes to the types of file formats CDX will accept—for example a change from extended markup language (XML) formats to some non-XML format—as well as changes to the technologies that may be used for file transfer to CDX or for creating electronic signatures on transmitted reports. ''Significant'' changes will not generally include optional upgrades to software, the

provision of additional formatting (or other technical) options, or changes to CDX that simply reflect changes to the underlying regulatory reporting requirements. ''Other'' changes include an increase in—or re-ordering of—the steps involved in transmitting electronic reports, changes to the registration or credential (*e.g.*, PIN, password, PKI certificate) provisioning process that could affect users ability to access CDX, and changes to reporting formats that involve the reconfiguration of software. ''Emergency'' changes include such things as an upgrade to the system firewall protection. Finally, ''*de minimis* or transparent'' changes include the myriad small or ''back end'' fixes and improvements that EPA makes to CDX each week that have minimal or no impact on the transmission process. Such changes may range from fixing a typo on a data entry screen to re-engineering the system's archiving routines.

To address ''significant'' changes, § 3.20(a)(1) of the final rule provides that EPA will give public notice in the **Federal Register** of such changes and will seek comment. EPA proposed to provide this notice at least a year in advance of contemplated implementation, but based on experience developing and operating a CDX prototype, EPA no longer believes that a single time-frame is appropriate in all situations. For example, ''significant'' changes that could affect the transmission of an annual report may respond to needs or events that arise less than a year in advance of the report's due date. On the other hand, some ''significant'' changes may require more than a year for reporting entities to accommodate. Accordingly, the final rule provides that these **Federal Register** notices will propose and seek public comment on an implementation schedule for a ''significant'' change, along with describing and inviting comment on the change itself. To address ''other'' changes to CDX, § 3.20(a)(2) of the final rule provides that EPA will give notice at least 60 days in advance of implementation. The notice in this case will typically be to CDX users, and the method of notice may be electronic, perhaps using the facilities of CDX itself. For ''emergency'' and ''*de minimis* or transparent'' changes, EPA will make decisions on whether, when, and how to provide public notice on a case-by-case basis.

VI. Requirements for Electronic Reporting Under EPA-Authorized Programs

A. What is the general regulatory approach?

As explained in Part V of this preamble, the requirements in § 3.10 of today's rule apply to reporting entities that submit electronic reports directly to EPA. By contrast, today's rule contains no requirements that apply directly to entities who submit electronic reports to state, tribe, or local government agencies. However, Subpart D of today's rule does contain requirements that apply to state, tribe, or local government agencies that operate EPA-authorized programs. Subpart D of today's rule requires that such agencies that receive, or wish to begin receiving, electronic reports under an authorized program must apply to EPA for a revision or modification of that program and get EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving system that the state, tribe, or local government will use to implement the electronic reporting. Additionally, Subpart D provides for special procedures for program revisions and modifications that provide for electronic reporting, to be used at the option of the state, tribe, or local government in place of procedures available under existing program-specific authorization regulations.

Generally speaking, EPA believes that even absent today's rule, an authorized program's electronic reporting implementation would still need EPA's approval under a program revision or modification. At least where electronic reports may play a role in enforcement proceedings, the authorized program's electronic reporting implementation has the potential to affect program enforceability, and as such, revises or modifies the program. Today's rule makes this explicit in § 3.1000. In addition, the final rule includes program-specific amendments to various provisions in 40 CFR to cross reference those rules to the new Part 3. With this approach, EPA hopes to support and promote state, tribe, and local government efforts to make electronic reporting available under their authorized programs, both by clarifying the requirement that EPA approve these electronic reporting initiatives, and by providing a single, uniform set of standards and a specially-designed process to facilitate electronic reporting approval for otherwise authorized programs.

B. When must authorized state, tribe, or local government programs revise or modify their programs to allow electronic reporting?

1. *The general requirement.* As discussed earlier, this rule does not require states, tribes, or local governments to allow or require electronic reporting. Where they choose to do so, § 3.1000 generally provides that they must revise or modify such programs to ensure that their electronic reporting implementation will meet the requirements of section 3.2000. Additionally, once these authorized programs begin operating the electronic reporting systems under EPA-approved revisions or modifications, they must keep EPA informed of changes to laws, policies or the electronic reporting systems that could affect the program's compliance with § 3.2000. Where the Administrator determines that such changes require EPA review and approval, EPA may ask the authorized program to submit an application for revision or modification to address the changes. Alternatively, the authorized program can apply for a revision or modification on its own initiative.

For any of these program revisions or modifications, states, tribes, or local governments may use either the application procedures provided under § 3.1000(b)–(e) or the program-specific procedures provided in other parts of Title 40 or the applicable statute. Whichever procedure is used, the state, tribe, or local government must submit an application that complies with the requirements of § 3.1000(b)(1), discussed in section VI.C.1. Section 3.1000(b)(1) identifies the elements of an electronic reporting program that EPA would need to consider in order to approve a state's, tribe's, or local government's approach to receiving electronic documents, in lieu of paper, to satisfy requirements under their EPA-authorized programs.

2. *Deferred compliance for existing systems.* For authorized programs that have ''existing'' electronic document receiving systems as of the date this final rule is published, EPA is deferring the deadline for these programs to submit their applications for program revisions or modifications with respect to such systems. The deferral is generally two years from the date of this rule's publication. This approach is consistent with similar provisions under other regulations governing program authorization where new requirements are imposed. Additionally, EPA conducted extensive discussions with entities operating authorized programs about how much time they generally

would need to bring their systems into compliance with today's rule, given their funding cycles, program review schedules under ''performance partnership'' agreements, the timeframes for making any necessary system upgrades and completing an application for program revision or modification, and any necessary legislative or regulatory changes. Based upon these discussions, we believe that this two-year period is generally sufficient to allow these programs to make the transition to CROMERR-compliant systems without having to discontinue their electronic reporting operations. Today's rule also allows authorized programs to request extensions to the two-year deadline where the timeframe for regulatory or legislative changes may be somewhat longer.

EPA's purpose in deferring the application deadline for program revisions or modifications with respect to existing electronic reporting is to avoid disrupting authorized programs' electronic reporting initiatives that are already underway. With this goal in mind, EPA has defined ''existing electronic document receiving system'' broadly, to include not only those that are actually operational at the time the final rule is published, but also those that are substantially developed. We recognize that it would be disruptive to require that authorized programs shut down their operational systems during the time it would take to prepare, submit and have their applications for revision or modification approved. However, there is often a very fine line between an operational system and a system under development; for example, where the developmental work is to scale a working prototype up to production. In addition, at least the later stages of development are likely to be restrained substantially or even halted if a system must await EPA approval to operate, and this may affect system costs, availability of contractor staff and their ability to complete the system in a timely manner. Avoiding such disruptions to substantially developed systems is part of the goal of the deferred compliance provisions. To define what counts as a ''substantially developed'' system for this purpose, the definition of ''existing electronic document receiving system'' uses evidence that system services or specifications are already established by existing contracts or other binding agreements. Where an agency has already made legally binding agreements to procure a significant proportion of the services and/or components that will constitute the system then such a system would be considered ''existing'' under this rule.

While many or most authorized programs with existing systems may need this two-year compliance deferral, some may have no difficulty submitting a completed application well before the end of two years. We strongly encourage such early submissions when feasible. This will make better use of EPA's review resources and will provide earlier certainty of compliance with this rule for existing state, tribe, and local government electronic reporting programs that are subject to this rule. In addition, EPA believes that, whether through informal consultation or formal application, identifying and addressing any existing system issues as early as possible is the best way to avoid disruption to electronic reporting initiatives currently underway.

C. What alternative procedures does EPA provide for revising or modifying authorized state, tribe, or local government programs for electronic reporting?

Under § 3.1000, this rule provides procedures which a state, tribe, or local government, at its option, can use to seek approval for revisions or modifications with respect to electronic reporting under its existing authorized programs. These optional procedures are available both for revisions or modifications that seek initial EPA approval for electronic reporting programs, and also for revisions or modifications to accommodate substantial changes to electronic reporting programs that already have EPA approval.

Although there is always the alternative of using the program-specific procedures provided in other parts of 40 CFR, EPA believes that, normally, a state, tribe, or local government would find the procedures provided in this rule to be shorter, simpler, and easier. The § 3.1000 procedures allow submission of a single, relatively simple application to request revisions or modifications that address electronic reporting across any number of authorized programs. Additionally, the procedures provide for a single, straightforward EPA review process, with deadlines for EPA action written into the rule. EPA believes that these procedures will be especially useful where the state, tribe, or local government is planning to implement all of its program-specific electronic reporting with a single system. Rather than requiring approval program-by-program, § 3.1000 allows the system to be addressed in a single application package that can be reviewed in its entirety and responded to within a relatively short and predictable time-frame.

1. *The application.* To request modifications or revisions under this rule, § 3.1000(b)(1) requires a state, tribe, or local government to submit an application that generally contains three elements. The first is a certification that state, tribe, or local government laws and/or regulations provide sufficient legal authority to implement electronic reporting in conformance with § 3.2000 and to enforce the affected authorized programs using electronic documents collected under those programs; the application must also include copies of the relevant laws and/or regulations. This certification of legal authority is not meant to address actual conformance with § 3.2000(b); that is, the certification is not meant to reflect a judgment about the capabilities of an agency's electronic document receiving system. However, the certification would address § 3.2000(c), and must be signed by the governmental official who is legally competent to certify with respect to legal authority on behalf of his or her government. In the case of a state, this official must be the Attorney General or his or her designee. In the case of tribes or local governments, this official must be the chief executive or administrative official or officer or his or her designee. EPA realizes that obtaining an Attorney General's certification for state applications may involve considerable administrative burden; however, as a legal matter, EPA believes that Attorneys General or their designees are the only officials capable of certifying with respect to their states' legal authority. Where there are substantial administrative obstacles to involving the Attorney General in such certifications, EPA urges the state Attorney General to provide for a legally-competent designee who is available to participate in the submission of the state's application.

The second element of the application, and the most substantive, is a listing and description of the electronic document receiving systems that do or will receive the electronic submissions addressed by the requested program revisions or modifications. The application should specify the electronic submissions each system will be used to receive, and which (if any) of these submissions involve electronic signatures. In describing each system, the application should explain how the system will satisfy the applicable requirements of § 3.2000. Many of these requirements apply only to systems that receive submissions with electronic

signatures; accordingly, the descriptions for systems that receive no electronically signed submissions will be relatively short and simple. For each of the § 3.2000 requirements that do apply, the description should explain the functions the system will perform to satisfy the requirement, and the technologies that will be used to achieve this functionality. EPA does not expect such explanations to include detailed technical specifications of the systems, but rather to provide conceptual descriptions of the technical approach and functionality. In implementing this rule, EPA will provide applicants with more detailed recommendations for preparing these system descriptions, including examples and an application checklist.

The third element of the application is simply a schedule of upgrades to each system addressed by the application—to the extent that such upgrades can be anticipated—together with a brief discussion of how the upgrades will assure continued compliance with § 3.2000. This third element should be thought of as an appendix to the second, recognizing that the functionality with which each electronic document receiving system addresses the § 3.2000 requirements normally exists within the dynamic environment of the system life cycle.

2. *Review for completeness.* Once EPA receives an application submitted under the procedures in this rule, EPA will, within 75 calendar days, send a letter that either notifies the applicant that its application is complete or identifies deficiencies that render the application incomplete. An applicant that receives a notice of deficiencies may amend the application and resubmit it. From the date EPA receives the amended application, EPA will, within 30 calendar days, respond with a letter that either notifies the applicant that the amended application is complete or else identifies remaining deficiencies. If an amended application is not submitted within a reasonable time period to remedy identified deficiencies, EPA has the authority to review and act on the incomplete application, as explained in section VI.C.3.

3. *EPA actions on applications.* EPA will act on an application by either approving or denying the requested program revisions or modifications. In the case of a consolidated application for revision or modification of more than one program, EPA need not take the same action on each revision or modification; some may be approved while others are denied. EPA will have 180 calendar days from the time it sends a notice of completeness to act on an application in its entirety. Except in certain cases of requested revisions or modifications associated with existing systems (see section VI.C.4) or with an authorized public water system program under 40 CFR part 142 (see section VI.C.5), if EPA does not act on a program revision or modification by the end of the 180-day review period, then that revision and/or modification is considered automatically approved by EPA. The rule allows this review period to be extended, at the request of the state, tribe, or local government submitting the application. This may accommodate situations where EPA and the applicant are working through issues that may take more than the 180-day review period to resolve, and they mutually find it in their best interest to continue discussion before EPA makes its decision.

Where EPA approves a program revision or modification (by either affirmative or automatic approval), the approval becomes effective when EPA publishes a notice of the approval in the **Federal Register**. Where EPA denies a requested revision or modification, EPA will explain the reasons for the action and advise the applicant of the steps that can be taken to remedy the application's defects and will generally try to work with the applicant to address the issues that have posed an obstacle to approval. Additionally, in some cases, denial of approval under the § 3.1000 process may result from EPA's determination that the application raises certain issues that are highly program-specific and that these cannot be adequately addressed through the procedures provided in this rule. For example, there may be issues that require a discussion of program features that the § 3.1000(b)(1) application would not cover. In such cases, EPA will identify the issues that exceed the scope of the § 3.1000 process and will advise the applicant to request the revision or modification under the applicable program-specific procedures provided in other parts of Title 40.

4. *Revisions or modifications associated with existing systems.* Some applications will request modification or revision to an authorized program with an ''existing electronic document receiving system''. As noted in section VI.B.2, the deadline for submitting such applications is two years after the publication of today's rule. Where such applications are submitted and are determined to be complete before the two-year deadline, EPA will have a 180-day review-period for any program modification or revision being requested, as explained in section VI.B.3. However, where EPA sends notification that an application is complete after the two-year deadline has passed, for example, because the application was submitted relatively late in the two-year period, EPA will have 360 days to act on any requested modification or revision addressed by the application. As with the cases where EPA has 180 days to act, this 360-day review period can be extended at the request of the state, tribe, or local government submitting the application.

The rule provides for this extended review period to deal with the possibility that EPA will receive a large number of applications associated with existing systems just before the two-year deadline expires. If the number of such applications is sufficiently large, EPA may not be able to act on all of them within a 180-day review period. States, tribes, or local governments that wish to avoid the extended review may do so by submitting their applications addressing existing systems early enough in the two-year period to ensure that EPA can determine completeness before the deadline. As noted in section VI.B.2, EPA strongly encourages such early submissions wherever they are feasible.

5. *Public hearings for Part 142 revisions or modifications.* Where a complete application requests a revision or modification of an authorized public water system program under 40 CFR part 142, EPA will make a preliminary determination on the request—either an approval or a denial—by the end of the 180-day review period (or the 360-day extended review period discussed in section VI.C.4). EPA will then publish a notice of the preliminary determination in the **Federal Register**. The notice will state the reasons for the preliminary determination, and will inform interested members of the public that they may request a public hearing on the preliminary determination. Such hearing requests must be submitted within 30 days of the notice's **Federal Register** publication. If no requests are submitted, and the Administrator does not hold a hearing on his or her own motion, then the preliminary determination will be effective 30 days after the initial **Federal Register** publication.

If a request for hearing is granted, or the Administrator determines that a hearing is warranted, EPA will publish an additional **Federal Register** notice announcing—at least 15 days in advance of any such hearing—the date and time of any hearing, contact information, and the purpose of the hearing. At the hearing, a hearing officer will receive oral and written testimony, and will forward a record of the hearing to the EPA Administrator. After

reviewing the record of the hearing, EPA will by order either affirm or rescind the preliminary determination, and will publish notice of this decision in the **Federal Register**. If the order is to approve the revision or modification, the approval will be effective upon publication of the order in the **Federal Register**.

6. *Re-submissions and amendments.* States, tribes, or local governments whose § 3.1000 applications for revisions or modifications have been denied in whole or in part may reapply for reconsideration, using either the § 3.1000 procedures again, or, at their option, the applicable program-specific procedures. A state, tribe, or local government may also, on occasion, choose to amend a § 3.1000 application after the Administrator has determined the application to be complete. In such cases, the application will be considered to have been withdrawn and resubmitted as a new package, and a new 75-day completeness determination process will begin. An applicant may choose to withdraw and resubmit the package in this manner, for example, if it becomes clear relatively early into the 180-day review period that the application cannot be approved in its current form. For such re-submissions, EPA will work diligently to expedite the completeness determination.

D. What general requirements must state, tribe, and local government electronic reporting programs satisfy?

States, tribes, and local governments that accept electronic reports in lieu of paper under their authorized programs must satisfy the requirements of § 3.2000(b) and (c). Section 3.2000(b) sets forth the standards that acceptable electronic document receiving systems must satisfy, and these are explained in detail in section VI.E. In parallel with § 3.4 on federal compliance and enforcement, § 3.2000(c) requires that the state, tribe, or local government be able to seek and obtain any appropriate civil, criminal or other remedies under state, tribe, or local law for failure to comply with a reporting requirement if a person submits an electronic document that fails to comply with the applicable provisions for electronic reporting. Similarly, § 3.2000(c) contains provisions to ensure that an electronic signature provided to a state, tribe, or local government will make the person who signs the document responsible, bound, and/or obligated to the same extent as he or she would be signing the corresponding paper document.

Additionally, under § 3.2000(a)(2), the authorized program must require that any electronic document it accepts bear a valid electronic signature wherever the corresponding paper document would have to be signed under existing regulations or guidance, with the signatory being the same person who is authorized and/or required to sign under the current applicable provision. As in the case of direct reporting to EPA (see section V.A), the requirement for an electronic signature will apply only where the document would have to bear a signature were it to be submitted on paper, either because this is required by statute or regulation, or because a signature is required to complete the paper form. This rule does not require that authorized programs impose any new or additional signature requirements for electronic documents that are submitted in lieu of paper and were not previously required to be signed when submitted in paper form.

As with direct reporting to EPA, § 3.2000(a)(2) also allows an authorized program to make special provisions for the required signatures to be executed on follow-on paper submissions. As noted in section IV.C, such provisions must ensure that the paper submission containing the signatures is adequately cross-referenced with the electronic document being signed, and must be described as a part of the § 3.1000(b)(1) application. Systems that receive electronic documents with such follow-on paper signature submissions are subject to all applicable § 3.2000(b) requirements, including the requirement that the electronic document cannot be altered without detection after the signature has been executed.

E. What standards must state, tribe, and local government electronic document receiving systems satisfy?

Section 3.2000(b) specifies the standards that electronic document receiving systems must satisfy if they are to be approved for use by states, tribes, or local governments to receive electronic documents in lieu of paper under an EPA-authorized program. EPA's purpose in specifying such standards remains the same as it was when EPA specified the proposed § 3.2000 criteria in proposed CROMERR. As discussed in section IV.B.1, that purpose was to ensure that electronically submitted documents have the same ''legal dependability'' as their paper counterparts, so that any electronic document that may be used as evidence to prosecute an environmental crime or to enforce against a civil violation has no less evidentiary value than its paper equivalent. EPA has been motivated to provide for the legal dependability of electronic documents submitted under authorized programs by considering, among other things:

- The roles that many electronically submitted documents would likely play in environmental program management, including compliance monitoring and enforcement;
- EPA's statutory obligation to ensure that authorized or delegated programs maintain the enforceability of environmental law and regulations; and
- The consequent need to ensure that enforceability is not compromised as authorized programs make the transition from paper to electronic submission of compliance or enforcement-related documents.

The § 3.2000(b) standards for electronic document receiving systems in today's rule provide an expanded version of what had been the proposed § 3.2000(b) ''Validity of Data'' criterion. Like proposed § 3.2000(b), final § 3.2000(b) requires that electronic document receiving systems reliably enable EPA, states, tribes, and local governments to prove, in civil and criminal enforcement proceedings, that the electronic documents they receive and maintain are what they purport to be, that any changes to their content are documented, and that any associated signatures were actually executed by the designated signatories intending to certify that content. Systems must be able to satisfy the § 3.2000(b) requirements for any electronic documents they receive that are submitted in lieu of paper to satisfy an authorized program requirement.

The following discussion highlights some of the § 3.2000(b) requirements for electronic document receiving systems. The first five of these requirements (timeliness of data generation, copy of record, integrity of the electronic document, submission knowingly, and opportunity to review and repudiate copy of record) apply to all electronic document receiving systems. The other highlighted requirements (validity of the electronic signature, binding the signature to the document, opportunity to review, understanding the act of signing, the electronic signature or subscriber agreement, acknowledgment of receipt, and determining the identity of an individual) apply only to systems that receive electronically signed documents.

1. *Timeliness of data generation.* Section 3.2000(b) reflects the role that electronic document receiving systems play in supporting a wide range of compliance and enforcement-related activities, including compliance research and analysis, civil actions, and

litigation, and the fact that the success of such activities may be affected by the relative ease or difficulty of accessing the data related to electronic submissions. Accordingly, electronic document receiving systems must provide timely access to such data, especially to data relevant to the questions of what was submitted, by whom, and, where signatures are involved, who the signatories were and to what they certified. Much of this data may be assembled in the copy of record, together with any data needed to establish that the copy is a ''true and correct copy of an electronic document received,'' as specified by the § 3.3 copy of record definition. To help the litigator develop evidence and present it in the courtroom, it is advisable that the copy of record be maintained and made accessible in a form and format that requires the minimum possible ''assembly'' of its elements, so that its connection with what was received and what was certified to by any signatories is easy to understand and to demonstrate to others.

2. *Copy of record.* Under § 3.2000(b), an acceptable electronic document receiving system must retain and be able to make available a copy of record for each electronic document it receives that is submitted in lieu of paper to satisfy requirements under an authorized program. For such submissions, the copy of record is intended to serve as the electronic surrogate for what we refer to as the ''original'' of the document received where we are doing business on paper. The copy of record is meant to provide an authoritative answer to the question of what was actually submitted and, as applicable, what was signed and certified to in the particular case.

As defined in § 3.3, a copy of record must satisfy at least four requirements. First, it must be a true and correct copy of the electronic document that was received. In the case of documents consisting of data, this means that the copy of record must contain exactly the set of data elements that constituted the electronic document that was submitted. In the case of a document consisting of other forms of information, e.g., text or images, being a ''true and correct copy,'' may mean including file and or visual format information along with the items of information themselves, to the extent the meaning of these items is dependent on format. (See the discussion of the definition of ''electronic document,'' in section IV.D.1.) For the copy of record to fulfill its intended role, it is not enough that it be a true and correct copy; it must also be capable of being shown to be a true and correct copy; otherwise, it cannot meet other related system requirements, such as establishing document integrity. (See section VI.E.3, below.) The copy of record is shown to be true and correct in part by virtue of its not being repudiated by the submitters and/or signatories where it is made available for their review and repudiation. (See section VI.E.5., below.) In addition, the system must provide sufficient evidence to show how the copy of record was derived from and accurately reflects the electronic document as it was received by the system; such evidence is also necessary to establish document integrity. To provide for such evidence, the system may need to establish a chain of custody for the copy of record, particularly if there are a number of processing steps that separate the copy of record from the file as it enters the system. On the other hand, where the copy of record captures and preserves the file containing the electronic document exactly in the form and format in which it is received, then a chain of custody may not be necessary. Considerations of ''timeliness'' favor maintaining copies of record in a way that would not require a chain of custody. (See section VI.E.1., above.)

Second, the copy of record must include all the electronic signatures that have been executed to sign the document or components of the document. The method of inclusion may vary, depending on the nature of the signature. With a digital signature, created by encrypting a hash of the document being signed with the private key in a private/public key-pair, the signature is simply a number that can and should be contained as a copy of record element. There is no risk of signature theft in this case. Each digital signature is bound to the specific document it signs, and the private key, which is actually used for signing, is inaccessible to a would-be intruder.

With other forms of signature such as personal identification numbers (PINs) or passwords, items of personal information, or biometric images or values, including the signature as a copy of record element may raise signature theft issues. At least in theory, such signatures could be detached or copied from a copy of record and re-used spuriously without detection. To address this risk, the signature, especially in the case of a PIN or password, may be encrypted for storage, perhaps together with a hash of the document signed, to bind the signature to the document content. Another approach may be to validate the signatory's identity, *e.g.* by comparing a signatory-generated password with an encrypted version maintained securely at the electronic document receiving system. In such cases, the signatory-generated password—which might be regarded as the signature—never actually appears on the electronic document, so the signature that is ''included'' in the copy of record may be an encrypted form of the signature, or possibly nothing exactly corresponding to a signature at all, but rather pointers or references to the processes or encrypted data that provide the actual link to the signatory. There are analogous strategies for biometric signatures. For example, the validity of a biometric (*e.g.*, a finger print, a retinal scan, etc.) may be established by using certain statistical algorithms to evaluate data provided by the biometric. In such cases, the copy of record might document the process of validating the signature, but without including the biometric data that was used to show that the signature was valid. On any of these approaches, the copy of record may satisfy the requirement that the copy ''include'' the signatures, provided that what the copy does contain serves to establish whether the electronic document in question was signed and by whom.

Third, the copy of record must include the date and time of receipt to help establish its relation to submission deadlines, to the circumstances of its submission, and to other possibly associated documents that may have been submitted or alleged to have been submitted. This is not generally problematic, except in cases of continuous streams of data conveyed to the system. For such continuous data, reasonable alternatives may be substituted that serve the same purposes, for example, associating stages of the data flow with dates and times, say, at hourly intervals. Similarly, the copy of record may include other additional information to the extent that this is needed to establish the meaning of the content and the circumstances of receipt. Such additional information might include data field labels, signatory information such as references to PKI certificates, and transmission source information.

Fourth, the copy of record must be viewable in a human-readable format that clearly indicates what the submitter and, where applicable, the signatory intended that each of the data elements or other information items in the document means. This supports the copy of record's role as a surrogate ''original'' of the paper document, and serves to establish the content of the document as it was signed and/or

submitted. The copy of record may satisfy this requirement in many different ways. It might actually include explicit labels or descriptions for each data element or information item, or preserve a visual format in which the data were submitted. Alternatively, it may incorporate a conventional ordering of the items or elements, where the information that associates such ordered data with labels, descriptions, or other means of visual display is maintained externally and can be invoked as needed—for example, to make the data elements appear within fields in the image of a filled-out form. Where the electronic document is created off-line by the submitter and conveyed as a whole to the receiving system, it is preferable for the copy of record to reflect the mechanism or format for indicating meaning supplied in the submission. For example, if the submission is in some standard electronic data interchange format, then the copy of record might usefully preserve that format. Taking this approach will help to resolve potential chain of custody issues if questions arise about whether the copy of record is true and correct. However, in cases where the electronic document is created on-line, for example, through the use of a web-form, the format for the copy of record will of necessity be an artifact of the electronic document receiving system itself. This is not problematic, as long as the system provides a way to ensure that the meaning of each data element as supplied by the submitter remains unambiguous.

Some commenters objected to copy of record requirements because of the potential expense of redesigning systems that are not currently capable of creating and storing electronic copies of records. EPA notes, however, that systems satisfying copy of record requirements need not preserve the electronic documents received in separate or special storage apart from the files that maintain the data or information content of the documents. For example, data loaded from submitted electronic documents to a database may satisfy copy of record requirements where the stored content includes the signatures, the date/time of receipt, and an adequate chain of custody. This may be the most practical copy of record approach for receiving continuous data streams. Such an approach does not preclude satisfying the requirement that the copy of record be viewable in a human-readable format. The requirement does not mean that the data must be stored in a human-readable format, so long as there is a well-documented way to display the stored data in such a format. In addition, nothing in the ''copy of record'' definition requires such copies to be electronic. Particularly where the signature involves some easily represented numerical value, the copy of record may be created and maintained in an imaging medium or on paper, provided that such copies can be shown to have been created by the electronic document receiving system to be true and correct copies of the electronic documents received. Whether such alternatives are appropriate as interim or even long-term solutions will depend on individual circumstances. It may be difficult to provide a copy of record for review and possible repudiation if the copy is not available as an electronic document that can be viewed on-line or downloaded through the network.

3. *Integrity of the electronic document.* Under § 3.2000(b)(1)—(2), an acceptable electronic document receiving system must be able to establish that a given electronic document was not altered without detection in transmission or at any time after receipt, and any such alterations must be fully documented. For purposes of § 3.2000(b)(1)—(2), EPA excludes alterations that have no effect on the document's information content. Examples of excluded alterations include the separation of a transmitted file into packets and their error-free recombination, the error-free processes of file compression and extraction, as well as certain disk maintenance functions that may, for example, involve physically repositioning file components on the storage medium. To satisfy § 3.2000(b)(1)—(2) requirements with respect to alterations that do affect information content, a system may rely on a number of different but complementary capabilities, including general provisions for system security, access control, and secure transmission. Additionally, the system's copy of record provisions help make the case that the electronic document is unaltered, or has been altered only as documented (for example, through a chain of custody), a case which is strengthened where submitters and/or signatories have had the opportunity to review the copy and have not contacted the system to repudiate the copy. Finally there are specific technical approaches to ensuring integrity, based, for example, on calculating hash values associated with the document content.

4. *Submission knowingly.* Under § 3.2000(b)(3), an acceptable electronic document receiving system must provide evidence that the submitter had some reliable way of knowing and/or confirming that the submission took place. This requirement is necessary to help establish submitter responsibility for the electronic document and to rule out spurious submissions, whether by accident or through the actions of an unauthorized submitter or ''hacker.'' EPA believes that to satisfy this requirement, the system must have some follow-on communication with the submitter related to the submission. This could be a communication initiated by the submitter in cases where it is realistic to rely on submitters to regularly check the system for evidence of documents submitted; where such submitter interactions are relied upon, they must be documented. Alternatively, the system must send some form of acknowledgment of submission as a response to the submitter named, and must document such acknowledgments, recording at least their date, time, content and the addresses to which they were sent. For cases where the electronic document bears an electronic signature, this acknowledgment is explicitly provided for under § 3.2000(b)(5)(vi). (See section VI.E.11.)

5. *Opportunity to review and repudiate copy of record.* Under § 3.2000(b)(4), the copy of record must be available for review and timely repudiation by the individuals to whom the document is attributed, as its submitters and/or signatories. The fact that the copy was available for this review and was not repudiated provides strong support for its being a ''true and correct copy of an electronic document received,'' as specified by the § 3.3 copy of record definition. Program managers normally would set reasonable end dates for this process, especially where there is concern that the copy is not ''officially'' a copy of record until the process is complete.

Satisfying this ''opportunity to review'' provision involves at least two requirements. The first is that the identified submitters and/or signatories must have some way of knowing that their submission was received, and that a copy of record is available for review. This requires some follow-on communication with the submitters and signatories related to the submission—initiated either by the submitters/signatories or by the system, as discussed in section VI.E.4. Approaches should be avoided that allow the initial submission and provision of copy of record to occur as a part of the same on-line session, because in cases of spurious submission the identified submitters/signatures may never learn

that a copy of record exists. Second, to ensure that the opportunity to review and repudiate is meaningful, the copy of record must be viewable in a human-readable format that clearly and accurately associates all the information elements of the electronic document with descriptions or labeling of those elements. This second requirement is consistent with the definition of ''copy of record,'' as discussed in section VI.E.2.

6. *Validity of the electronic signature.* Under § 3.2000(b)(5)(i), for each electronic document that is required to bear an electronic signature, the receiving system must be able to establish that each electronic signature was a valid electronic signature at the time of signing. Under § 3.3, as discussed in section IV.D.5, a valid electronic signature must satisfy three conditions. The first is that the signature must be created with a signature device that is ''owned'' by the individual designated as signatory—''owned'' in the sense that this individual is uniquely entitled to use it for creating signatures. To establish this, an electronic document receiving system must be able to identify signature device ''owners'' and must be able to determine that an identified signatory is the owner of the device used to create the signature in question. Section 3.2000(b)(5)(vii) explicitly requires the ability to identify signature device owners, and section VI.E.12 of this Preamble discusses the § 3.2000(b)(5)(vii) requirements in detail.

Concerning the determination that an identified signatory is the owner of the device used to create the signature, the system needs to have unique signature validation criteria for each identified signature device owner who submits electronically signed documents; the system must be able to apply these criteria to each signature on documents received. For example, in the case of a digital signature, the validation criteria include the existence of a valid PKI certificate for the identified signatory and the ability of the associated public key to decrypt the encrypted message digest that constitutes the signature. In the case of a PIN, the validation criterion may be simply that the PIN added to the document as a signature matches the PIN on file for the identified signatory.

The second condition for an electronic signature to be considered valid is that the signature must be created with a device that has not been compromised. That is, at the time of signing, the electronic signature device must in fact be available only to the individual identified as its owner, and to no one else. Otherwise, the use of the device to create the electronic signature may not provide evidence that a specific, identifiable individual has certified to the truth or accuracy of an electronic document. Accordingly, an acceptable electronic document receiving system must provide evidence that the electronic documents it receives and maintains do not contain signatures executed with compromised devices. Such evidence will document the system's approach to three related functions: prevention of signature device compromise, detection of compromises where they occur, and rejection of known compromised submissions.

The approach to prevention will include the way the system notifies submitters of their obligations to avoid signature compromise, including the obligation not to share or delegate the use of the device as a part of the electronic signature agreement. (See sections IV.D.4 and VI.D.8. of this Preamble, respectively.) Prevention also involves choosing the kinds of signature devices to support and determining how they are to be used. Some devices are inherently vulnerable to compromise, for example, because protection from spurious use relies on ''secret'' (such as a PIN or password) that has to be shared when the device is used. However, vulnerable devices can sometimes be strengthened with appropriate implementation. In the case of a PIN or password, adding an element that does not rely on secrecy—e.g. a physical ''token,'' such as a smart card or employee badge—that had to be used along with the PIN or password may greatly reduce the device's vulnerability. Alternatively, a system accepting secret-based signatures might be programmed to query the would-be signatory about a randomly selected piece of private information that has been (or could be) verified. This approach would also reduce vulnerability to compromise, since the discovery of a secret number or password does not convey other private information about the secret's owner.

For detection of compromises, there are two complementary approaches. The first is to ensure that the system recognizes the signs of spurious submission, for example, duplicate reports, off-schedule submissions, and deviations from normal content or procedure. The second is to ensure that the system empowers submitters to detect and report spurious submissions by providing the regular ''out of band'' acknowledgments discussed in section VI.E.11. Once spurious submissions are detected, the system must ensure their rejection, and the rejection of any subsequent submissions that use the same device. An acceptable receiving system must provide for timely revocation or suspension of access by those individuals with compromised signature devices.

Finally, a signature must be created by an individual who is authorized to do so, primarily by virtue of his or her relationship with the regulated entity on whose behalf the signature is executed. An electronic document receiving systems must be able to determine whether the identified signatories have the necessary relationship with the regulated entity that enables them to sign the documents being submitted. Generally, the system would obtain the information necessary for these determinations along with establishing the identity of the signature device owners. Section VI.E.12 of this Preamble discusses this point in more detail.

The system must also have some way to keep this information up-to-date, for example, some way to reject signatures where it is known that the signature device owner is no longer authorized to sign the electronic document in question. As with the initial registration process, the provisions for updating this information may vary. For some cases, it may be sufficient to rely on voluntary notifications from registrants when, e.g., their job status changes. For other cases, it may be appropriate to identify a responsible company official who is charged with managing the authorizations of employees signing documents on behalf of the company, to include keeping records of changes in authorization status and/or sending notifications. For certain cases, the system might limit a signature device owner's authorization to a defined period, which could be extended only through a re-registration process.

7. *Binding the signature to the document.* Under § 3.2000(b)(5)(ii), an acceptable electronic document receiving system must establish that electronic documents cannot be altered without detection once such documents are signed. Well-implemented provisions for copy of record help satisfy this requirement. The fact that a signatory has not repudiated a document's copy of record that he or she has had the opportunity to review provides evidence that the copy accurately reflects the document as it was signed. However, even where the signatory affirms the authenticity of the copy of record at the time of review, he or she may still repudiate the document at a later date. Therefore, an acceptable electronic document receiving system

must provide a method of ensuring that any breach of a signed document's integrity can be detected. As discussed in section IV.B.2., such methods are available in the form of signatures that incorporate a hash value of the content being signed, or in the form of signature processes that involve the creation of this hash and its maintenance in association with the signed document. Encrypting the hash value, for example, by executing a digital signature, provide the strongest approach to rebutting claims that the hash has been manipulated. Encryption may not be necessary to the extent that the system provides other means to prevent tampering and establish that the hash has not been altered since it was calculated.

8. *Opportunity to review.* Where a signatory is certifying to the truth or accuracy of document content, the certification represents the signatory as knowing and understanding the content, as well as certifying to its truth. Under § 3.2000(b)(5)(iii), an acceptable electronic document receiving system must be able to provide evidence that the signatory had the opportunity to review what he or she was signing in a human-readable format. Providing this evidence may be relatively simple, depending on the signature/certification scenarios that the system provides for or allows. In a case where the system only allows signature/certification during an on-line client-server session, and where the server always explicitly gives the signatory the option of scrolling through an appropriately-formatted display of the submission content before signing, documenting these server functions should suffice to provide the required evidence. Cases that may be similarly straightforward include those where signature/certification takes place off-line, at the signatory's computer, but using software provided by or certified by the governmental entity whose system will receive the signed electronic document. In this case, the evidence is provided by documenting how the software works. Less straightforward are cases where the signature/certification software is completely beyond the control of the governmental entity. In such cases, evidence of the opportunity to review may need to rely on the use of a submission format that demonstrably allows a human-readable display of the content. For example, the fact that the file format is a Word or Excel file and that the file provides a human readable display when opened with the right program may constitute sufficient evidence that the opportunity to review has been provided.

9. *Understanding the act of signing.* Where a signatory is certifying to the truth or accuracy of document content, the certification affirmatively represents that the signatory understands both what the act of signing means and that he or she is subject to criminal liability for false certification. Reporting formats in the paper medium provide evidence that certifications are made with the requisite understandings by placing the certification statement in a clearly visible position near the place where signatures are to be affixed and by prominently displaying the statement that there are criminal penalties for false certification. Under § 3.2000(b)(5)(iv), an acceptable electronic document receiving system must ensure that such statements are presented in conjunction with electronic signature/certification. Satisfying this requirement is straightforward where the system itself provides for the signature process or where the governmental entity receiving the submission provides or otherwise has control over the signature/certification software being used. In other cases, satisfaction will depend on requiring that the signatories and/or submitters incorporate such statements into their documents before they are signed or into screens that are displayed prior to signature. Confidence that the requirement is satisfied will depend in part on the extent to which the submission process involves the use of common, easy-to-display file structures together with the software to display the files being signed.

10. *The electronic signature or subscriber agreement.* Under § 3.2000(b)(5)(v), an acceptable electronic document receiving system must be able to provide evidence that any signatory of documents received by the system has signed an electronic signature agreement or subscriber agreement with respect to the electronic signature device he or she uses to sign the documents. ''Electronic signature agreement'' and ''subscriber agreement'' are defined under § 3.3, the latter referring to electronic signature agreements that are executed with ink on paper. (The distinct role of subscriber agreements is explained in section VI.E.12.) By signing such agreements, an individual agrees to protect his or her signature device from compromise, that is, to keep a secret code secret, a hardware token secured, etc., and not to deliberately compromise the device by making it available to others. He or she also agrees to promptly report any evidence that the device has been compromised, for example, to promptly notify the system manager if he or she receives system acknowledgments of submissions he or she did not make, or if the device has become available to others. Finally, by signing the electronic signature or subscribed agreement, an individual agrees that use of his or her electronic signature device to sign documents creates obligations and/or legally binds him or her to the same extent as he or she would be bound or obligated by executing handwritten signatures. EPA believes that such agreements are necessary to assure—and provide evidence—that the signatory recognizes his or her obligations with respect to the electronic signature device. Insofar as the institutions surrounding the use of electronic signatures are relatively new, EPA believes that express recognition of signatory obligations through explicit agreements avoids potential ambiguity or misunderstandings.

11. *Acknowledgment of receipt.* Where an electronic signature is used to certify to the truth or accuracy of document content—with criminal liability for false certification—then it is especially important to ensure that any individual identified as signatory has the opportunity to detect and repudiate any spurious submissions made in his or her name through unauthorized access to signature device and/or the electronic document receiving system. To provide for this, § 3.2000(b)(5)(vi) requires the system to automatically send acknowledgments of document receipt to the individuals in whose names the submissions are made, the acknowledgments in each case identifying the document in question, the signatories, and the date and time of receipt.

Additionally, § 3.2000(b)(5)(vi) requires that each acknowledgment be sent to an address with access controls different and separate from those that enable the submission itself, so that in cases of compromised access, the individual in whose name a submission is made would still receive the acknowledgment without interference. This is sometimes referred to as ''out of band'' acknowledgment. In web-based commerce, this is fairly standard practice—a purchase is normally acknowledged directly to the internet protocol (IP) address from which the purchase is made, as a part of the on-line session, but also is confirmed through a follow-up communication to an email address. Note that while the ''out of band'' acknowledgment is normally sent electronically, electronic transmission is not required. A paper acknowledgment sent by U.S. Mail, or a voice acknowledgment via telephone would serve the same purpose so long

as these are documented by the system so they may be produced, possibly as evidence, at a later date.

12. *Determining the identity of the individual uniquely entitled to use a signature device.* As discussed in section VI.E.6, a system cannot accept an electronic signature as valid unless it establishes an identity between the individual designated as signatory and the owner of the device used to create the signature. Any circumstance casting doubt on the device's ownership undermines the certainty that signatures created with the device are valid; if it's not certain whose device created the signature then it's not certain whether the actual signatory is the individual who is designated as signatory in the submitted document. Additionally, it must be clear what the signature device owner's relation is to the entity on whose behalf a document is signed, in order to be certain that this device owner is an authorized signatory. This is also a condition of signature validity. (See section VI.E.6.) Accordingly, to assure that electronically signed documents are legally reliable, a system accepting such documents must have a process for determining who owns the signature devices used to create the signatures, and their relations to the entities on whose behalf they sign submitted documents. Section 3.2000(b)(5)(vii) explicitly reflects this performance standard by requiring that a system provide for such determinations ''with legal certainty.'' That is, the system must be able to provide evidence sufficient to prove the signature device owner's identity and relation to entities on whose behalf he or she signs in a context where designated signatories may have an interest in repudiating their signature device ownership or in distancing themselves from the entities on whose behalf they are supposed to have signed.

Section 3.2000(b)(5)(vii) does not specify how this performance standard is to be met, however, at a minimum, an ''identity-proofing'' capability must involve access to a set of descriptions that apply uniquely to the individual in question and refer to attributes that are durable, documented, and objective. Such descriptions must be capable of being shown at any time to uniquely identify the individual without having to depend on anyone who might have an interest in repudiating the identification. Section 3.2000(b)(5)(vii) requires that more specific conditions be met for the special class of electronically signed documents that are included in the list that defines ''priority report'' under § 3.3 and Appendix 1 to Part 3. The priority reports are those that EPA has identified as likely to be material to potential enforcement litigation. Given this likelihood, it is important to provide not only for the provability of signature device ownership in principle, but for the practical need to make this proof with the resources typically available to enforcement staff and within the constraints of the judicial process in criminal and civil proceedings. To address this practical dimension of identity-proofing in the case of priority reports, § 3.2000(b)(5)(vii) adds three conditions to the general performance standard. The first is that the identity of a signature device owner must be verified before the system accepts any electronic signature created with the device. The second, in § 3.2000(b)(5)(vii)(A), is that this verification must be ''by attestation of disinterested individuals.'' The third condition, also contained in § 3.2000(b)(5)(vii)(A), specifies that the verification be ''based on information or objects of independent origin, at least one item of which is not subject to change without government action or authorization.''

Regarding the first condition, requiring identity-proofing before the signature device is used helps prevent systems from accepting electronic signatures that cannot be proved to be valid in the context of an enforcement proceeding. This is at least a potential concern in any case of electronic signature, but it is also a very real concern in cases where what is signed is a priority report. The second condition anticipates the need to prove signature device ownership in court, by ensuring the availability of someone credible to offer testimony about the device owner's identity who does not have an interest in repudiating device ownership. This is the idea of verification by a ''disinterested individual,'' the term defined under § 3.3 as ''a person who is not the employer; the employer's corporate parent, subsidiary, or affiliate; contracting agent; or relative (including spouse or domestic partner) of the individual in whose name the electronic signature device is issued.'' The condition suggests an identity-proofing process carried out by a trusted third party, and, in the current electronic commerce environment, this would typically be a PKI certificate authority (CA), whose business is to issue certificate-based electronic signature devices that reflect identity-proofing at a specified level of assurance. However, it is important to be clear that verification by a ''disinterested individual'' does not have to involve a PKI-based approach to electronic signatures. Indeed, it does not have to involve a third party at all; the disinterested individual could simply be an employee of the agency operating the electronic document receiving system, if that agency itself has the resources to provide for identity-proofing as it registers signature device owners to use the system. Additionally, if a trusted third party is wanted, there are alternatives to the CA. For example, with an appropriately defined procedure, a notary public or some local government official could play this role; so could some other governmental agency, such as department of motor vehicles, which is in the business of issuing credentials based (usually) on in-person verification of identity.

The third condition sets a standard for the evidence on which verification of identity would be based—evidence that would be attested to by the disinterested individual provided for by the second condition. The standard refers to ''information or objects'' and for each requires that they be ''of independent origin'' and include at least one item that requires ''governmental action or authorization'' to change. Information ''of independent origin'' must be knowable empirically, and not simply as a matter of someone's say so; objects of independent origin could provide such information. Such information, where it concerns an individual's identity, would generally come from three sources: first, documented, direct, in-person contact; second, documentation of the individual's history—e.g., as an employee, a consumer, a student, etc.—with objects such as credit cards, passports, etc., sometimes together with corroborating testimony; and third, forensic evidence of unique, immutable traits, from such objects as fingerprints, photos, and handwritten signatures.

Evidence of identity from any of these three sources will meet the § 3.2000(b)(5)(vii)(A) standard, provided that the information used also includes at least one item that cannot be changed without governmental action or authorization—for example, a social security number, a passport number, or a driver's license number. This last requirement helps assure that the identifying information used is sufficiently well-documented and durable to support re-verification of identity at some later date. The requirement also facilitates identity-proofing that relies on database searches, insofar as data on individuals tends to be keyed to government-issued identifiers. Finally, while such

identifiers are items of information, they typically are presented on objects—e.g. a driver's license or a passport—that provide independent evidence of their authenticity.

EPA recognizes that the identity-proofing requirements specified in § 3.2000(b)(5)(vii)(A) may be difficult to implement in some cases. The rule therefore allows a system to meet the § 3.2000(b)(5)(vii)(A) requirements for cases of priority reports in other ways. Under § 3.2000(b)(5)(vii)(C), a system may collect a subscriber agreement (see section VI.E.10) from each signatory of the priority reports received by the system, in lieu of satisfying § 3.2000(b)(5)(vii)(A). Alternatively, the system may collect a certification from a ''local registration authority'' (LRA) that such a subscriber agreement has been executed and is being securely stored. As defined under § 3.3, an LRA is an individual who plays the role of a custodian of subscriber agreements, maintaining these paper agreements as records and sending the system a certification of receipt and secure storage for each such agreement he or she receives. The presumption is that such certifications would be sent electronically to the system as signed electronic documents. To become an LRA, an individual must have his or her identity established by notarized affidavit, and must be authorized in writing by the regulated entity to issue these ''agreement collection certifications'' (defined under § 3.3) on its behalf.

A state, tribe, or local government adopting the subscriber agreement alternative might chose to implement through LRAs as a way of reducing the pieces of paper it had to manage in operating its electronic document receiving system. While setting up the LRA relationships requires the collection of affidavits and authorizations on paper, this involves far fewer paper transactions than collecting the individual subscriber agreements from each person who signs priority reports. However, only larger companies or facilities with many employees signing priority reports are likely to be motivated and able to designate a company official as an LRA. Although nothing in the rule prohibits third parties from serving as LRAs for the smaller companies, a subscriber agreement implementation will probably always involve accepting some of these agreements directly from priority report signatories. What is essential under § 3.2000(b)(5)(vii)(C) is that a subscriber agreement be available, as needed, to establish the identity of the associated signature device owner. Identity in this case is established based on the forensic properties of the handwritten signature on the agreement.

Finally, § 3.2000(b)(5)(vii)(B) gives states, tribes, or local governments the flexibility to propose identity-proofing methods that may not meet the specific requirements of § 3.2000(b)(5)(vii)(A), but which are no less stringent than the methods that satisfy § 3.2000(b)(5)(vii)(A). For example, if a method of electronic identity-proofing were proposed that relies on the attestations of an LRA who is not a disinterested party, EPA would look for other features in the identity-proofing method that guarantee the identity of the LRA and the trustworthiness of the identity-proofing that the LRA would conduct. Similarly, if an identity-proofing method were proposed that relies on objects or information that are not of independent origin (e.g., a company identification card), EPA would look for other features in the authentication method that guarantee that the registrant's identity could not have been manufactured by the registrant or another interested party. EPA's expectation is that the advance of technology may also make new methods of identity-proofing available that meet the needs of the enforcement community, and we expect that § 3.2000(b)(5)(vii)(B) could be used to accommodate such new methods when implemented as part of electronic document receiving systems.

VII. What are the costs of today's rule?

A. Summary of Proposal Analysis

The Agency has conducted a number of analyses to ensure that this rule complies with the various statutory and administrative requirements that apply to EPA regulations. The results of the analyses are summarized in this section.

In the proposal, EPA estimated that the proposed rule could result in an average annual reduction in burden of $52.3 million per year for those facilities reporting, $1.2 million per year for EPA, and $1.24 million for each of the 30 states that were assumed to implement programs over the eight years of the analysis. EPA received many comments on the costs associated with the proposed electronic reporting provisions. Comments included concerns about the proposal's assumptions related to the number of affected entities, the number of registered users per facility, the costs to state programs, and the costs of implementing standard formats. Several commenters expressed support for the analysis findings, concurring that electronic reporting will reduce their environmental reporting costs. EPA's response to these comments is explained in the following section. Additional comments on the cost analysis and EPA's responses can be found in the rulemaking docket, in the Response to Comments document.

B. Final Rule Costs

In response to comments received on the proposed rule, EPA conducted additional cost analyses to determine the impacts of this rule on regulated entities, states, tribes, and local governments, and EPA programs. In developing the analysis for this final rule, EPA relied heavily on existing sources of data that included:

- EPA's 2002 Government Paperwork Elimination Act (GPEA) Report to OMB;
- Interviews with EPA programs, states, and nine industry representatives currently using CDX to report electronically;
- EPA's Information Collection Requests (ICRs);
- EPA's Envirofacts Warehouse and Facility Registry System;
- Follow-up to comments received from twenty state and local government agencies and several major industry associations; and
- Market research to assess trends of large and small companies using the Internet, costs of technology for electronic signature and data exchange formats, and other technical issues.

Based on the additional analyses, EPA estimates that under this rule there will be a total cumulative cost savings to the Agency, over the period 2003 to 2012, ranging from $64.4 million to $75.4 million, depending on the discount rate used. For those that adopt electronic reporting, EPA estimates a total cumulative cost burden to state and local governments under this rule, over the period 2003 to 2012, ranging from $57.2 million to $65.2 million annually, depending on the discount rate used. These costs result from the incremental burden to states to upgrade their receiving systems to meet the rule's standards and apply for EPA approval of program modifications and revisions. The model does not consider the potential cost savings to state and local governments resulting from processing electronic submittals but believes the savings would likely offset these incremental costs. For facilities, EPA estimates a total cumulative cost during this period ranging from $41.6 million to $51.9 million, depending on the discount rate used. The net total cumulative cost of this rule, over the period 2003 to 2012, ranges from $34.4 million to $41.7 million, depending on the discount rate used.

C. General changes to methodology and assumptions

The research effort for the final rule differed from that conducted for the proposal in that it was much broader and involved far greater engagement with external stakeholders. EPA used this research to reevaluate assumptions made in the proposal and to refine the overall approach to the cost-benefit analysis. The process of reevaluating costs to regulated entities included:

- Analyzing the GPEA report to determine the specific information collections identified as being suitable for electronic reporting and their implementation schedule;
- Evaluating each information collection request for an understanding of the types of activities that would be eliminated (such as mailing paper forms) or reduced (manual data quality checks) through electronic reporting;
- Interviewing trade associations, reviewing comments received, evaluating market trend research, and querying Envirofacts warehouse and Facility Registry System to establish an understanding of the numbers of potential facility representatives that would register for a particular program, the rate of electronic reporting growth in a program, the number of facilities using web forms or file exchanges, and the relative distribution of small to large businesses; and
- Establishing an understanding of the time required by facilities to register with CDX and maintain a CDX account, through interviews with CDX registered users and the CDX hotline.

The process of reevaluating costs and benefits to EPA, state, tribes, and local governments, included:

- Meeting with EPA programs and state program counterparts to identify the broad range of EPA authorized programs and the types and number of agencies under each program;
- Interviewing state and local agencies and their associations as follow-up to public comment to obtain an understanding of their current electronic reporting systems, long-term plans, and perceived impacts to their systems from this rule;
- Evaluating current information technology expenditures of CDX and other program system development efforts, and general costs of EPA rulemakings with respect to federal costs and benefits.

In preparing the CBA, EPA used a computer model to estimate the annual costs to EPA, state and local governments and regulated entities. To evaluate the costs and benefits of this rule, two scenarios were modeled: a ''Baseline'' scenario in which EPA would enable electronic reporting through an approach other than CROMERR and a ''To Be'' scenario in which EPA enables electronic reporting under CROMERR. In comparing the cumulative costs of this rule, EPA notes that the ''To Be'' scenario would be a more efficient approach than the ''Baseline'' scenario. Under the ''Baseline'' scenario, EPA programs would be left to implement their own program-specific electronic reporting requirements and electronic document receiving systems. Also, under the ''Baseline'' scenario, electronic reporting would be delayed, because EPA would have to generate separate rules and guidance to support program-specific electronic document receiving systems. Once these systems were established, reporting entities could conceivably be required to register under different rules and through different systems across EPA programs.

Based on the new research, EPA revised assumptions about the costs associated with authorized programs and corresponding benefits to the reporting entities. In contrast to the proposal, EPA does not claim the costs associated in building electronic document receiving systems for authorized programs (state, tribe, and local) or the benefits for their reporting entities in using these systems. Since it is clear that authorized programs intend to proceed with electronic reporting on their own regardless of this rule, the analyses for the final rule looks at the incremental costs to electronic document receiving systems that would be developed absent this rule, in meeting the final rule's requirements.

Based on research and comments received on the proposal, EPA also revised the following key cost assumptions:

- *Increased costs for XML.* EPA substantially increased the cost estimate of integrating an XML format into a facility's environmental management system (from $4,000 to $10,000).
- *Increased number of registered users.* EPA substantially increased the number of registrants (from 3 registrant/facility to 6 registrants per facility) in large companies that would use CDX.
- *Broadened impacts of authorized programs.* EPA substantially broadened the number of state, tribe, and local environmental agencies potentially impacted by the rule, to include health departments, county air boards, oil and gas agencies, and publicly-owned treatment works.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866

Pursuant to the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

For EPA, the average annual cost to implement and operate electronic reporting under this rule is estimated to be $60.94 million. The average annual cost to implement and operate electronic reporting in the absence of this rule (i.e., where EPA implements electronic reporting on a program-specific basis) is estimated to be $70.36 million for EPA. The average annual cost savings to EPA under this rule is $8.42 million. The average annual cost to states, tribes, and local governments in initially upgrading their electronic receiving systems and obtaining EPA approval for appropriate program modification under the rule ranges from roughly $5,000 to $460,000, depending on the number of systems and extent of the upgrades needed. In addition, states, tribes, and local governments that upgrade their systems are expected to incur system maintenance costs averaging about $10,000 annually. These costs reflect solely the incremental costs resulting from the rule; they do not reflect the cost savings that states, tribes, and local governments will experience in implementing their receiving systems. EPA has not quantified these savings as part of its analysis. It should be noted that EPA expects today's rule to produce a net cost savings for states, tribes, and local governments. However, it is not possible to provide an adequate year-by-year comparison of the costs of the two scenarios, because the Baseline Scenario anticipates a more gradual process of EPA approval for state, tribe, and local government electronic reporting systems, starting at a later point in time.

The average annual cost to facilities to submit electronic reports to EPA in compliance with today's rule ranges from $9 for those entities that choose simply to use a web browser to access CDX and fill out web forms, to $10,000 per facility for those companies that wish to configure their environmental management systems to exchange data with CDX, using agreed-upon data exchange formats.

In addition to the monetary benefits identified by the analysis, EPA also

believes that there are many qualitative benefits that justify the initial costs associated with the rule. These benefits include:

• Responding to federal requirements, such as GPEA, which, among other things, requires federal agencies to allow individuals or entities that deal with the agencies the option to submit information or transact with the agency electronically. This rule sets the legal framework for most major EPA initiatives implementing electronic environmental data exchanges with the various stakeholders.

• Maintaining consistency with emerging industry commercial practices. The implementation of electronic government initiatives is a reflection of the rapid evolution of electronic commerce, which has occurred in industry since the expansion of the Internet and the World Wide Web (WWW), in the early 1990s. In many ways, EPA and state, tribe, and local environmental agencies' implementations of electronic reporting under today's rule will be more consistent with emerging practices and less burdensome to industry than paper reporting.

• Providing sound environmental practice. Part of EPA's mission is conserving environmental resources. The traditional paper-based reporting practices and processes consumes trees and other resources for printing, exchanging, reproducing, storing, and retrieving grants, permits, compliance reports, and supporting documents.

• Fostering more rapid environmental compliance reporting. Organizations have become increasingly environmentally conscientious. This change stems both from a desire to be good corporate citizens and from fear of negative media reporting. Hence, organizations, especially large companies, are becoming increasingly interested in being able to demonstrate their environmental compliance. More rapid and accurate public posting of compliance data by environmental agencies is one way to help achieve this goal.

• Simplifying facility reporting. Electronic reporting and EPA's planned implementation support a single point of entry into agency systems, which will enhance facilities' ability to locate appropriate regulations, obtain information, ask questions, obtain forms, and submit data.

• Providing more accurate data. Replacing paper forms with electronic forms will result in more accurate data. Systems incorporating electronic forms can perform real time edit checks that will reduce the number of input errors. These checks can range from simple verification of valid date formats, to complex validations of proper nomenclature and limits of chemicals emitted into the environment. Improved data quality will also help reduce the time required for data correction and the effects of inaccurate reporting.

• Making data more readily available. The process of creating, mailing, receiving, entering, verifying, and correcting paper reports consumes both resources and time. This delays the analysis of the data by EPA and authorized programs and its availability to decision makers and the public.

• Provides the foundation for further process re-engineering. Moving data from a paper to an electronic system as early in the process as possible creates the foundation on which many work-flow re-engineering initiatives can be constructed.

B. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA 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'' are defined in the Executive Order 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.''

This final rule does not have federalism implications. EPA has determined that the final rule will 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. The final rule will not require states to accept electronic reports. The effect of this rule will be to provide an electronic alternative to currently accepted methods of receiving regulatory reports on paper and to give the states the option of choosing to receive electronic submissions in satisfaction of reporting requirements under their authorized programs or continuing to require submissions on paper.

Authorized states and local agencies that choose to receive electronic reports under this rule may incur expenses initially in developing systems or modifying existing systems to meet the standards in this rule. The average annual cost to state agencies in upgrading their electronic receiving systems and obtaining EPA program modification approval depends on the amount of effort required to adhere to the requirements of this rule. However, EPA estimates that for those states deploying systems that meet rule standards, each state will incur a cost of about $12,000 in obtaining EPA approval of its system. For a state where upgrades to its systems are needed to meet rule requirements, the costs can range up to $460,000, depending on the size and complexity of its systems and the extent of the upgrades needed. Maintenance costs for maintaining compliance with this rule will cost each state about $10,000 annually. These costs include both capital costs required for hardware and software upgrades, and labor costs incurred by state employees. EPA analyzed the most likely alternative scenario where, absent this rule, EPA programs would implement rules that would require states to seek program modifications on a program by program basis. It should be noted that these analyses do not quantify the cost savings that states will incur through offering electronic reporting options to their reporting entities. EPA believes these savings will greatly outweigh the costs of complying with the rule. Based on these analyses, EPA believes that although the final rule imposes some compliance costs on state and local governments, the costs for most states are marginal and will result in net benefits over the most likely alternative scenario.

Over the last several years, EPA has provided substantial financial support to states to assist in upgrades to information technology systems. For example, in fiscal years 2002–2004, EPA provided approximately $65 million dollars to states, tribes, and territories through grants to support their efforts to establish EIEN. EPA intends to award additional grants for fiscal year 2005. EPA's fiscal year 2006 budget includes $20 million for the EIEN Grant Program. States, tribes, and territories may apply for these grant funds to generally upgrade their EIEN capabilities, including improvements related to this rule, e.g., to improve data validity and user authentication procedures, as required by today's final rule.

Although Section 6 of Executive Order 13132 does not apply to this rule, EPA has welcomed the active participation of the states; on several separate occasions EPA has held substantial consultations with state and local officials in developing this rule. State participation has resulted in changes to the final rule, including the section 3.1000 approval process and

special provisions such as deferred compliance for existing systems.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2025–0003.

The ICR for this rule covers the registration information, which will be collected from individuals wishing to submit electronic reports to EPA on behalf of regulated facilities. The information will be used to establish the identity of that individual and the regulated entity he or she represents. This information will be used by EPA to register and provide individuals with the ability to access the EPA's electronic document receiving system, CDX. In appropriate circumstances this information will also be used to issue an electronic signature to the registered individual. The ICR also covers activities incidental to electronic reporting (*e.g.*, submittal of an electronic signature agreement to EPA as applicable). It should be noted that the submission of environmental reports in an electronic format to EPA and states, tribes, and local governments is voluntary for most examples of electronic reporting, and viewed as a service that EPA and its regulatory partners are providing to the regulated community. The rule allows reporting entities to submit reports and other information electronically, thereby streamlining and expediting the process for reporting. However, it should also be understood that this rule does set forth requirements for regulated entities that submit electronic reports directly to EPA and for states, tribes, and local governments that choose to implement electronic reporting under their authorized programs. EPA is issuing this rule on cross-media electronic reporting, in part, under the authority of GPEA, Public Law 105–277, which amends the PRA.

In addition, the ICR covers state, tribe, and local government activities involved in upgrading their electronic receiving systems to satisfy the standards in the rule and in applying to EPA for approval of program modification. States, tribes, and local governments will undertake these activities only if they intend to collect information electronically under an EPA authorized program.

The total annual reporting and recordkeeping burden this ICR estimates is 151,963 hours, which includes the tasks described above. It is expected that a respondent reporting directly to EPA will take on average ten minutes to register with CDX; however, if the respondent contacts the CDX help desk for assistance with CDX registration, on average the respondent will incur an additional six minutes. The average annual number of respondents registering with CDX is 19,434. It is further expected that 201,331 respondents will report electronically to a state, tribe, or local government receiving system. Respondents reporting to EPA or state, tribe, or local governments may also incur an additional burden of 20 minutes to prepare, sign, and submit an electronic signature agreement. The average annual number of these respondents is 177,009. In addition, the ICR estimates that 7,293 medium-sized and large companies will register local registration authorities (LRA) and incur an additional burden of 1 hour. This includes the time to prepare and submit LRA designation applications, collect and store subscriber agreements, and prepare and submit certification of receipt and secure storage.

Finally, it is expected that a state, tribe, or local government would take between 210 and 330 hours to prepare and submit its program modification application to EPA. The average annual number of states applying to EPA is expected to be 15; the average annual number of tribes and local governments applying to EPA is expected to be 46. In addition, the ICR estimates $4,450,658 in annual capital/start-up costs for states, tribes and local governments to upgrade their receiving systems. The ICR estimates $663,975 in annual operation and maintenance costs. This includes costs to registrants and state, tribes and local governments in submitting information to EPA.

Public Burden Statement

The public reporting burden is estimated to be 10 minutes for an individual that reports electronically to the CDX. This includes time for preparing the on-line application and calling the CDX help desk.

The public reporting burden in this ICR is estimated to be 15 minutes for an individual that prepares and submits a subscriber agreement.

The public reporting burden is estimated to be 30 minutes for a local registration authority. This includes time for preparing and submitting the certification of receipt and secure storage to EPA or state/local agency.

The public reporting burden is estimated to range from 210 hours for a local government to 330 hours for a state seeking to implement an electronic receiving system. This includes time for preparing and submitting the program modification application to EPA.

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.

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 are listed in 40 CFR part 9 and 48 CFR chapter 15. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citations for the information requirements contained in this final rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purpose of assessing the impacts of today's rule on small entities, small entity is defined as: (1) Small business as defined by the RFA and based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less then 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, the Agency certifies, pursuant to section 605(b) of the RFA, that this

action will not have a significant economic impact on a substantial number of small entities. Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. See *Motor and Equip. Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Elec. Co-op, Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule). This final rule would not establish any new direct requirements applicable to small entities. States that are directly regulated in this rulemaking are not small entities.

This rule provides for EPA review and approval of authorized state, tribe, and local government programs that decide to provide for electronic reporting. This rule includes performance standards against which a state's, tribe's, or local government's electronic document receiving system will be evaluated before EPA will approve changes to the delegated, authorized, or approved program to provide electronic reporting, and establishes a streamlined process that states, tribes, and local governments can use to seek and obtain such approvals. The rule also includes special provisions for existing state electronic reporting systems in place at the time of publication of this rule.

Currently, entities that choose to submit electronic documents directly to EPA submit documents to a centralized Agency-wide electronic document-receiving system, called the CDX, or to alternative systems designated by the Administrator. This rule does not change those systems. In addition, today's rule, does not require the submission of electronic documents in lieu of paper documents.

Because there is no requirement to adopt electronic reporting, EPA has determined that small local governments will not be directly impacted by this rule. Nonetheless, EPA also considered the possible impacts of this rule to determine whether small local governments could potentially be subject to the provisions of § 3.1000, which would require these programs to seek EPA approval for their electronic document receiving systems if they choose to provide electronic reporting. EPA reviewed its programs and conducted follow-up to comments received from industry, state, and local government associations to determine possible impacts to small local jurisdictions. Based on its review, EPA concluded that the only small government jurisdictions possibly subject to the rule are those with Publicly-Owned Treatment Works (POTWs). Only POTWs choosing to deploy electronic document receiving systems would be subject to today's rule. Through analysis and direct discussions with municipal POTWs and trade associations, EPA did not identify any such small government jurisdictions planning to deploy electronic reporting systems.

Although not required by the RFA, (See *Michigan* v. *EPA*, 213 F.3d 663, 668–69 (D.C. Cir., 2000), *cert. den.* 121 S.Ct. 225, 149 L.Ed.2d 135 (2001)), as a part of the analysis prepared under Executive Order 12866, EPA also considered the costs to small entities that are indirect reporters to authorized state, tribal, and local government programs. For this final rule, EPA prepared a cost/benefit analysis to assess the economic impact of CROMERR, which can be found in the docket for this rule.

Although this rule will not have a significant economic impact on a substantial number of small entities, the Agency nonetheless consulted with small entities as well as organizations such as the Small Business Administration (SBA). We made several changes to the rule based upon these discussions.

E. 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 states, tribes, and local governments and the private sector. Under section 202 of UMRA, EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to states, tribes, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribes, it must have developed under section 203 of UMRA a small-government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input into the development of EPA regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

As described in section VIII.D. of this Preamble, above, EPA also evaluated the possible impacts of this rule to small governments. In particular, EPA was concerned that small governments could potentially be subject to the provisions of § 3.1000, which would require these programs to seek EPA approval for the electronic document receiving systems. EPA reviewed its programs, and also conducted follow-up to comments from industry, state, and local government associations to determine possible impacts to small local governments. As a result of this review, EPA concluded that small local governments would not be adversely impacted by the provisions of § 3.1000 this rule.

The Agency has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for states, tribes, and local governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements in sections 202 and 205 of UMRA. The Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements in section 202 of UMRA.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

The consensus standards relevant to an electronic reporting rule are primarily technical standards that specify file formats for the electronic exchange of data, telecommunications network protocols, and electronic signature technologies and formats. EPA is not setting requirements for electronic reporting at the level of specificity addressed by such formats, protocols and technologies, so consensus standards are not directly applicable to today's rule. For example, the final rule does not stipulate data exchange formats, does not specify electronic signature technologies, and does not address telecommunications issues. At the same time, there is nothing in today's rule that is incompatible with these standards, and in implementing electronic reporting under this rule EPA is adopting standards-based approaches to electronic data exchange.

In the preamble to the proposed rule, EPA described its initial plans to implement a number of standards-based approaches to electronic reporting, including electronic data exchange formats based upon the ANSI Accredited Standards Committee's (ASC) X12 for Electronic Data Interchange or EDI. That preamble also discussed EPA's interest in exploring the use of Internet data exchange formats based on XML, then under development by the World Wide Web Consortium (W3C). As a part of the preamble discussion, EPA solicited comment on these planned standards-based electronic reporting implementations. In response, EPA received considerable feedback both from states and from industry indicating a trend in the direction of XML, and away from the deployment of ANSI ASC X12 standards. In any event, CDX now looks to XML to provide the formats for its Internet data exchanges. EPA currently supports multi-agency Integrated Project Teams to develop XML formats and intends to use standardized formats for this purpose to the extent that they are available. In addition, EPA currently registers XML formats in its System of Registries to facilitate easy access to these formats for partners wishing to exchange data. EPA is attempting to make use of applicable standards-setting work being done by several organizations, including the Electronic Business XML (ebXML), the Organization for the Advancement of Structured Information Standards (OASIS), and, internationally, the United Nation's Center for Administration, Commerce, and Transport (UN/CEFACT) Forum. In any event, today's rule is compatible with any of these current standards-based approaches to electronic reporting, but the rule itself does not set requirements at the level of detail that such standards address.

G. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that EPA determines (1) ''economically significant'' as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. EPA interprets Executive Order 13045 as encompassing only those regulatory actions that are risk-based or health-based, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation.

This rule is not subject to Executive Order 13045 because it is not an economically significant action as defined by Executive Order 12866 and it does not involve decisions regarding environmental health or safety risks. This rule contains general performance standards for the submission of environmental data electronically.

H. Executive Order 13175

Executive Order 13175, entitled, ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.''

This rule does not have tribal implications, as specified in Executive Order 13175, and therefore consultation under the Order is not required. It will not have substantial direct effects on 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 in Executive Order 13175. This action does not require Indian tribes to accept electronic reports. The effect of this rule is to provide additional regulatory flexibility to Indian tribes by giving them the opportunity to submit electronic reports to EPA in satisfaction of EPA reporting requirements and by allowing them to implement electronic reporting under their authorized programs.

I. Executive Order 13211 (Energy Effects)

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse affect on the supply, distribution, or use of energy. EPA has concluded that this rule is not likely to have any adverse energy effects.

J. Congressional Review Act

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). This rule will become effective on January 11, 2006.

List of Subjects

40 CFR Part 3

Environmental protection, Conflict of interests, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 9

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Ammonium sulfate plants, Batteries, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Electronic records, Electronic reporting requirements, Electronic reports, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Heaters, Household appliances, Insulation, Intergovernmental relations, Iron, Labeling, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Polymers, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Sulfuric acid plants, Tires, Urethane, Vinyl, Volatile organic compounds, Waste treatment and disposal, Zinc.

40 CFR Part 63

Environmental protection, Air pollution control, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 69

Environmental protection, Air pollution control, Electronic records, Electronic reporting requirements, Electronic reports, Guam, Intergovernmental relations.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 71

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations.

40 CFR Part 123

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Electronic records, Electronic reporting requirements, Electronic reports, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 145

Environmental protection, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 162

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Pesticides and pests, Reporting and recordkeeping requirements, State registration of pesticide products.

40 CFR Part 233

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 257

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 281

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Insurance, Intergovernmental relations, Oil pollution, Reporting and recordkeeping requirements, Surety bonds, Water pollution control, Water supply.

40 CFR Part 403

Environmental protection, Confidential business information, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Environmental protection, Administrative practice and procedure, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Sewage disposal.

40 CFR Part 745

Environmental protection, Electronic records, Electronic reporting requirements, Electronic reports, Intergovernmental relations, Hazardous substances, Lead poisoning, Reporting and recordkeeping requirements.

40 CFR Part 763

Environmental protection, Administrative practice and procedure, Asbestos, Electronic records, Electronic reporting requirements, Electronic reports, Hazardous substances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 22, 2005.

Stephen L. Johnson,

Administrator.

■ Therefore, Title 40 Chapter I of the Code of Federal Regulations is amended by adding a new Part 3, and amending parts 9, 51, 60, 63, 69, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763 to read as follows:

PART 3—CROSS-MEDIA ELECTRONIC REPORTING

Subpart A—General Provisions

Sec.

Authority: 7 U.S.C. 136 to 136y; 15 U.S.C. 2601 to 2692; 33 U.S.C. 1251 to 1387; 33 U.S.C. 1401 to 1445; 33 U.S.C. 2701 to 2761; 42 U.S.C. 300f to 300j–26; 42 U.S.C. 4852d; 42 U.S.C. 6901–6992k; 42 U.S.C. 7401 to 7671q; 42 U.S.C. 9601 to 9675; 42 U.S.C. 11001 to 11050; 15 U.S.C. 7001; 44 U.S.C. 3504 to 3506.

Subpart A—General Provisions

§ 3.1 Who does this part apply to?

(a) This part applies to:

(1) Persons who submit reports or other documents to EPA to satisfy requirements under Title 40 of the Code of Federal Regulations (CFR); and

(2) States, tribes, and local governments administering or seeking to administer authorized programs under Title 40 of the CFR.

(b) This part does not apply to:

(1) Documents submitted via facsimile in satisfaction of reporting requirements as permitted under other parts of Title 40 or under authorized programs; or

(2) Electronic documents submitted via magnetic or optical media such as diskette, compact disc, digital video disc, or tape in satisfaction of reporting requirements, as permitted under other parts of Title 40 or under authorized programs.

(c) This part does not apply to any data transfers between EPA and states, tribes, or local governments as a part of their authorized programs or as a part of administrative arrangements between states, tribes, or local governments and EPA to share data.

§ 3.2 How does this part provide for electronic reporting?

(a) *Electronic reporting to EPA.* Except as provided in § 3.1(b), any person who is required under Title 40 to create and submit or otherwise provide a document to EPA may satisfy this requirement with an electronic document, in lieu of a paper document, provided that:

(1) He or she satisfies the requirements of § 3.10; and

(2) EPA has first published a notice in the **Federal Register** announcing that EPA is prepared to receive, in electronic form, documents required or permitted by the identified part or subpart of Title 40.

(b) *Electronic reporting under an EPA-authorized state, tribe, or local program.*

(1) An authorized program may allow any document submission requirement under that program to be satisfied with an electronic document provided that the state, tribe, or local government seeks and obtains revision or modification of that program in accordance with § 3.1000 and also meets the requirements of § 3.2000 for such electronic reporting.

(2) A state, tribe, or local government that is applying for initial delegation, authorization, or approval to administer a federal program or a program in lieu of the federal program, and that will allow document submission requirements under the program to be satisfied with an electronic document, must use the procedures for obtaining delegation, authorization, or approval under the relevant part of Title 40 and may not use the procedures set forth in § 3.1000; but the application must contain the information required by § 3.1000(b)(1) and the state, tribe, or local government must meet the requirements of § 3.2000.

(c) *Limitations.* This part does not require submission of electronic documents in lieu of paper. This part confers no right or privilege to submit data electronically and does not obligate EPA, states, tribes, or local governments to accept electronic documents.

§ 3.3 What definitions are applicable to this part?

The definitions set forth in this section apply when used in this part.

Acknowledgment means a confirmation of electronic document receipt.

Administrator means the Administrator of the EPA.

Agency means the EPA or a state, tribe, or local government that administers or seeks to administer an authorized program.

Agreement collection certification means a signed statement by which a local registration authority certifies that a subscriber agreement has been received from a registrant; the agreement has been stored in a manner that prevents unauthorized access to these agreements by anyone other than the local registration authority; and the local registration authority has no basis to believe that any of the collected agreements have been tampered with or prematurely destroyed.

Authorized program means a Federal program that EPA has delegated, authorized, or approved a state, tribe, or local government to administer, or a program that EPA has delegated, authorized, or approved a state, tribe or local government to administer in lieu of a Federal program, under other provisions of Title 40 and such delegation, authorization, or approval has not been withdrawn or expired.

Central Data Exchange means EPA's centralized electronic document receiving system, or its successors, including associated instructions for submitting electronic documents.

Chief Information Officer means the EPA official assigned the functions described in section 5125 of the Clinger Cohen Act (Pub. L. 104–106).

Copy of record means a true and correct copy of an electronic document received by an electronic document receiving system, which copy can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A *copy of record* includes:

(1) All electronic signatures contained in or logically associated with that document;

(2) The date and time of receipt; and

(3) Any other information used to record the meaning of the document or the circumstances of its receipt.

Disinterested individual means an individual who is not connected with the person in whose name the electronic signature device is issued. A *disinterested individual* is not any of the following: The person's employer or employer's corporate parent, subsidiary, or affiliate; the person's contracting agent; member of the person's household; or relative with whom the person has a personal relationship.

Electronic document means any information in digital form that is conveyed to an agency or third-party, where ''information'' may include data, text, sounds, codes, computer programs, software, or databases. ''Data,'' in this context, refers to a delimited set of data elements, each of which consists of a content or value together with an understanding of what the content or value means; where the electronic document includes data, this understanding of what the data element content or value means must be explicitly included in the electronic document itself or else be readily available to the electronic document recipient.

Electronic document receiving system means any set of apparatus, procedures,

software, records, or documentation used to receive electronic documents.

Electronic signature means any information in digital form that is included in or logically associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content. The electronic document bears or has on it an electronic signature where it includes or has logically associated with it such information.

Electronic signature agreement means an agreement signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signatures requiring such individual to protect the electronic signature device from compromise; to promptly report to the agency or agencies relying on the electronic signatures created any evidence discovered that the device has been compromised; and to be held as legally bound, obligated, or responsible by the electronic signatures created as by a handwritten signature.

Electronic signature device means a code or other mechanism that is used to create electronic signatures. Where the *device* is used to create an individual's electronic signature, then the code or mechanism must be unique to that individual at the time the signature is created and he or she must be uniquely entitled to use it. The *device* is compromised if the code or mechanism is available for use by any other person.

EPA means the United States Environmental Protection Agency.

Existing electronic document receiving system means an electronic document receiving system that is being used to receive electronic documents in lieu of paper to satisfy requirements under an authorized program on October 13, 2005 or the system, if not in use, has been substantially developed on or before that date as evidenced by the establishment of system services or specifications by contract or other binding agreement.

Federal program means any program administered by EPA under any other provision of Title 40.

Federal reporting requirement means a requirement to report information directly to EPA under any other provision of Title 40.

Handwritten signature means the scripted name or legal mark of an individual, handwritten by that individual with a marking-or writing-instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form, where ''a writing'' means any intentional recording of words in a visual form, whether in the form of handwriting, printing, typewriting, or any other tangible form. The physical instance of the scripted name or mark so created constitutes the handwritten signature. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other media.

Information or objects of independent origin means data or items that originate from a disinterested individual or are forensic evidence of a unique, immutable trait which is (and may at any time be) attributed to the individual in whose name the device is issued.

Local registration authority means an individual who is authorized by a state, tribe, or local government to issue an agreement collection certification, whose identity has been established by notarized affidavit, and who is authorized in writing by a regulated entity to issue agreement collection certifications on its behalf.

Priority reports means the reports listed in Appendix 1 to part 3.

Subscriber agreement means an electronic signature agreement signed by an individual with a handwritten signature. This agreement must be stored until five years after the associated electronic signature device has been deactivated.

Transmit means to successfully and accurately convey an electronic document so that it is received by the intended recipient in a format that can be processed by the electronic document receiving system.

Valid electronic signature means an electronic signature on an electronic document that has been created with an electronic signature device that the identified signatory is uniquely entitled to use for signing that document, where this device has not been compromised, and where the signatory is an individual who is authorized to sign the document by virtue of his or her legal status and/or his or her relationship to the entity on whose behalf the signature is executed.

§ 3.4 How does this part affect enforcement and compliance provisions of Title 40?

(a) A person is subject to any applicable federal civil, criminal, or other penalties and remedies for failure to comply with a federal reporting requirement if the person submits an electronic document to EPA under this part that fails to comply with the provisions of § 3.10.

(b) A person is subject to any applicable federal civil, criminal, or other penalties or remedies for failure to comply with a State, tribe, or local reporting requirement if the person submits an electronic document to a State, tribe, or local government under an authorized program and fails to comply with the applicable provisions for electronic reporting.

(c) Where an electronic document submitted to satisfy a federal or authorized program reporting requirement bears an electronic signature, the electronic signature legally binds, obligates, and makes the signatory responsible, to the same extent as the signatory's handwritten signature would on a paper document submitted to satisfy the same federal or authorized program reporting requirement.

(d) Proof that a particular signature device was used to create an electronic signature will suffice to establish that the individual uniquely entitled to use the device did so with the intent to sign the electronic document and give it effect.

(e) Nothing in this part limits the use of electronic documents or information derived from electronic documents as evidence in enforcement or other proceedings.

Subpart B—Electronic Reporting to EPA

§ 3.10 What are the requirements for electronic reporting to EPA?

(a) A person may use an electronic document to satisfy a federal reporting requirement or otherwise substitute for a paper document or submission permitted or required under other provisions of Title 40 only if:

(1) The person transmits the electronic document to EPA's Central Data Exchange, or to another EPA electronic document receiving system that the Administrator may designate for the receipt of specified submissions, complying with the system's requirements for submission; and

(2) The electronic document bears all valid electronic signatures that are required under paragraph (b) of this section.

(b) An electronic document must bear the valid electronic signature of a signatory if that signatory would be required under Title 40 to sign the paper document for which the electronic document substitutes, unless EPA announces special provisions to accept a handwritten signature on a separate paper submission and the signatory provides that handwritten signature.

§ 3.20 How will EPA provide notice of changes to the Central Data Exchange?

(a) Except as provided under paragraph (b) of this section, whenever

EPA plans to change Central Data Exchange hardware or software in ways that would affect the transmission process, EPA will provide notice as follows:

(1) *Significant changes to CDX:* Where the equipment, software, or services needed to transmit electronic documents to the Central Data Exchange would be changed significantly, EPA will provide public notice and seek comment on the change and the proposed implementation schedule through the **Federal Register**;

(2) *Other changes to CDX:* EPA will provide notice of other changes to Central Data Exchange users at least sixty (60) days in advance of implementation.

(3) *De minimis or transparent changes to CDX:* For *de minimis* or transparent changes that have minimal or no impact on the transmission process, EPA may provide notice if appropriate on a case-by-case basis.

(b) *Emergency changes to CDX:* Any change which EPA's Chief Information Officer or his or her designee determines is needed to ensure the security and integrity of the Central Data Exchange is exempt from the provisions of paragraph (a) of this section. However, to the extent consistent with ensuring the security and integrity of the system, EPA will provide notice for any change other than *de minimis* or transparent changes to the Central Data Exchange.

Subpart C—[Reserved]

Subpart D—Electronic Reporting Under EPA-Authorized State, Tribe, and Local Programs

§ 3.1000 How does a state, tribe, or local government revise or modify its authorized program to allow electronic reporting?

(a) A state, tribe, or local government that receives or plans to begin receiving electronic documents in lieu of paper documents to satisfy requirements under an authorized program must revise or modify such authorized program to ensure that it meets the requirements of this part.

(1) *General procedures for program modification or revision:* To revise or modify an authorized program to meet the requirements of this part, a state, tribe, or local government must submit an application that complies with paragraph (b)(1) of this section and must follow either the applicable procedures for program revision or modification in other parts of Title 40, or, at the applicant's option, the procedures provided in paragraphs (b) through (e) of this section.

(2) *Programs planning to receive electronic documents under an authorized program:* A state, tribe, or local government that does not have an existing electronic document receiving system for an authorized program must receive EPA approval of revisions or modifications to such program in compliance with paragraph (a)(1) of this section before the program may receive electronic documents in lieu of paper documents to satisfy program requirements.

(3) *Programs already receiving electronic documents under an authorized program:* A state, tribe, or local government with an existing electronic document receiving system for an authorized program must submit an application to revise or modify such authorized program in compliance with paragraph (a)(1) of this section no later than October 13, 2007. On a case-by-case basis, this deadline may be extended by the Administrator, upon request of the state, tribe, or local government, where the Administrator determines that the state, tribe, or local government needs additional time to make legislative or regulatory changes to meet the requirements of this part.

(4) *Programs with approved electronic document receiving systems:* An authorized program that has EPA's approval to accept electronic documents in lieu of paper documents must keep EPA apprised of those changes to laws, policies, or the electronic document receiving systems that have the potential to affect program compliance with § 3.2000. Where the Administrator determines that such changes require EPA review and approval, EPA may request that the state, tribe, or local government submit an application for program revision or modification; additionally, a state, tribe, or local government on its own initiative may submit an application for program revision or modification respecting their receipt of electronic documents. Such applications must comply with paragraph (a)(1) of this section.

(5) *Restrictions on the use of procedures in this section:* The procedures provided in paragraphs (b) through (e) of this section may only be used for revising or modifying an authorized program to provide for electronic reporting and for subsequent revisions or modifications to the electronic reporting elements of an authorized program as provided under paragraph (a)(4) of this section.

(b)(1) To obtain EPA approval of program revisions or modifications using procedures provided under this section, a state, tribe, or local government must submit an application to the Administrator that includes the following elements:

(i) A certification that the state, tribe, or local government has sufficient legal authority provided by lawfully enacted or promulgated statutes or regulations that are in full force and effect on the date of the certification to implement the electronic reporting component of its authorized programs covered by the application in conformance with § 3.2000 and to enforce the affected programs using electronic documents collected under these programs, together with copies of the relevant statutes and regulations, signed by the State Attorney General or his or her designee, or, in the case of an authorized tribe or local government program, by the chief executive or administrative official or officer of the governmental entity, or his or her designee;

(ii) A listing of all the state, tribe, or local government electronic document receiving systems to accept the electronic documents being addressed by the program revisions or modifications that are covered by the application, together with a description for each such system that specifies how the system meets the applicable requirements in § 3.2000 with respect to those electronic documents;

(iii) A schedule of upgrades for the electronic document receiving systems listed under paragraph (b)(1)(ii) of this section that have the potential to affect the program's continued conformance with § 3.2000; and

(iv) Other information that the Administrator may request to fully evaluate the application.

(2) A state, tribe, or local government that revises or modifies more than one authorized program for receipt of electronic documents in lieu of paper documents may submit a consolidated application under this section covering more than one authorized program, provided the consolidated application complies with paragraph (b)(1) of this section for each authorized program.

(3)(i) Within 75 calendar days of receiving an application for program revision or modification submitted under paragraph (b)(1) of this section, the Administrator will respond with a letter that either notifies the state, tribe, or local government that the application is complete or identifies deficiencies in the application that render the application incomplete. The state, tribe, or local government receiving a notice of deficiencies may amend the application and resubmit it. Within 30 calendar days of receiving the amended application, the Administrator will respond with a letter that either notifies the applicant that the amended

application is complete or identifies remaining deficiencies that render the application incomplete.

(ii) If a state, tribe, or local government receiving notice of deficiencies under paragraph (b)(3)(i) of this section does not remedy the deficiencies and resubmit the subject application within a reasonable period of time, the Administrator may act on the incomplete application under paragraph (c) of this section.

(c)(1) The Administrator will act on an application by approving or denying the state's, tribe's or local government's request for program revision or modification.

(2) Where a consolidated application submitted under paragraph (b)(2) of this section addresses revisions or modifications to more than one authorized program, the Administrator may approve or deny the request for revision or modification of each authorized program in the application separately; the Administrator need not take the same action with respect to the requested revisions or modifications for each such program.

(3) When an application under paragraph (b) of this section requests revision or modification of an authorized public water system program under part 142 of this title, the Administrator will, in accordance with the procedures in paragraph (f) of this section, provide an opportunity for a public hearing before a final determination pursuant to paragraph (c)(1) of this section with respect to that component of the application.

(4) Except as provided under paragraph (c)(4)(i) and (ii) of this section, if the Administrator does not take any action under paragraph (c)(1) of this section on a specific request for revision or modification of a specific authorized program addressed by an application submitted under paragraph (b) of this section within 180 calendar days of notifying the state, tribe, or local government under paragraph (b)(3) of this section that the application is complete, the specific request for program revision or modification for the specific authorized program is considered automatically approved by EPA at the end of the 180 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(i) Where an opportunity for public hearing is required under paragraph (c)(3) of this section, the Administrator's action on the requested revision or modification will be in accordance with paragraph (f) of this section.

(ii) Where a requested revision or modification addressed by an application submitted under paragraph (b) of this section is to an authorized program with an existing electronic document receiving system, and where notification under paragraph (b)(3) of this section that the application is complete is executed after October 13, 2007, if the Administrator does not take any action under paragraph (c)(1) of this section on the specific request for revision or modification within 360 calendar days of such notification, the specific request is considered automatically approved by EPA at the end of the 360 calendar days unless the review period is extended at the request of the state, tribe, or local government submitting the application.

(d) Except where an opportunity for public hearing is required under paragraph (c)(3) of this section, EPA's approval of a program revision or modification under this section will be effective upon publication of a notice of EPA's approval of the program revision or modification in the **Federal Register**. EPA will publish such a notice promptly after approving a program revision or modification under paragraph (c)(1) of this section or after an EPA approval occurs automatically under paragraph (c)(4) of this section.

(e) If a state, tribe, or local government submits material to amend its application under paragraph (b)(1) of this section after the date that the Administrator sends notification under paragraph (b)(3)(i) of this section that the application is complete, this new submission will constitute withdrawal of the pending application and submission of a new, amended application for program revision or modification under paragraph (b)(1) of this section, and the 180-day time period in paragraph (c)(4) of this section or the 360-day time period in paragraph (c)(4)(ii) of this section will begin again only when the Administrator makes a new determination and notifies the state, tribe, or local government under paragraph (b)(3)(i) of this section that the amended application is complete.

(f) For an application under this section that requests revision or modification of an authorized public water system program under part 142 of this chapter:

(1) The Administrator will publish notice of the Administrator's preliminary determination under paragraph (c)(1) of this section in the **Federal Register**, stating the reasons for the determination and informing interested persons that they may request a public hearing on the Administrator's determination. Frivolous or insubstantial requests for a hearing may be denied by the Administrator;

(2) Requests for a hearing submitted under this section must be submitted to the Administrator within 30 days after publication of the notice of opportunity for hearing in the **Federal Register**. The Administrator will give notice in the **Federal Register** of any hearing to be held pursuant to a request submitted by an interested person or on the Administrator's own motion. Notice of hearing will be given not less than 15 days prior to the time scheduled for the hearing;

(3) The hearing will be conducted by a designated hearing officer in an informal, orderly, and expeditious manner. The hearing officer will have authority to take such action as may be necessary to assure the fair and efficient conduct of the hearing; and

(4) After reviewing the record of the hearing, the Administrator will issue an order either affirming the determination the Administrator made under paragraph (c)(1) of this section or rescinding such determination and will promptly publish a notice of the order in the **Federal Register**. If the order is to approve the program revision or modification, EPA's approval will be effective upon publication of the notice in the **Federal Register**. If no timely request for a hearing is received and the Administrator does not determine to hold a hearing on the Administrator's own motion, the Administrator's determination made under paragraph (c)(1) of this section will be effective 30 days after notice is published pursuant to paragraph (f)(1) of this section.

§ 3.2000 What are the requirements authorized state, tribe, and local programs' reporting systems must meet?

(a) Authorized programs that receive electronic documents in lieu of paper to satisfy requirements under such programs must:

(1) Use an acceptable electronic document receiving system as specified under paragraphs (b) and (c) of this section; and

(2) Require that any electronic document must bear the valid electronic signature of a signatory if that signatory would be required under the authorized program to sign the paper document for which the electronic document substitutes, unless the program has been approved by EPA to accept a handwritten signature on a separate paper submission. The paper submission must contain references to the electronic document sufficient for legal certainty that the signature was executed with the intention to certify to, attest to, or agree to the content of that electronic document.

(b) An electronic document receiving system that receives electronic documents submitted in lieu of paper documents to satisfy requirements under an authorized program must be able to generate data with respect to any such electronic document, as needed and in a timely manner, including a copy of record for the electronic document, sufficient to prove, in private litigation, civil enforcement proceedings, and criminal proceedings, that:

(1) The electronic document was not altered without detection during transmission or at any time after receipt;

(2) Any alterations to the electronic document during transmission or after receipt are fully documented;

(3) The electronic document was submitted knowingly and not by accident;

(4) Any individual identified in the electronic document submission as a submitter or signatory had the opportunity to review the copy of record in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information and had the opportunity to repudiate the electronic document based on this review; and

(5) In the case of an electronic document that must bear electronic signatures of individuals as provided under paragraph (a)(2) of this section, that:

(i) Each electronic signature was a valid electronic signature at the time of signing;

(ii) The electronic document cannot be altered without detection at any time after being signed;

(iii) Each signatory had the opportunity to review in a human-readable format the content of the electronic document that he or she was certifying to, attesting to or agreeing to by signing;

(iv) Each signatory had the opportunity, at the time of signing, to review the content or meaning of the required certification statement, including any applicable provisions that false certification carries criminal penalties;

(v) Each signatory has signed either an electronic signature agreement or a subscriber agreement with respect to the electronic signature device used to create his or her electronic signature on the electronic document;

(vi) The electronic document receiving system has automatically responded to the receipt of the electronic document with an acknowledgment that identifies the electronic document received, including the signatory and the date and time of receipt, and is sent to at least one address that does not share the same access controls as the account used to make the electronic submission; and

(vii) For each electronic signature device used to create an electronic signature on the document, the identity of the individual uniquely entitled to use the device and his or her relation to any entity for which he or she will sign electronic documents has been determined with legal certainty by the issuing state, tribe, or local government. In the case of priority reports identified in the table in Appendix 1 of Part 3, this determination has been made before the electronic document is received, by means of:

(A) Identifiers or attributes that are verified (and that may be re-verified at any time) by attestation of disinterested individuals to be uniquely true of (or attributable to) the individual in whose name the application is submitted, based on information or objects of independent origin, at least one item of which is not subject to change without governmental action or authorization; or

(B) A method of determining identity no less stringent than would be permitted under paragraph (b)(5)(vii)(A) of this section; or

(C) Collection of either a subscriber agreement or a certification from a local registration authority that such an agreement has been received and securely stored.

(c) An authorized program that receives electronic documents in lieu of paper documents must ensure that:

(1) A person is subject to any appropriate civil, criminal penalties or other remedies under state, tribe, or local law for failure to comply with a reporting requirement if the person fails to comply with the applicable provisions for electronic reporting.

(2) Where an electronic document submitted to satisfy a state, tribe, or local reporting requirement bears an electronic signature, the electronic signature legally binds or obligates the signatory, or makes the signatory responsible, to the same extent as the signatory's handwritten signature on a paper document submitted to satisfy the same reporting requirement.

(3) Proof that a particular electronic signature device was used to create an electronic signature that is included in or logically associated with an electronic document submitted to satisfy a state, tribe, or local reporting requirement will suffice to establish that the individual uniquely entitled to use the device at the time of signature did so with the intent to sign the electronic document and give it effect.

(4) Nothing in the authorized program limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

Appendix 1 to Part 3—Priority Reports

Category	Description	40 CFR Citation
	Required Reports	
State Implementation Plan	Emissions data reports for mobile sources	51.60(c).
Excess Emissions and Monitoring Performance Report Compliance Notification Report.	Excess emissions and monitoring performance report detailing the magnitude of excess emissions, and provides the date, time, and system status at the time of the excess emission.	60.7(c), 60.7(d).
New Source Performance Standards Reporting Requirements.	Semi-annual reports (quarterly, if report is approved for electronic submission by the permitting authority) on sulfur dioxide, nitrous oxides and particulate matter emission (includes reporting requirements in Subparts A through DDDD).	60.49a(e) & (j) & (v), 60.49b(v).
Semi-annual Operations and Corrective Action Reports.	Semi-annual report provides information on a company's exceedance of its sulfur dioxide emission rate, sulfur content of the fresh feed, and the average percent reduction and average concentration of sulfur dioxide. When emissions data is unavailable, a signed statement is required which documents the changes, if any, made to the emissions control system that would impact the company's compliance with emission limits.	60.107(c), 60.107(d).

Category	Description	40 CFR Citation
National Emission Standards for Hazardous Air Pollutants Reporting Requirements.	Include such reports as: Annual compliance, calculation, initial start-up, compliance status, certifications of compliance, waivers from compliance certifications, quarterly inspection certifications, operations, and operations and process change.	61.11, 61.24(a)(3) & (a)(8), 61.70(c)(1) & (c)(2)(v) & (c)(3) & (c)(4)(iv), 61.94(a) & (b)(9), 61.104(a) & (a)(1)(x) & (a)(1)(xi) & (a)(1)(xvi), 61.138(e) & (f), 61.165(d)(2) & (d)(3) & (d)(4) & (f)(1) & (f)(2) &(f)(3), 61.177(a)(2) & (c)(1) & (c)(2) & (c)(3) & (e)(1) & (e)(3), 61.186(b)(1) & (b)(2) & (b)(3) & (c)(1) & (f)(1), 61.247(a)(1) & (a)(4) & (a)(5)(v) & (b)(5) & (d), 61.254(a)(4), 61.275(a) & (b) & (c), 61.305(f) & (i), 61.357(a) & (b) & (c) & (d), 63.9(h).
Hazardous Air Pollutants Compliance Report.	Reports containing results from performance test, opacity tests, and visible emissions tests. Progress reports; periodic and immediate startup, shutdown, and malfunction reports; results from continuous monitoring system performance evaluations; excess emissions and continuous monitoring system performance report; or summary report.	63.10(d), 63.10(e)(1), 63.10(e)(3).
Notifications and Reports	Reports that document a facility's initial compliance status, notification of initial start-up, and periodic reports which includes the start-up, shutdown, and malfunction reports discussed in 40 CFR 65.6(c).	65.5(d), 65.5(e).
Continuous Emissions Monitoring ...	Quarterly emissions monitoring reports and opacity reports which document a facility's excess emission.	75.64, 75.65.
Notice of Fuel or Fuel Additive Registration and Health Effects Testing.	Registration of new fuels and additives, and the submission and certification of health effect data.	79.10, 79.11, 79.20, 79.21, 79.51.
Manufacture In-Use and Product Line Emissions Testing.	Reports that document the emissions testing results generated from the in-use testing program for new and in-use highway vehicle ignition engines; non-road spark-ignition engines; marine spark-ignition engines; and locomotives and locomotive engines.	86.1845, 86.1846, 86.1847, 90.113, 90.1205, 90.704, 91.805, 91.504, 92.607, 92.508, 92.509.
Industrial and Publicly Owned Treatment Works Reports.	Discharge monitoring reports for all individual permittees—including baseline reports, pretreatment standards report, periodic compliance reports, and reports made by significant industrial users.	122.41(l)(4)(i), 403.12(b) & (d) & (e) & (h).
Event Driven Notices		
State Implementation Plan	Owners report emissions data from stationary sources	51.211.
Report For Initial Performance Test	Report that provides the initial performance test results, site-specific operating limits, and, if installed, information on the bag leak detection device used by the facility.	60.2200 (initial performance tests).
Emissions Control Report	Report submitted by new sources within 90 days of set-up which describes emission control equipment used, processes which generate asbestos-containing waste material, and disposal information.	61.153(a)(1), 61.153(a)(4)(i), 61.153(a)(5)(ii).
State Operating Permits—Permit Content.	Monitoring and deviation reports under the State Operating Permit	70.6(a)(3)(iii)(A), 70.6(a)(3)(iii)(B).
Title V Permits—Permit Content	Monitoring and deviation reports under the Federal Operating Permit	71.6(a)(3)(iii).
Annual Export Report	Annual report summarizing the amount and type of hazardous waste exported.	262.56(a).
Exceptions Reports	Reports submitted by a generator when the generator has not received confirmation from the Treatment, Storage, and Disposal Facility (TSDF) that it received the generator's waste and when hazardous waste shipment was received by the TSDF. For exports, reports submitted when the generator has not received a copy of the manifest from the transporter with departure date and place of export indicated; and confirmation from the consignee that the hazardous waste was received or when the hazardous waste is returned to the U.S.	262.42, 262.55.
Contingency Plan Implementation Reports.	Follow-up reports made to the Agency for all incidents noted in the operating record which required the implementation of a facility's contingency plan.	264.56(j), 265.56(j).
Significant Manifest Discrepancy Report.	Report filed by Treatment, Storage, and Disposal Facilities (TSDF) within 15 days of receiving wastes, when the TSDF is unable to resolve manifest discrepancies with the generator.	264.72(b), 265.72(b).
Unmanifested Waste Report	Report that documents hazardous waste received by a Treatment, Storage, and Disposal Facility without an accompanying manifest.	264.76, 265.76.
Noncompliance Report	An owner/operator submitted report which documents hazardous waste that was placed in hazardous waste management units in noncompliance with 40 CFR sections 264.1082(c)(1) and (c)(2); 264.1084(b); 264.1035(c)(4); or 264.1033(d).	264.1090.

Category	Description	40 CFR Citation
Notification—Low Level Mixed Waste.	One-time notification concerning transportation and disposal of conditionally exempted waste.	266.345.
Notification—Land Disposal Restrictions.	One-time notification and certification that characteristic waste is no longer hazardous.	268.9(d).
Underground Storage Tank Notification.	Underground Storage Tank system notifications concerning design, construction, and installation. As well as when systems are being placed in operation. (EPA Form 7530–1 or state version.).	280.22.
Free Product Removal Report and Subsequent Investigation Report.	Report written and submitted within 45 days after confirming a free product release, including information on the release and recovery methods used for the free product, and when test indicate presence of free product, response measures.	280.64, 280.65.
Manufacture or Import Premanufacture Notification.	Premanufacture notification of intent to begin manufacturing, importing, or processing chemicals identified in Subpart E for significant new use (forms 7710–56 and 7710–25).	720.102, 721.25.
Permit Applications [1]		
State Implementation Plan	Information describing the source, its construction schedule, and the planned continuous emissions reductions system.	52.21(n).
State Operating Permits	Reports, notices, or other written submissions required by a State Operating Permit.	70.6(c)(1).
Title V Permits—Permit Content	Reports, notices, or other written submissions required by a Title V Operating Permit.	71.6(c)(1), 71.25(c)(1).
Title V Permits	Specific criteria for permit modifications and or revisions, including a certification statement by a responsible official.	71.7(e(2)(ii)(c).
Reclaimer Certification	Certification made by a reclaimer that the refrigerant was reprocessed according to specifications and that no more than 1.5% of the refrigerant was released during the reclamation.	82.164.
Application for Certification and Statement of Compliance.	Control of Emissions for New and In-Use Highway Vehicles and Engines statement of compliance made by manufacturer, attesting that the engine family complies with standards for new and in-use highway vehicles and engines.	86.007–21 (heavy duty), 1844–01 (light duty).
Application for Certification	Application made by engine manufacturer to obtain certificate of conformity.	89.115, 90.107, 91.107, 92.203, 94.203.
National Pollutant Discharge Elimination System.	National Pollutant Discharge Elimination System (NPDES) Permits and Renewals (includes individual permit applications, NPDES General Form 1, and NPDES Forms 2A–F, and 2S).	122.21.
Resource Conservation and Recovery Act Permit Applications and Modifications.	Signatures for permit applications and reports; submission of permit modifications. (This category excludes Class I permit modifications (40 CFR 270.42, Appendix I) that do not require prior approval).	270.11, 270.42.
Certifications of Compliance/Non-Applicability		
State Implementation Plan Requirements.	State implementation plan certifications for testing, inspection, enforcement, and continuous emissions monitoring.	51.212(c), 51.214(e).
Certification Statement	Chemical Accident Prevention Provisions—Risk Management Plan certification statements.	68.185.
Title V Permits	Federal compliance certifications and permit applications	70.5(c)(9), 70.5(d), 70.6(c)(5).
State Operating Permits	State compliance certifications and permit applications	71.5(c)(9), 71.5(d), 71.24(f).
Annual and Other Compliance Certification Reports.	Annual compliance certification report and is submitted by units subject to acid rain emissions limitations.	72.90.
Annual Compliance Certification Report, Opt-In Report, and Confirmation Report.	Annual compliance certification report which is submitted in lieu of annual compliance certification report listed in Subpart I of Part 72.	74.43.
Quarterly Reports and Compliance Certifications.	Continuous Emission Monitoring certifications, monitoring plans, and quarterly reports for NO_X emissions.	75.73.
Certification Letters Recovery and Recycling Equipment, Motor Vehicle Air Conditioners Recycling Program, Detergent Package.	Protection of Stratospheric Ozone: Recycling & Emissions Reduction. Acquisition of equipment for recovery or recycling made by auto repair service technician and Fuels and Fuel Additives Detergent additive certification.	79.4, 80.161, 82.162, 82.42.
Response Plan Cover Sheet	Oil Pollution Prevention certification to the truth and accuracy of information.	112 (Appendix f).
Closure Report	Report which documents that closure was in accordance with closure plan and/or details difference between actual closure and the procedures outlined in the closure plan.	146.71.
Certification of Closure and Post Closure Care, Post-Closure Notices.	Certification that Treatment, Storage, and Disposal Facilities (TSDF) are closed in accordance with approved closure plan or post-closure plan.	264.115, 264.119, 264.119(b)(2), 264.120, 265.115, 265.119(b)(2), 265.120, 265.19.
Certification of Testing Lab Analysis	Certification that the testing and/or lab analyses required for the treatment demonstration phase of a two-phase permit was conducted.	270.63.

Category	Description	40 CFR Citation
Periodic Certification	Certification that facility is operating its system to provide equivalent treatment as in initial certification.	437.41(b).

[1] Included within each permit application category, though sometimes not listed, are the permits submitted to run/operate/maintain facilities and/or equipment/products under EPA or authorized programs.

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 125l *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. Section 9.1 is amended by adding a new entry in numerical order for part 3 to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * *	
Cross-Media Electronic Reporting	
Part 3	2025–0003

* * * * *

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.286 is added to Subpart O to read as follows:

§ 51.286 Electronic reporting.

States that wish to receive electronic documents must revise the State Implementation Plan to satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401–7601.

■ 2. Section 60.25(b)(1) is amended by adding a sentence to the end of the paragraph to read as follows:

§ 60.25 Emission inventories, source surveillance, reports.

* * * * *

(b)(1) * * * Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 1. The authority citation for part 63 continues to read as follows:

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

■ 2. Section 63.91 is amended by adding a new paragraph (d)(5)to read as follows:

§ 63.91 Criteria for straight delegation and criteria common to all approved options.

* * * * *

(d) * * *

(5) Electronic documents. Submission of electronic documents shall comply with the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

■ 1. The authority citation for part 69 continues to read as follows:

Authority: 42 U.S.C. 7545(c), (g) and (i), and 7625–1.

■ 2. Section 69.13 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.13 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

■ 3. Section 69.22 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.22 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

■ 4. Section 69.32 is amended by adding a new paragraph (b)(1)(v) to read as follows:

§ 69.32 Title V conditional exemption.

* * * * *

(b) * * *

(1) * * *

(v) If the program chooses to accept electronic documents it must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 70—STATE OPERATING PERMIT PROGRAMS

■ 1. The authority citation for part 70 continues to read as follows:

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

■ 2. Section 70.1 is amended by adding a new paragraph (f) to read as follows:

§ 70.1 Program overview.

* * * * *

(f) States that choose to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting) in their program.

PART 71—FEDERAL OPERATING PERMIT PROGRAMS

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

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

■ 2. Section 71.10 is amended by adding a new sentence to the end of paragraph (a) to read as follows:

§ 71.10 Delegation of part 71 program.

(a) * * * Delegate agencies that choose to receive electronic documents as part of their delegated program must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 123—STATE PROGRAM REQUIREMENTS

■ 1. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

■ 2. Section 123.25 is amended by revising paragraphs (a)(44) and (a)(45), adding the phrase ''Except for paragraph (a)(46) of this section,'' at the beginning of the Note to paragraph (a), and adding a new paragraph (a)(46) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(44) § 122.35 (As an operator of a regulated small MS4, may I share the responsibility to implement the minimum control measures with other entities?);

(45) § 122.36 (As an operator of a regulated small MS4, what happens if I don't comply with the application or permit requirements in §§ 122.33 through 122.35?); and

(46) For states that wish to receive electronic documents, 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

■ 1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

■ 2. Section 142.10 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(g) Has adopted regulations consistent with 40 CFR Part 3—(Electronic reporting) if the state receives electronic documents.

* * * * *

PART 145—REQUIREMENTS FOR STATE PROGRAMS

■ 1. The authority citation for part 145 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

■ 2. Section 145.11 is amended by revising paragraphs (a)(30), (a)(31), (a)(32), and adding paragraph (a)(33) to read as follows:

§ 145.11 Requirements for permitting.

(a) * * *

(30) Section 124.12(a)—(Public hearings);

(31) Section 124.17 (a) and (c)—(Response to comments);

(32) Section 144.88—(What are the additional requirements?); and

(33) For states that wish to receive electronic documents, 40 CFR Part 3—(Electronic reporting).

* * * * *

PART 162—STATE REGISTRATION OF PESTICIDE PRODUCTS

■ 1. The authority citation for part 162 continues to read as follows:

Authority: 7 U.S.C. 136v, 136w.

■ 2. Section 162.153 is amended by adding a paragraph (a)(6) to read as follows:

§ 162.153 State registration procedures.

(a) * * *

(6) *Electronic Reporting under State Registration of Pesticide Products for Special Local Needs.* States that choose to receive electronic documents under the regulations pertaining to state registration of pesticides to meet special local needs, must ensure that the requirements of 40 CFR Part 3—(Electronic reporting) are satisfied by their state procedures for such registrations.

* * * * *

PART 233—404 STATE PROGRAM REGULATIONS

■ 1. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. A new § 233.39 is added to Subpart D to read as follows:

§ 233.39 Electronic reporting.

States that choose to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting) in their state program.

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

■ 1. The authority citation for part 257 continues to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a) and 6949(c), 33 U.S.C. 1345(d) and (e).

■ 2. Section 257.30 is amended by adding a new paragraph (d) to read as follows:

§ 257.30 Recordkeeping requirements.

* * * * *

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

■ 1. The authority citation for part 258 continues to read as follows:

Authority: 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

■ 2. Section 258.29 is amended by adding a new paragraph (d) to read as follows:

§ 258.29 Recordkeeping requirements.

* * * * *

(d) The Director of an approved state program may receive electronic documents only if the state program includes the requirements of 40 CFR Part 3—(Electronic reporting).

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 1. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912 and 6926.

■ 2. Section 271.10 is amended by revising paragraph (b) to read as follows:

§ 271.10 Requirements for generators of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all generators to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR 262.40 and 262.41. States must require that generators keep these records at least 3 years. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests and/or permit the use of electronic manifests must comply with any applicable requirements for e-manifest in this section of this section).

* * * * *

■ 3. Section 271.11 is amended by revising paragraph (b) to read as follows:

§ 271.11 Requirements for transporters of hazardous waste.

* * * * *

(b) The State shall have authority to require and shall require all transporters to comply with reporting and recordkeeping requirements equivalent to those under 40 CFR 263.22. States must require that transporters keep these records at least 3 years. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests

and/or permit the use of electronic manifests must comply with any applicable requirements for e-manifest in this section of this section).

* * * * *

■ 4. Section 271.12 is amended by revising paragraph (h) to read as follows:

§ 271.12 Requirements for hazardous waste management facilities.

* * * * *

(h) Inspections, monitoring, recordkeeping, and reporting. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their Program (except that states that choose to receive electronic manifests and/or permit the use of electronic manifests must comply with paragraph (i) of this section);

* * * * *

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

■ 1. The authority citation for part 281 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991 (c), (d), (e), (g).

■ 2. Section 281.40 is amended by revising paragraph (d) to read as follows:

§ 281.40 Requirements for compliance monitoring program and authority.

* * * * *

(d) State programs must have procedures for receipt, evaluation, retention and investigation of records and reports required of owners or operators and must provide for enforcement of failure to submit these records and reports. States that choose to receive electronic documents must include the requirements of 40 CFR Part 3—(Electronic reporting) in their state program.

* * * * *

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

■ 1. The authority citation for part 403 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 403.8 is amended by adding a new paragraph (g) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(g) A POTW that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

■ 3. Section 403.12 is amended by adding a new paragraph (r) to read as follows:

§ 403.12 Reporting requirements for POTW's and industrial users.

* * * * *

(r) The Control Authority that chooses to receive electronic documents must satisfy the requirements of 40 CFR Part 3—(Electronic reporting).

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

■ 1. The authority citation for part 501 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 2. Section 501.15 is amended by adding a new paragraph (a)(4) to read as follows:

§ 501.15 Requirements for permitting.

(a) * * *

(4) Information requirements: All treatment works treating domestic sewage shall submit to the Director within the time frames established in paragraph (d)(1)(ii) of this section the information listed in paragraphs (a)(4)(i) through (xii) of this section. The Director of an approved state program that chooses to receive electronic documents must satisfy the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Section 745.327 is amended by adding a new paragraph (f) to read as follows:

§ 745.327 State or Indian Tribal lead-based paint compliance and enforcement programs.

* * * * *

(f) *Electronic reporting under State or Indian Tribe programs.* States and tribes that choose to receive electronic documents under the authorized state or Indian tribe lead-based paint program, must ensure that the requirements of 40 CFR part 3—(Electronic reporting) are satisfied in their lead-based paint program.

PART 763—ASBESTOS

■ 1. The authority citation for part 763 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607(c), 2643, and 2646.

■ 2. Section 763.98 is amended by revising paragraphs (a)(1), (b)(3), and (d)(3) to read as follows:

§ 763.98 Waiver; delegation to state.

(a) *General.* (1) Upon request from a state Governor and after notice and comment and an opportunity for a public hearing in accordance with paragraphs (b) and (c) of this section, EPA may waive some or all of the requirements of this subpart E if the state has established and is implementing or intends to implement a program of asbestos inspection and management that contains requirements that are at least as stringent as the requirements of this subpart. In addition, if the state chooses to receive electronic documents, the state program must include, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

(b) * * *

(3) Detailed reasons, supporting papers, and the rationale for concluding that the state's asbestos inspection and management program provisions for which the request is made are at least as stringent as the requirements of Subpart E of this part, and that, if the state chooses to receive electronic documents, the state program includes, at a minimum, the requirements of 40 CFR part 3—(Electronic reporting).

* * * * *

(d) * * *

(3) The state has an enforcement mechanism to allow it to implement the program described in the waiver request and any electronic reporting requirements are at least as stringent as 40 CFR part 3—(Electronic reporting).

* * * * *

■ 3. Appendix C to subpart E of part 763 is amended by adding paragraph (I) to section I to read as follows:

Appendix C to Subpart E of Part 763—Asbestos Model Accreditation Plan

I. Asbestos Model Accreditation Plan for States

* * * * *

(I) Electronic Reporting.

States that choose to receive electronic documents must include, at a minimum, the requirements of 40 CFR Part 3—(Electronic reporting) in their programs.

* * * * *

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October 13, 2005

Part IV

Department of Housing and Urban Development

24 CFR Part 983

Project-Based Voucher Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 983

[Docket No. FR–4636–F–02]

RIN 2577–AC25

Project-Based Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This rule replaces the current project-based certificate (PBC) regulations with a comprehensive new project-based voucher program. This rule is based on statutory authorities enacted in 1998 and 2000, and follows a proposed rule and public comment.

DATES: *Effective date:* November 14, 2005.

FOR FURTHER INFORMATION CONTACT: David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708–2815 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The project-based voucher law was initially enacted in 1998, as part of the statutory merger of the certificate and voucher tenant-based assistance programs. (See section 545 of the Quality Housing and Work Responsibility Act of 1998 (Pub L. 105–276) approved October 21, 1998) (QHWRA) amending 42 U.S.C. 1437f(o).) Under QHWRA, a public housing agency (PHA), as defined under section 3(b)(6) of the U.S. Housing Act of 1937, 42 U.S.C. 1437a(b)(6), has the option to use a portion of its available tenant-based voucher funds for project-based rental assistance. The project-based voucher law replaced an authority for project-based rental assistance in the former Section 8 certificate program.

In 2000, Congress substantially revised the project-based voucher law. (Section 8(o)(13) of the United States Housing Act of 1937, 42 U.S.C. 1473f(o)(13), as amended by section 232 of the Fiscal Year 2001 Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act (Pub. L. 106–377, 114 S-tat. 1441, approved October 27, 2000)). The statutory basis for project-based housing is codified at 42 U.S.C. 1437f(o)(13) under the heading, ''PHA project-based assistance.''

Significant changes made by QHWRA and the FY 2001 Appropriations Act include:

- A PHA may project-base up to 20 percent of the PHA's voucher funding.
- A PHA may provide project-based assistance for existing housing that does not need rehabilitation, as well as for newly constructed or rehabilitated housing.
- Project-based assistance must be consistent with the ''PHA Plan.''
- Project-basing must be consistent with the statutory goals of ''deconcentrating poverty and expanding housing and economic opportunities.''
- After one year of assistance, a family may move from a project-based voucher unit. When a slot is available, the family may switch to the PHA's tenant-based voucher program or another comparable program.
- Except for units designated for families that are elderly, disabled, or receiving supportive services, no more than 25 percent of units in a building may have project-based voucher assistance.
- A PHA may enter into a housing assistance payments (HAP) contract for a term of up to 10 years. However, the PHA's contractual commitment is subject to availability of appropriated funds.
- At the end of the contract term, the PHA may extend the HAP contract with an owner for a period appropriate to achieve long-term affordability or to expand housing opportunities. Extensions are subject to availability of appropriated funds.
- Generally, project-based voucher rents (rent to owner plus the allowance for tenant-paid utilities) may not exceed the lower of the reasonable rent, or 110 percent of the applicable Fair Market Rent (FMR) (or any exception payment standard approved by the Secretary), or, if applicable, the tax credit rent. This limit applies both to the initial rent and rent adjustments over the term of the HAP contract.
- There are special provisions for establishing the project-based voucher rent for a unit in a tax credit building located outside a ''qualified census tract.'' These provisions are found at 42 U.S.C. 1437f(o)(13)(H).
- Admission to project-based units is subject to the overall voucher ''income-targeting'' requirement. Under 42 U.S.C. 1437f(o)(13)(J), the income targeting provisions of section 16(b) of the U.S. Housing Act of 1937 apply. Under these provisions, at least 75 percent of the families admitted to the PHA tenant-based and project-based voucher programs each year must be families with annual incomes below 30 percent of median income for the area. HUD's regulations define such families as ''extremely low-income families'' at 24 CFR 5.603.
- All units must be inspected for housing quality standards (HQS) compliance before the PHA enters into a HAP contract with an owner. After the initial inspection, the PHA is not required to re-inspect each unit annually. Instead, the PHA may inspect a representative sample of units at the annual re-inspection.
- If a family moves out, the PHA may continue payments to the owner for up to 60 days. The PHA has discretion whether to provide such vacancy payments.

On January 16, 2001, (66 FR 3605), HUD published a **Federal Register** notice with guidance on the changes made to the project-based voucher (PBV) program in the FY 2001 Appropriations Act. By ''project-based voucher program,'' this regulation means the program statutorily codified at 42 U.S.C. 1437f(o)(13), which allows PHAs to attach to dwelling units up to 20 percent of the funding available for tenant-based assistance. The HUD guidance notice described the law, identified statutory requirements that are effective immediately, and provided guidance on how to implement the law and existing program regulations.

II. The Proposed Rule

HUD published a proposed rule for comment on March 18, 2004 (69 FR 12950). A summary overview of the proposed rule can be found at 69 FR 12950–12953. The proposed rule text begins at 69 FR 12954. The comment period for this proposed rule closed on May 17, 2004. Forty-seven commenters submitted comments during the comment period on a wide variety of issues related to this proposed rule. The commenters included a variety of entities, including PHAs, professional and trade organizations, and individuals. In response to the comments, this final rule makes certain changes to the proposed rule as described in the following section of the preamble. In addition, a summary of the issues raised by the public commenters and HUD's responses is found at section IV of this preamble.

III. This Final Rule

This final rule implements the project-based voucher program. As of its effective date, this rule supersedes the January 2001 notice. The following

changes to the proposed rule are made by this final rule. Section IV of this preamble summarizes the public comments and HUD's responses to them.

Subpart A—General

1. Section 983.1

This final rule makes a technical correction in § 983.1(c), ''Specific 24 CFR part 982 provisions that do not apply to PBV assistance.'' References to § 982.551–982.555 are removed. It is not necessary to mention these sections as excepted from the sections that do not apply, because the same result is obtained by simply not mentioning them.

2. Section 983.3

In the PBV definitions under § 983.3(b), the definition of ''baseline units'' is deleted. Instead, the rule uses the concept of ''budget authority'' to indicate the amount of appropriated funds available to a PHA for its housing choice voucher program.

The definition of ''HUD'' is removed because it is unnecessary to restate it in this part. ''HUD'' is defined in 24 CFR 5.100.

The definition of PHA-owned unit is revised to clarify that ''PHA owned'' includes any interest by the PHA in the building in which a unit is located. This change is necessary because HUD's experience to date has been that the definition has been misunderstood and applied differently in different geographical areas. Also, in the proposed rule, this definition cross-referenced a non-applicable portion of part 982.

The definition of ''proposal selection date'' is revised to reference the PHA's administrative plan. Section 983.51(b) of this rule requires that the PHA's procedures for selecting proposals be stated in the administrative plan.

The definition of ''rent to owner'' is amended. Examples of non-housing services that are not included in rent are added, and the adjective ''reasonable'' is removed. The rent reasonableness test is an overall limitation on the amount of rent to owner under the rule, and it is not necessary to include it in the definition.

A number of terms defined in the proposed rule are removed because those terms are defined in 24 CFR part 982 and are applicable to this rule under § 983.3(a)(2)(ii). These terms are: Fair market rent (FMR); family; gross rent; group home; HAP contract; owner; participant; reasonable rent; tenant; and tenant rent.

Definitions were removed and replaced with cross references for ''utility allowance'' and ''utility reimbursement.'' Both of these terms are defined at 24 CFR 5.603.

3. Section 983.5

The final rule makes two minor technical corrections. Section 983.5(a)(4) is amended to change ''rental assistance payments'' to ''housing assistance payments.'' Section 983.5(b)(2) is amended to change ''project-basing'' to ''project-based vouchers'' (a similar change is made in § 983.6(c)).

4. Section 983.6

In paragraphs (a) and (c) of this section dealing with the amount of project-based assistance available to a PHA, the phrase ''baseline units'' is removed. Instead, the amount of project-based funding is expressed as a percentage of the amount of budget authority allocated to the PHA.

5. Section 983.7

The Notice of Proposed Rulemaking (NPRM) proposed that voucher program funds could not be used to pay for relocation costs under the Uniform Relocation Act in connection with assistance under this part. This final rule allows administrative fee reserves to be used for this purpose provided that payment of relocation benefits is consistent with state and local law and HUD regulations on the use of reserves, including 24 CFR 982.155, and that all other program administrative expenses have been satisfied.

6. Section 983.10

This final rule revises § 983.10(b) to clarify that PHAs may renew PBC HAP contracts for terms of up to five years, to an aggregate total including the original term and all extensions, of 15 years, depending on the availability of appropriated funds.

Subpart B—Selection of PBV Owner Proposals

7. Section 983.51

The final rule makes several editorial changes to this section. In addition, § 983.51(b)(2) is revised to allow PHAs to select owner proposals without a separate competition for projects that were competitively selected under another program within three years of the PBV proposal selection date. The prior competitive selection cannot have considered future PBV assistance, because such a consideration could give such projects an unfair advantage by wrongly affecting the original competition and thereby tainting the process. Also, the non-competitive selection of a project for low income housing tax credits (LIHTCs) does not satisfy the requirement of a prior competition.

8. Section 983.52

This section adds additional detail to the general description of housing types to which assistance may be attached under this program. Existing housing is defined to exclude housing for which new construction or rehabilitation has been started. The rule cross-references subpart D as applicable to newly constructed and rehabilitated housing.

9. Section 983.53

This section makes an editorial change to combine § 983.53(a)(2) and (a)(4). Substantively, § 983.53(b) is revised to give PHAs the responsibility to make an initial determination (and HUD approves such determination as the statute requires) as to whether assistance may be attached to a high-rise elevator project that may be occupied by families with children because there is no practical alternative. PHAs may make this initial determination for its entire project-based program, a portion of it, or case-by-case, and HUD may approve the determination on the same basis.

10. 983.56

The NPRM proposed that the overall cap of 25 percent of the total number of dwelling units in the building include units receiving any type of federal, project-based assistance. This final rule limits the units that count against the cap to units receiving PBV assistance under this program, revising paragraph (a)(1) accordingly and removing paragraph (a)(2). Additionally, § 983.56(b)(2)(B) is revised. In the proposed rule, this exception to the 25 percent cap on project-basing units was limited to families in a housing voucher Family Self-Sufficiency (FSS) program under section 23 of the 1937 Act, 42 U.S.C. 1437u.

This final rule revises this exemption to include units that are made available to families that are receiving any type of supportive services that the PHA specifies as qualifying services in its PHA administrative plan. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails to complete the FSS contract of

participation or fails to complete another program of supportive services, such failure results in termination of assistance by the PHA, and is grounds for lease termination by the owner. The PHA is responsible for monitoring and ensuring compliance with this requirement. At the time of initial lease execution between the family and the owner, the family and the PHA sign a statement of family responsibility, and HUD will include this requirement in this statement, thus ensuring that the family is aware that the PHA will terminate assistance if the family fails to meet its obligation.

If the unit at the time of such termination is an excepted unit outside the 25 percent cap, the exception continues to apply to the unit as long as the unit is made available to another family receiving qualifying services. A family is deemed to be receiving supportive services if it has at least one family member receiving at least one qualifying service.

The section also is revised to clarify that, generally, a PHA may not require participation in medical or disability-related services. The one exception is that a PHA may require current drug and alcohol abusers to receive drug and alcohol treatment. This requirement is in accordance with HUD's overall policy to ensure that drug and alcohol abusers do not interfere with other residents' health, safety, or right to reasonable enjoyment of the premises of assisted housing. See, for example, 24 CFR 5.858 and 5.860.

11. Section 983.57

The NPRM proposed at § 983.57(b)(1) that a proposed site for project-based assistance be ''consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.'' This final rule revises proposed § 983.57(b)(1) and adds seven factors that the PHA must consider in determining whether a proposed PBV site is consistent with these goals. Under this final rule, the housing site must be consistent with the deconcentration goals stated in the PHA plan and with civil rights laws and regulations, including HUD's rules on accessibility at 24 CFR 8.4(b)(5). These include whether the site is in an Enterprise Zone, Economic Community, or Renewal Community (EZ/EC/RC); whether the concentration of assisted units will be or has decreased as a result of public housing demolition; whether the census tract is undergoing significant revitalization; whether government funding has been invested in the area; whether new market rate units are being developed in the area, which are likely to positively impact the poverty rate in the area; if the poverty rate in the area is greater than 20 percent, whether in the past five years there has been an overall decline in the poverty rate; and whether there are meaningful opportunities for educational and economic advancement in the area. Housing under the PBV program may be selected only if consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities.

12. Section 983.58

Section 983.58(c) is revised to indicate that in the case of existing housing, the responsible entity must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5. The responsible entity must either complete the environmental review requirements of 24 CFR part 58, or HUD must perform the review under part 50, or the project must be determined to be exempt or categorically excluded. Section 983.58(d)(ii) of this final rule clarifies that in the case of review by the responsible entity under part 58, that entity makes the determination whether the project to be assisted is exempt or categorically excluded, and that if the project is exempt or categorically excluded, no further environmental review is needed.

Subpart C—Dwelling Units

There are no substantive changes to this subpart made in this final rule. There are some minor editorial changes.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

13. Section 983.155

The NPRM proposed that the PHA and HUD could set requirements for the evidence of completion of a housing project under this program at § 983.155(b), along with additional documentation that could be required under proposed § 983.155(b)(2). In the final rule, reference to HUD is removed so that the PHA alone sets these requirements.

Subpart E—Housing Assistance Payments Contract

14. Section 983.202

This final rule removes an unnecessary sentence from § 983.202(b)(2). This is an editorial change that does not alter the overall intent of the section. The sentence stated that HUD provides funds to PHAs to make housing assistance payments to owners. This sentence is redundant as the same idea is stated in the first two sentences of the paragraph.

15. Section 983.203

This final rule conforms § 983.203(h) to the change to the exception to the 25 percent cap, making the exception generally applicable to families receiving supportive services, rather than only to families with a contract of participation under the statutory FSS program at 42 U.S.C. 1437u (*see also* § 983.57, redesignated from proposed § 983.56).

16. Section 983.205

The NPRM proposed that extensions of the HAP contract be in one-year increments. The final rule revises § 983.205(a) to allow for extensions of up to five years.

17. Section 983.206

In § 983.206(b), on ''amendments to add contract units,'' this final rule removes ''compliance with Davis-Bacon wage rates during construction'' as an example of the legal requirements for a HAP amendment and replaces it with ''rents are reasonable.''

18. Section 983.209

This final rule adds ''spouse'' to the list of prohibited family relationships between the owner of a PBV unit and the resident(s) of this unit at § 983.209(e).

Subpart F—Occupancy

19. Section 983.251

This section relates to protection of in-place families; that is, families that are eligible to participate in the program as of the date the proposal is selected, and which reside in a unit that will be placed under a project-based assistance contract. This final rule finalizes similar protections for in-place families that were originally proposed, with the one difference that § 983.251(b)(2) is revised to require that such families be placed on the PHA's waiting list, with an absolute preference for referral to owners and placement in units that become available.

This final rule adds a new § 983.251(d), entitled ''Preference for services offered,'' and redesignates proposed § 983.251(d) as § 983.251(e). This new section allows PHAs to grant a preference to families with disabilities that require the services offered at a particular project. The preference may be applied to those families, including individuals, whose disabilities

significantly interfere with their ability to obtain and maintain themselves in housing; who, without such services, will not in the future be able to maintain themselves in housing; and for whom such services cannot be provided in a non-segregated setting. Disabled residents cannot be required to accept the particular services offered. The project may be advertised as being for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from the services offered.

Section 983.252, relating to information to be provided to families, is slightly revised for consistency and to make changes. Paragraph (c) is revised to include alternative formats for persons with disabilities. A new 24 CFR 983.252(d) is added regarding information for families with limited English proficiency.

Section 983.253 is revised in this final rule. Section 983.253(a)(2), stating that the owner ''may apply its own admission standards,'' is replaced with a statement that, like current 24 CFR 983.203(c)(4)(i), the owner is responsible for having written tenant selection procedures. These procedures must be consistent with the purpose of improving housing opportunities for very low-income families and be reasonably related both to program eligibility requirements and to the applicant family's ability to perform its obligations under the lease.

20. Section 983.255

The NPRM proposed in § 983.255(a) that a PHA has no obligation but ''may opt to screen applicants for family behavior and suitability for tenancy.'' This final rule specifies that a PHA may deny admission based on this screening. Proposed § 983.255(b)(2)(vi) gave the owner broad latitude to screen a family's background for a variety of factors, including ''other factors determined by the owner.'' This paragraph is removed from the final rule. The owner may screen for factors ''such as'' the factors listed in § 983.255(b)(2)(i)–(v). A variety of minor revisions are made to proposed § 983.255 on information that a PHA must provide. These include the provision to the owner of any prior address of the applicant (rather than any immediately prior address) and information relating to drug trafficking by family members. This section also provides that the PHA may give the owner certain information about an applicant family, and that the PHA must disclose to the family a description of the PHA's policy regarding such information. The requirement that this disclosure must be included specifically in the information package given to a family is removed, although the underlying requirement to give the disclosure to the family is retained.

21. Section 983.256

This final rule strengthens the PHA's ability to ensure that the lease meets the requirements of state and local law. Proposed § 983.256(b)(4) would have allowed the PHA to require revisions to the lease, if necessary. This final rule allows the PHA to decline to approve the tenancy if the lease does not meet the requirements of law.

This final rule adds an item to § 983.256(c), entitled ''Required information.'' New § 983.256(c)(6) requires the lease to specify ''the amount of any charges for food, furniture, or supportive services.''

The final rule revises § 983.256(f). The NPRM had proposed that, under certain conditions, leases could be for a term of less than one year. This final rule eliminates that option.

22. Section 983.257

The final rule refines the section on owner termination of tenancy and eviction by specifying in a new § 983.257(b) that the owner shall not terminate a lease under the PBV program without good cause as meant in 24 CFR 982.310 (except for 24 CFR 982.310(d)(1)(iii) and (iv), and under the eviction provisions of 24 CFR 5.858–5.861). Otherwise, an owner may renew or non-renew a lease upon expiration, but if the owner does not renew without good cause, the family must be provided tenant-based assistance and the unit must be removed from the coverage of the HAP contract. A new § 983.257(c) is added to make the section consistent with § 983.56 and clarify that, if a family is living in a unit excepted from the 25 percent per-building cap on project-basing because of the family's participation in an FSS or other supportive services program, failure of the family without good cause to complete its FSS or supportive services program is grounds for lease termination by the owner.

23. Section 983.258

This section provides that the owner may collect a security deposit from the tenant, and that the deposit may be used when the tenant moves out to reimburse the owner for any unpaid rent, damages to the unit, or other money that the tenant owes to the owner. This final rule makes only minor editorial revisions.

24. Section 983.260

This final rule makes a minor technical change to this section to make the second sentence of paragraph (a) into a new stand-alone paragraph at § 983.260(d). This change is made because this sentence is actually a separate consideration from the remainder of paragraph (a). Paragraph (a) generally concerns termination of the lease at the family's option after one year of occupancy; the new § 983.260(d) concerns termination before one year of occupancy, which is treated differently.

25. Section 983.261

This section governs referrals to units that are excepted from the 25 percent cap on project basing. Under § 983.56(b), units in a multifamily building that are occupied by the elderly, families with disabilities, or families receiving supportive services are exempt from the overall 25 percent cap. This final rule revises § 983.261 in accordance with § 983.56 to expand the exemption from families with a contract of participation in the statutory FSS program under 42 U.S.C. 1437u to units made available to all families receiving supportive services as stated in § 983.57(b)(2)(ii). A family is ''receiving supportive services'' if it has at least one member receiving at least one such service. If a family successfully completes its supportive services program, the unit remains an excepted unit as long as the family resides in the unit. If a family fails to complete its FSS or other supportive services participation, or no longer has a member qualifying as elderly or disabled, the family must vacate the unit in a reasonable time established by the PHA and the PHA shall cease paying housing assistance on behalf of the non-qualifying family. In the case of a partially assisted building, the owner has the choice of substituting a different unit in accordance with 983.206(a) or terminating the lease. The assistance for a family that is not in compliance with its obligations, such as non-completion of its FSS program without good cause, shall be terminated by the PHA.

Subpart G—Rent to Owner

26. Section 983.301

The proposed rule would have provided for annual redeterminations of the rent to owner (at § 983.301(a)(3)), and for the amount of rent to owner (except for certain tax credit units) to be up to the lowest of the payment standard amount for the bedroom size minus any utility allowance, the reasonable rent, or the rent requested by the owner. This final rule significantly

revises these provisions in response to public comments, which are described below at section IV of this preamble. Under this final rule, the rent to owner is established at the beginning of the HAP contract term. The rent to owner, for non-LIHTC units, may not exceed the lowest of an amount determined by the PHA, not to exceed 110 percent of the applicable FMR or HUD-approved exception payment standard for the unit size less any utility allowance; the reasonable rent; or the rent requested by the owner. The tax credit rent is similar, except that the first of the three amounts is the tax credit rent minus any utility allowance. The tax-credit rent provision applies to certain tax credit projects not located in a qualified census tract. A ''qualified census tract'' is defined as any census tract or equivalent area defined by the Census Bureau in which: (1) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income; or (2) the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD. The rent must be redetermined at the owner's request or whenever there is a five percent or greater decrease in the published FMRs. The owner must request any rent increase at the annual anniversary of the HAP by written notice to the PHA.

Under final § 983.301(f), when determining the initial rent to the owner, the most recently published fair market rent (FMR) and utility allowance schedule applies, rather than, as proposed, the payment standard amount on the PHA's payment standard schedule.

27. Sections 983.302 and 983.303

These sections apply to redeterminations of the rent to owner. This final rule revises these sections so that, consistent with § 983.301, the time for redetermination is upon the owner's request and when there is a five percent or greater decrease in the published FMR.

28. Section 983.304

This section addresses limitations on the rent to owner for units that have subsidies under programs in addition to the PBV program. Proposed § 983.304(b)(2) would have provided that the rent to owner could not exceed the amounts allowed in these programs, enumerated under proposed § 983.304(b)(1). This final rule adds tax credit projects to this list. In addition, in order to provide paragraph designations for all sections, the proposed undesignated introductory section is redesignated § 983.304(a) in this final rule, and the following sections are redesignated (b)–(f), accordingly.

Subpart H—Payment to Owner

29. Section 983.354

This section provides that meals and supportive services, generally, may not be charged as part of the rent to the owner, and that an owner may not use non-payment of such charges as grounds for termination of tenancy. The exception to this general rule is that in an assisted living development, owners may charge families or their members for meals or supportive services. In the case of such a development, the final rule adds a proviso that non-payment of such charges may be grounds for the owner to terminate the lease. The HAP payment may not be used for the costs of meals and supportive services.

IV. Responses to Public Comments

Comments Addressed to the Rule Generally

Comment: One commenter questioned why the provisions applicable to the project-based voucher program do not also apply to the former PBC program. Another commenter stated that HUD should combine the certificate and voucher programs and stop having multiple versions of one program in operation.

HUD Response: The Department is required by its regulations on rulemaking at 24 CFR 10.2 to publish regulations to implement, interpret, and prescribe law and policy for future effect. Thus, these regulations cannot be made retroactive to apply to the former program.

Comment: A commenter stated that PHAs are currently being funded from quarter to quarter based on actual utilization, and that, as a result, would likely have to hold or set aside some of their tenant-based funding in order to facilitate project-based voucher development proposals. ''The proposed rule should more specifically address the allocation of funding for the PBV program as it relates to this issue.''

HUD Response: HUD does not agree that this rule should address funding issues as it relates to the PBV program. In Calendar Year 2005, PHAs were provided with a specified amount of funding that was determined at the beginning of the calendar year and was not subject to quarterly or other utilization changes. PHAs are charged with managing their resources within program requirements to ensure that they do not incur costs beyond their annual funding allocation. If a PHA elects to project-base any of its voucher units, it must manage its resources to ensure that the agreement to enter into a HAP contract agreement and HAP contract commitments will be honored.

Comment: One commenter stated that PHAs should be able to give preferences to ''CHDOs, HOME, HOPE VI, LIHTC properties'' and similar projects, and to housing providers with a history of ''responsible practices and proper reporting.''

HUD Response: CHDOs most likely refers to community housing development organizations that are eligible to participate in certain HUD Community Development Block Grant programs. The requirements for CHDOs are stated at 570.204(c). HOME probably refers to the HOME Investment Partnerships Act, 42 U.S.C. 12701 note. HOPE VI is the popular name for the program for revitalization of public housing now codified at 42 U.S.C. 1437v.

The final rule provides that in cases where a federal, state, or local housing assistance, community development, or supportive services program that requires a competitive selection of proposals has already competitively selected proposals, a second competition for PBV is not required. The original competition, however, cannot have considered the possibility of future PBV assistance, but the selection must have been based on the project's merits at the time of the competition. However, the PHA, if it is in accordance with its administrative plan, can give a preference to CHDOs, HOME, and LIHTC projects.

Comment: A commenter stated ''we remain concerned about the need for HUD's continued involvement in a given PHA's administration of the PBV program.'' This commenter stated that PHAs are independent governmental agencies and can police themselves with respect to the proper and needed use of public funds. This commenter cited proposed § 983.51 (referenced by the commenter as ''dealing with PHA-owned units'') and § 983.55 (subsidy layering) as particular concerns. Because many PHAs are heavily involved in real estate development and subsidy layering reviews—''perhaps even better than a HUD staff person who is not intimate with the local real estate development market''—PHAs should be allowed to make determinations in both those areas.

HUD Response: Congress specifically set in place safeguards against possible program abuse regarding PHA-owned units by requiring HUD to ensure that Housing Quality Standards (HQS) inspections and rent determinations are conducted by outside entities. To

protect against possible PHA bias or abuse, and to ensure fairness, HUD has promulgated program regulations to carry out Congress' intent. The Office of Public and Indian Housing will be issuing a separate regulation to delegate subsidy layering reviews (see response to comments on § 983.55).

Comment: Five commenters commented on the relationship between 24 CFR part 982 and part 983. Four commenters stated that HUD should add a general provision that in the event of a conflict between parts 982 and 983, part 983 shall prevail over any inconsistent provisions of part 982 with respect to the PBV program. Another commenter stated that in the event that HUD has missed something in part 982 that is not applicable to the PBV program, there should be leeway for HUD to determine, short of a regulatory waiver, that the provision is inapplicable to the PBV program.

HUD Response: 24 CFR 982 is the regulation for the tenant-based voucher program. The rule identifies the provisions in 24 CFR 982 that do not apply to PBV assistance under part 983. HUD believes it has accurately cross-referenced part 982 in the 983 regulation, but if HUD determines that any errors have been made, HUD will publish corrections in the **Federal Register**.

Comment: A commenter stated that there is a disincentive to participation in the PBV program because PHAs want to designate a portion of their Section 8 allocation to leverage investment or LIHTCs. However, while these units are undergoing construction or substantial rehabilitation, they are counted adversely in the PHA's lease-up rate calculation. This commenter recommends a grace period for such PHAs during construction or substantial rehabilitation. This grace period should be provided as long as there is a well-defined construction plan in place with specific time frames that are documented and submitted to HUD.

HUD Response: During construction or substantial rehabilitation, units that will have PBV assistance attached pursuant to an agreement do not require the setting aside of vouchers and budget authority committed for those units. Rather such set asides are required only after completion of the project. However, the PHA must ensure that budget authority is available for those units upon execution of the HAP contract. If a PHA is leased up to its budget authority, it must ensure that through the turnover of vouchers it will have the necessary units and dollars to meet its contractual commitments when the project is ready to be occupied. PHAs are responsible for monitoring their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than is available.

Comment: A commenter also stated that ''Agencies should be able to lease the necessary number of vouchers through monthly turnover by the time they are needed for occupancy under the PBV program. To allow for this, HUD should not consider budget authority committed to PBV assistance for this reason to be unutilized.'' This change should also be reflected in HUD's Section Eight management assessment (SEMAP). HUD should change its procedures for determining agencies' lease-up rates and corresponding budget authority. Similarly, another commenter stated that, should a PHA set aside vouchers to project-base, the vouchers set-aside should not count against SEMAP or any other indicator. PHAs should be able to set-aside vouchers based on projections of the expected availability of vouchers due to turnover, attrition, or expected allocation of additional vouchers.

HUD Response: See response to comment above.

Comment: One commenter stated that HUD should increase the total number of vouchers available. ''This is the best and most successful housing subsidy program in the country.''

HUD Response: The appropriations for the voucher program, as well as the percentage of voucher funding that may be project-based, are both set by Congress.

Comment: A commenter stated that ''The rule proposed is still inconsistent with the congressional intent to simplify the process for project-basing vouchers * * *. Regrettably, the proposed rule continues to make the program too cumbersome to be appealing to many housing agencies.''

HUD Response: HUD disagrees that the proposed rule makes the program too cumbersome. The proposed rule has simplified and deregulated many aspects of the PBV program, such as competition and HQS inspections. The rule also eliminates any HUD approval actions during the development process resulting in a decrease in the necessity for HUD-approved exceptions and regulatory waivers. The final rule also simplifies the selection of proposals even further than originally proposed.

Comment: A commenter stated generally that transitional housing is important because it assists the homeless with skills necessary to become good tenants to whom landlords would be willing to rent. Accordingly, the PBV rule should be modified so that it will work with transitional housing serving homeless persons and persons with special needs.

HUD Response: The final rule provides that transitional housing is ineligible housing under the project-based voucher program. The statute governing the project-based voucher program specifically provides that low-income families assisted under the program may move after the family has occupied a unit for 12 months. If a transitional housing agreement requires a family to move prior to 12 months, the law governing the project-based voucher program does not give families the right to a tenant-based voucher prior to 12 months. Thus, in the situation described, a family would not be entitled to tenant-based assistance under the law governing the project-based voucher program.

Also, if a transitional housing agreement requires a family to move some time after the initial 12 months, a PHA would be required under the law to provide such a family with tenant-based assistance. If the project-based voucher contract with the owner extends beyond the transitional housing agreement, the PHA would also be required to refill the units vacated by the previous transitional housing participant. Given the scarcity of funding, such a result is undesirable. Additionally, if a family must leave after the initial 12-month lease in accordance with the transitional housing requirements, the PHA may not have a voucher or other form of assistance readily available. Since the participant would be required to move, the participant would have to do so without the benefit of subsidy since the PBV law only requires PHAs, after the initial 12 months, to issue a voucher or other form of assistance if available. The Department believes that transitional housing is inconsistent with the project-based voucher program. Thus, the final rule makes transitional housing an ineligible housing type under the project-based voucher program.

Subpart A (Proposed §§ 983.1–983.10)

Comment: In reference to proposed 24 CFR 983.2(c)(6)(iv), one commenter stated that the proposed rule incorrectly identifies 24 CFR §§ 982.551–.555 as being under part 982, subpart K. These sections are codified under subpart L.

HUD Response: HUD agrees and this final rule includes this technical correction.

Comment: A number of commenters questioned the definition of ''existing housing'' in § 983.3, seeking specificity about dollar amounts of repair that would distinguish substantial rehabilitation from existing housing.

Five commenters suggested that there be a ''safe harbor'' dollar amount of repairs that constitute existing housing. One of these commenters asked, if existing housing requires less than $1,000 of rehabilitation, and ''rehabilitation'' is any unit that requires $3,000 or more, how are units requiring $1,000–$3,000 worth of work categorized?

HUD Response: In this final rule, HUD has retained the language contained in the proposed rule. HUD has decided not to accept the suggestion of specifying a dollar amount since costs attributable to repairs and rehabilitation are market-driven and may vary widely depending upon individual market areas. Such decisions are properly left up to the PHAs.

Comment: Commenters objected to the definition of ''comparable rental assistance'' in proposed § 983.3, stating that the definition should define comparable rental assistance as gross rent that costs the family no more that 30 percent of their adjusted income, rather than 40 percent. One of these commenters stated that setting the standard at 40 percent violates the statute, and argued that the standard should be 30 percent, subject to a limited exception if the gross rent is greater than the PHA's payment standard.

HUD Response: The final rule defines comparable rental assistance as ''a subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that requires the tenant to pay no more than 40 percent of its adjusted monthly gross income for rent.'' Section 8(o)(3) of the United States Housing Act of 1937 governing the voucher program provides that at any time a family initially receives voucher assistance, the family rent contribution is limited to 40 percent of adjusted income. The definition of comparable rental assistance contained within the final rule does not violate the statute.

Comment: A commenter stated that the lobbying restriction in proposed § 983.4 is obsolete.

HUD Response: HUD reviewed the lobbying restrictions in § 983.4 and determined that they are not obsolete and therefore continue to apply to the project-based voucher program.

Comment: A commenter stated that § 983.5, which describes the project-based program, should specify when PBVs count toward the PHA's utilization rate. This commenter states that ''the Agreement to enter into a Housing Assistance Payment (HAP) contract is the appropriate trigger for SEMAP purposes.''

HUD Response: HUD has considered this comment. Currently SEMAP does not exclude units under an Agreement from total units for SEMAP scoring purposes under the leasing indicator. Since units and dollars that are committed under an agreement do not have to be set aside during the development or rehabilitation phase of a project, these units will not be excluded from the SEMAP leasing indicator. PHAs must monitor their leasing and turnover to ensure that they do not over-lease units or expend more budget authority than available. If a PHA is fully leased, it may have to withhold issuance of vouchers for a number of months based on attrition rates to ensure that units and dollars will be available at the time the HAP contract is executed.

Comment: A commenter stated that § 983.5(b), which references Section 8 administrative fees, should be revised. This commenter stated that PHAs that own PBV developments are restricted to a significantly lower administrative fee than private owners. However, PHAs must also contract for services at increasing administrative costs. This creates a disincentive to participation. Therefore, PHAs should be entitled to the same administrative fee as private owners.

HUD Response: HUD has considered this comment, but is not adopting it for the following reasons. The United States Housing Act of 1937 requires that a unit of state or local government or another entity approved by HUD perform certain functions for PHA-owned units. The act also authorizes HUD to decrease the administrative fees for PHA-owned units. In the case of PHA-owned units, some activities for which an owner is compensated from rental income under other HUD project-based programs result in a reduced administrative fee. For example, income-certification and re-examination are tasks for which PHAs are reimbursed as an owner through rental income under the PBV program.

Comment: Two commenters expressed concerns about the 20 percent cap on project basing. One of these commenters stated that the cap is too high and would force consumers ''to use their vouchers in projects, at least for a period of time,'' and will not have the option of using them with private landlords. The commenter stated that this does nothing to increase the amount of affordable, accessible housing and that the proposed regulation promotes segregation, loss of affordable units, and subjects tenants to impossible compliance regulations like workfare. This commenter recommends full funding of the Section 8 program in its present form, as well as additional changes in regulations to allow those with very low incomes to qualify for housing under LIHTC programs, such as the 80/20 program, HPD programs, and the Mitchell-Llama programs.

Another of these commenters stated that the 20 percent cap is a ''significant restriction'' on a PHA's ability to project-base vouchers and that HUD should pursue statutory changes to make the same flexibility that exists in the Moving to Work (MTW) program available to all PHAs.

HUD Response: The commenter refers to various assisted housing programs. The 80/20 program is a form of bond-financed tax credit that derives its name from the requirement that no more than 80 percent of the units in an LIHTC project financed with tax-exempt private activity bonds are to be occupied by individuals or families at market-rate rents, while the other 20 percent must be rented to low-income (no more than 50 percent of median) households. HPD is the New York City Department of Housing Preservation and Development. Mitchell-Lama is a New York State program of moderate- and middle-income rental and limited-equity cooperative developments. MTW is a HUD demonstration program codified under 42 U.S.C. 1437 note, which allows PHAs to design and test ways to promote self-sufficiency among assisted families, achieve programmatic efficiency and reduce costs, and increase housing choice for low-income households.

HUD must work under the current statutory framework that restricts project-based assistance to 20 percent of a PHA's budget authority under the voucher program.

Comment: Four commenters stated that proposed § 983.7(a)(2), which provides that relocation costs may not be paid out of voucher program funds, should not prohibit PHAs from using funds in the Section 8 administrative fee reserve account to pay relocation costs.

HUD Response: HUD has considered this comment and decided to adopt it. Provided payment of relocation benefits is consistent with state and local law, and provided the use of the administrative fee reserve is consistent with 24 CFR 982.155, PHAs may use their administrative fee reserves to pay for relocation assistance after all other program administrative expenses are satisfied. Program participants should also be mindful that HUD and Congress have from time to time restricted the use of administrative fee reserves.

Comment: Proposed §§ 983.9 and 983.53(a) prohibit voucher funding to be

used with cooperative housing and shared housing. Two commenters stated that they object to this exclusion of cooperative housing. These commenters stated that this ''is an arbitrary exclusion, not required by statute, and represents a change from the Initial Guidance.'' These commenters also state that the exclusion is against HUD's ''regulations and policies for other project-based Section 8 programs, as well as tenant-based Section 8,'' and that there are numerous examples of cooperative projects that have been good housing providers. One of these commenters stated that ''denying project-based Section 8 to* * * co-ops would make the projects unfeasible and be unfair to the low-income seniors who benefit from the creation of this affordable housing.'' This commenter also states that cooperatives have been proven to have lower operating costs than comparable rentals, and, therefore, it is in the government and public interest to encourage Section 8 in cooperatives.

Another commenter similarly objected to the exclusion of shared housing. The commenter stated that ''[shared housing] can be an extremely effective supportive transitional housing model that is being extensively used around the country.''

HUD Response: HUD considered these comments, but did not adopt them for the following reasons. Cooperative housing is not a permitted housing type under the project-based voucher program. Cooperative housing is considered homeownership and Section 8(y) of the United States Housing Act, which governs homeownership under the voucher program, limits the form of subsidy PHAs may use to provide homeownership assistance to tenant-based assistance. The comment regarding shared housing is also rejected since there are provisions to allow the use of group homes and congregate housing that are similar to shared housing. Additionally, to permit shared housing under the PBV program would require PHAs to refer families to an owner to occupy a unit with families that are not acquainted with each other, which may not be a desirable housing situation. This would result in many families refusing to share housing and as a result have families living in oversized units in violation of program guidelines.

Subpart B (Proposed §§ 983.51–983.59)

Comment: A number of commenters submitted comments regarding proposed § 983.51, which requires competitive selection of proposals for project-basing with an exception for proposals already selected pursuant to a competitive government housing assistance, supportive services, or community development program.

More than ten commenters supported the exception to competitive selection for units that have been previously competed. Four commenters stated that this proposal would save time and money and avoid needless duplication.

Some commenters opposed requiring any competition. One commenter stated that the competitive selection procedure, including the requirement for prior competitive selection, is too rigid. This commenter stated that these Reform Act requirements do not apply to PHAs. Since there is no statutory requirement for a competitive process, PHAs should be given discretion in how they award vouchers. Another commenter stated that selection should be allowed based on a request from a developer or owner; based on a HOPE VI site or similar endeavor having PHA participation; or public notice inviting competitive proposals. Another commenter stated that proposals subject to previous competitive selection should be exempt from additional environmental, site selection, and subsidy layering reviews; however, the rule should allow PHAs to use PBVs without any competition because ''agencies that need to lay out annual budgets and support their annual program operations would be placed in a compromising position. Agencies could thus face financial disincentives and opt out of using this important program.'' Another commenter stated that there should be no competition, but PHAs should develop and provide a clear set of guidelines to applicants. This commenter stated that the statute does not require competitive selection, but does require that HAP contracts be consistent with the agency's plan. This commenter stated that competitive selection is neither practical nor necessary, given the limited number of vouchers that will be available. Most affordable housing developments have funding from a variety of sources, and adding yet another competitive funding cycle complicates the process of financing affordable housing units, and adds unnecessary time and costs.

Some commenters criticized specific aspects of the competition provisions. Two commenters, while agreeing generally with the proposal on competitive selection, stated that the rule should make clear whether the PHA must include in its administrative plan its intent to make PBVs available based on a prior competition. Another commenter supported the prior competition exemption and also stated that the rule should give PHAs some discretion in establishing the competitive criteria whereby they will select units for project basing. A commenter stated that a news release and web publication should be sufficient to satisfy the advertising requirement in proposed § 983.51(c). A commenter, while agreeing with competitive selection generally, stated that the prior competition exception would appear to allow subsidy layering.

HUD Response: No response is necessary to the supportive comments. As to other comments, HUD believes that many commenters misunderstand the nature of the competitive selection of proposals. The purpose of the notice is to provide interested parties a fair opportunity to participate in the program. The final rule clarifies that PHAs must publish a general notice in accordance with 983.51(c) to inform the public that the PHA is soliciting proposals for the PBV program. The notice must indicate that the PHA's selection policy is available for viewing at the PHA's office. In addition, the PHA's selection criteria must be stated in the PHA's administrative plan. HUD will clarify that PHAs may target particular units in desirable neighborhoods or key ''turning point'' buildings in established revitalizing areas. One commenter suggested allowing PHAs to substitute environmental, site selection, and subsidy layering reviews conducted under previous competitions for the project-based voucher program. In response to the suggestion, HUD believes it would be impractical and infeasible for HUD to monitor requirements under individual state and local programs to assure consistency with federal statutory and regulatory requirements. HUD, therefore, is not adopting that comment. Site and neighborhood, site selection standards, environmental reviews, and subsidy layering requirements continue to apply.

Comment: Proposed § 983.51(e) prohibits PHAs from using PBV assistance with public housing units. A number of commenters suggested that this language was overbroad and should be clarified. Two commenters stated that the language ''could be read too broadly to include non-public housing units in a HOPE VI or public housing mixed finance project that contains both public housing units and non-public housing units.'' Three commenters stated that the definition of ''public housing'' in the U.S. Housing Act includes units receiving both capital and operating assistance. Therefore, under this rule, PHAs could not use

PBVs in HOPE VI developments. The commenters object to this result. One commenter stated that using PBV assistance in conjunction with HOPE VI and replacement housing factor (RHF) funds is especially important in areas where there has been a significant amount of public housing demolition. Therefore, more replacement housing could be produced. In many markets, PBVs alone do not provide enough of an incentive to develop affordable housing. This commenter and another commenter stated that pairing PBV with capital funds would provide enough operating and capital subsidy to develop long-term affordable housing, and suggests that the first sentence of proposed § 983.51(e) be revised to read: ''Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds.'' Another commenter agreed and stated that ''Congress made substantial changes to the PBV program in Section 232 of the 2001 HUD Appropriations Act, with the intent of making the program more flexible and workable. One of the important changes Congress made was to repeal a former statutory prohibition of project-based assistance for units to be constructed or rehabilitated with funds under the United States Housing Act of 1937.'' Proposed § 983.51(e) could be read to reinstate the bar on providing PBV assistance for units to be constructed or rehabilitated with U.S. Housing Act funds notwithstanding Congress' repeal of that bar.

HUD Response: The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-ration must occur. For example, if a project receives $2,000 in non-public housing HOPE VI funds and $1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program.

Comment: Proposed § 983.53 provides that certain types of housing are ineligible for PBV assistance. A number of commenters commented on this section. One commenter stated that there may be situations where location of a facility, especially supportive housing, on the grounds of a medical or mental institution is appropriate (see proposed § 983.53(a)(2)). If the intent of the rule is to prevent subsidizing of hospital rooms, that can be accomplished another way.

HUD Response: HUD has considered this comment and is not adopting it for the following reasons. To allow project-based assistance units on the grounds of medical or mental institutions would be inappropriate since the residency requirements for such housing facilities are usually limited to patients of the medical or mental institution. Housing for medical and mental institutions is generally funded privately or by local or state governments. The PBV program is not intended to be used to substitute for financing of housing that already exists for individuals who are residents of mental or medical facilities with federal funds appropriated to assist low-income families.

Comment: Five commenters stated that the PHA, not HUD, should determine when there is no practical alternative for a high-rise elevator project that may be occupied by families with children (see proposed § 983.53(b)). This could be particularly important where a PHA has a better understanding of the preservation needs of the community. Another commenter stated that the term ''high-rise'' should be defined because even two, three, or four story buildings that provide excellent family housing may have elevators. Another commenter stated that some existing high-rise developments provide good housing and should be preserved. The limitation on high-rise buildings with elevators should apply only to new construction. Another commenter stated that in Baltimore, high-rise buildings with elevators may be a significant source of housing. ''We believe that that high-rise elevator buildings with one and two bedroom apartments * * * should be eligible.''

HUD Response: While the statute gives the authority to make the determination about high-rise elevator projects to the Secretary, HUD is also mindful of the commenters' concerns. Therefore, this final rule revises the rule so that PHAs may make an initial determination, but HUD must approve a PHA's finding that there is no practical alternative.

Comment: Proposed § 983.58(c)(2) makes the release of PBV funds contingent on an environmental review being performed. A number of commenters stated that it is unclear what ''release of funds'' means because the funds will have already been allocated to the PHA.

HUD Response: Under part 58, HUD may allocate funds to the PHA, but the PHA may not commit or expend these funds until an environmental finding is completed by the responsible entity (RE). If the finding is that of an exempt activity (§ 58.34) or a finding of activity that is categorically excluded and not subject to § 58.5, then the PHA does not have to submit a request for release of funds (RROF) and certification, and no further approval from HUD is needed by the PHA for the draw down of funds to carry out exempt activities and projects. However, the RE must document in writing its determination that each activity or project is exempt and meets the conditions specified for such exemption.

In those cases where the RE determines that an environmental review is required, the RE will perform such review and execute the certification portion of the RROF by completing only Parts 1 and 2 of HUD form 7015.15 and by forwarding the form to the PHA, which must complete Part 3 before providing the form to HUD for approval. The PHA must await HUD approval from the Field Office Public Housing Director as the HUD Authorizing Officer; the approval is obtained either on HUD form 7015.16—Authority to Use Grant Funds or by a letter dispatched to the PHA. Once received, the PHA may then draw down funds under the voucher annual contributions contract for the project-based voucher project.

Comment: One commenter commented on proposed § 983.53(d), which prohibits PHAs from attaching PBV assistance to units occupied by ineligible families. This commenter stated that the PHA should be given the flexibility, between the time the Agreement and HAP contract are executed, to move the family to another unit and free the unit for an eligible family.

HUD Response: It is HUD's policy to minimize displacement and what the commenter proposes is unnecessary.

Section 983.206 allows PHAs to add units to the HAP contract when an ineligible family moves out.

Comment: Proposed § 983.54 prohibits PBV assistance from being attached to units that have other forms of Section 8 and other types of federal assistance. Two commenters stated that the rule should make clear that in mixed-finance projects, this prohibition applies only to the same units that are receiving subsidies.

HUD Response: This final rule clarifies that the use of PBV assistance in mixed-finance projects that are not classified as ineligible housing is authorized. Section 983.54 discusses prohibited types of housing under the project-based voucher program. Since the type of units the commenter mentions is not listed, the unit type is not an ineligible housing type.

Comment: Two commenters stated that § 983.54(a), for clarification, should add the word ''unit'' after ''public housing.''

HUD Response: The comment is accepted. The final rule is revised to include this clarification and also to specify that the unit is a ''dwelling unit.''

Comment: A commenter stated that an exception to the general rule should be made for holders of enhanced vouchers who received those vouchers when a mortgage on an older, assisted 236 project, which may have had a high tenant rent contribution, was prepaid. PHAs should have the flexibility to replace these enhanced vouchers with PBVs to reduce these tenants' rent contribution to 30 percent of adjusted income.

HUD Response: The comment relates to an issue that is beyond the scope of this rule. Section 8(t) of the United States Housing Act of 1937 explicitly limits enhanced voucher assistance to tenant-based assistance under section 8(o) of the Act.

Comment: One commenter stated that proposed § 983.54(a), barring a PHA from attaching project-based assistance to ''public housing units,'' is a carry-over of current § 983.7(c)(1) that predates the QHWRA. In QHWRA, Congress authorized PHAs to provide capital funds only and changed the definition of public housing to include units in a mixed-finance project that receive capital or operating assistance. Section 983.7(c)(1) was intended to bar project-based assistance from being attached to units that were receiving operating assistance. It was not intended to bar using project-based assistance with units that were constructed or rehabilitated with capital funds under the 1937 Act. HUD should clarify that § 983.54(a) and the last sentence of § 983.54(e) apply only to public housing units receiving operating subsidies under section 9(e) of the 1937 Act, 42 U.S.C. 1437(g)(e). Two other commenters agreed, stating that the rule should clarify that project-based assistance can be used with HOPE VI or capital funds.

HUD Response: HUD has considered these comments with the result that this final rule retains the proposed rule language, but clarifies when project-based voucher assistance may be combined with HOPE VI funds. The Department believes that Congress' adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that the public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is impermissible to combine voucher funds with public housing funds. For HOPE VI funds that predate FY 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine PBV and HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-ration must occur. For example, if a project receives $2,000 in HOPE VI funds and $1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any public housing funds, the units may be assisted under the PBV program.

Comment: One commenter asked that HUD not make projects that receive ''operating support'' ineligible for PBV. ''Sometimes projects need additional operating cash flows due to unexpected increases in operating costs and expenses.'' Another commenter stated that, as part of a plan to end long-term homelessness, ''we urge that the rule be amended to permit replacement of temporary subsidy with PBVs, or to clarify that such replacement is permissible.'' This commenter also stated that there may be situations, especially in supportive housing, where operating cost subsidy is required, despite rent subsidy, to ensure affordable rents and achieve project rent payment standards. This commenter suggested that HUD delete § 983.54(d) or revise it to permit operating subsidy where other governmental operating cost subsidy is required and demonstrated through the subsidy layering review to be necessary to the project. This commenter recommended that a new § 983.54(m) be added to read:

''For purposes of paragraphs (c), (d), and (l), rental or operating costs subsidies intended to terminate upon implementation of a HAP contract shall not be considered ''governmental rent subsidy,'' ''governmental subsidy,'' or ''housing subsidy.''

HUD Response: HUD considered these comments, but did not adopt them. With respect to the public housing program, it is statutorily impermissible to combine Public Housing Operating funds with PBV funds. Supportive housing programs that receive operating funds are also ineligible under the PBV program since rent is generally included as an operating expense.

Comment: A number of commenters objected to § 983.55, which requires a subsidy layering review to be conducted by HUD or an approved entity before a PHA may enter into a HAP contract. Commenters objected both to the overall requirement of a subsidy layering review and to the conduct of the review by HUD.

One commenter stated that subsidy layering should not be required as rent caps and other guidance should suffice. If subsidy layering is to be required, the rule should be amended to allow the PHA to conduct the review and receive just compensation. One commenter stated that there should be an exception for projects that provide extensive support services, such as projects that serve the homeless. Another commenter stated that if the PHA determines that there is no other government subsidy involved, no subsidy layering review should be required. Another commenter stated that the rule should permit additional governmental subsidy when necessary for the success of the project. One commenter questioned whether subsidy layering analysis applies to every application that shows public capital investments in the form of loans or grants, and stated that such an analysis should not be required where the bulk of public financing is through loans and there is no tax-credit financing.

HUD Response: Because prevention of excessive subsidy is statutorily required, this final rule retains the requirement for subsidy layering reviews.

Comment: One commenter stated that HUD should not be involved in subsidy

layering reviews. Other commenters stated that section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note) requires that, where low-income housing tax credits are involved, the state tax credit allocating agency must do the review. Still another commenter stated that while use of PBV must be consistent with subsidy layering, the rule ''could be misconstrued to create additional bureaucratic barriers'' and that the rule should clarify that it does not supersede authority of Housing Credit Agencies (HCAs) and Housing Finance Agencies (HFAs) to conduct the review when they are involved because of tax credits. When there is such an agency already involved, HUD should not have to determine individually whether it is an appropriate independent agency to do the review. Two commenters stated that a subsidy layering review for this program should not be required when another office or agency is authorized to perform a subsidy layering review or has recently performed such a review in connection with other assistance. One commenter stated that the rule should clarify what are approved entities and what entities may conduct a layering review. This should include entities already approved or required to perform such reviews in HUD programs.

HUD Response: The issue of entities that can perform subsidy layering reviews is addressed in statute and guidance published as **Federal Register** notices, and, hence, is not appropriate for treatment in this rule. Pursuant to Section 911 of the Housing and Community Development Act of 1992, as amended, 42 U.S.C. 3545 note, HUD has issued guidelines in the form of **Federal Register** notices on February 25, 1994 (59 FR 9332), and December 15, 1994 (59 FR 64748). Under these notices, the Office of Public and Indian Housing performs subsidy layering reviews for programs under its jurisdiction with input from field offices. HUD may invite HCAs to perform subsidy layering reviews in connection with projects receiving low-income housing tax credits, by publishing a **Federal Register** notice along with the guidelines that HCAs must follow in conducting subsidy layering reviews. PIH may publish revised guidelines as a **Federal Register** notice in the near future.

Comment: A number of commenters commented on the Family Self-Sufficiency (FSS) program exemption to the 25 percent cap on project-basing, with most commenters stating that the exemption is too narrowly limited to statutory FSS programs under section 23 of the 1937 Act, 42 U.S.C. 1437u. Many commenters expressed the view that there should be a broader definition of services that qualify for the exemption to the cap. Commenters stated that ''other tools are available than FSS, such as local self-sufficiency programs * * *,'' and that a broader definition of qualifying services is a better alternative than the FSS program alone. Some of these commenters cited specific local programs as ones that should qualify for the exception to the cap. Along these lines, three commenters suggested that the term ''families receiving supportive services'' be defined as ''families receiving services essential for maintaining or achieving independent living, such as, but not limited to, counseling, education, job training, health care, mental health services, alcohol or other substance abuse services, child care services, or service coordination and case management services.'' One commenter stated, in addition, that HUD should remove § 983.56(b)(2)(ii) and replace it with the phrase ''Families receiving supportive services.'' Another commenter stated that the limitation of supportive services to the FSS program is arbitrary and impractical. First, families in self-sufficiency programs other than FSS in many cases receive services that are as comprehensive or more comprehensive than FSS. Second, funding for FSS coordinators has been shrinking in real terms in recent years. One commenter stated that ''* * * service programs run by many of the faith-based organizations we are partnering with would not qualify for this exception.'' Two commenters stated that it is inconsistent with statute to limit ''families receiving supportive services'' to ''FSS families,'' because the statute refers to the broader concept of ''supportive services.''

HUD Response: HUD has considered these comments and adopted the suggestion to allow for services other than those services associated with the statutory FSS program under 42 U.S.C. 1437u. Under the Final Rule, PHAs are authorized to establish the type of services and the extent to which services will be provided to allow exceptions to the 25 percent limit. PHAs must state in their administrative plans what these services are. The final rule also clarifies that PHAs are responsible for determining that units are made available to families that are receiving the services in order for the unit to be and to remain excepted from the cap (see § 983.56(b)(2)(ii)(C)) and ensuring that assistance is terminated if families living in exempted units fail without good cause to complete their FSS or supportive services obligation.

Comment: One commenter stated that the narrow definition of social services that qualify for the exception to the cap ''will exclude many chronically homeless individuals and families—who may neither participate in the FSS program nor qualify as 'disabled' under the Section 8 statute due to a primary diagnosis of alcoholism or substance abuse. Such a result would be clearly contrary to the Administration's commitment to prioritize this vulnerable population within all HUD programs.''

HUD Response: See response above.

Comment: Two commenters stated that HUD should provide more flexibility with respect to the FSS exception to the 25 percent cap on project basing and make clear that the PHA can make its own determination what constitutes adequate supportive services.

HUD Response: See response above.

Comment: Two commenters stated that the proposed rule improperly imposes a work requirement by allowing PHAs to terminate assistance to a family not in compliance with its FSS contract of participation. ''The statute is silent about any such condition of continued occupancy.''

HUD Response: Since the family is receiving PBV assistance for a unit outside the statutory 25 percent cap because of its participation in supportive services, the family necessarily loses that right if it fails with respect to its FSS contract or its supportive services program. Therefore, this final rule provides that assistance to such a family can be terminated. However, as long as the unit continues to be made available to qualifying families, the unit can continue to receive assistance and benefit another family participating in supportive services.

Comment: A number of commenters stated that other forms of project-based subsidy should not count toward the 25 percent limit, because the statute applies only the 25 percent limit to project-based vouchers. Other commenters stated that this limitation would impede the preservation of affordable housing and constrain the development of supportive housing units. Two commenters stated that if HUD continues to include ''other federal project-based assistance'' as counting against the 25 percent cap on assisted units, the rule should make it clear that the term does not include units receiving only mortgage or production subsidies (such as § 236, § 221(d)(3), LIHTCs, or HOME funds).

HUD Response: HUD has considered these comments and adopts them in this

final rule. This final rule limits the number of project-based units in a building to 25 percent of the total units in the building and not to 25 percent of the unassisted units.

Comment: One commenter stated that limiting the size of a multifamily building to no more than a specified number of units is another alternative to the 25 percent cap.

HUD Response: The 25 percent cap is provided for by a clear and unambiguous statute, 42 U.S.C. 1437f(o)(13)(D)(i), and cannot be changed by this rule.

Comment: Two commenters stated that they support the exception to the 25 percent per building cap on project-based units for elderly and disabled families. One commenter stated that ''we would encourage HUD to also provide an exception to developments for units that provide families with service-enhanced housing which includes families who were previously homeless.'' Another commenter similarly stated that ''We suggest including in the list of examples of ''excepted units'' housing developments created through HUD's initiatives to provide permanent supportive housing to address the needs of chronically homeless individuals.''

HUD Response: HUD has considered these comments, but has not adopted them. The statute explicitly provides for certain exceptions to the limitation on the number of dwelling units that may be assisted in any one building. The commenters' suggestion is not included in the statutorily permissible exceptions because inclusion of the type of developments suggested would expand the exceptions allowed under the law. Nonetheless, the final rule expands the definition of supportive services to include services other than those under the FSS program.

Comment: Two commenters stated that if HUD follows the recommendation to expand the definition of ''supportive services'' that qualify for the exception to the 25 percent cap on project-based units in a building, the rule should make it clear that when an owner has entered into a contract with a public agency other than a PHA to provide supportive services, it is that public agency which has the primary responsibility for monitoring the delivery of those services. As with the competition for project-based vouchers in § 983.51(b)(2), the rule should permit PHAs to rely on the established selection procedures and monitoring expertise of other agencies.

HUD Response: HUD has considered this comment, but is not adopting it. Under the Project-Based Voucher program, HUD's contractual relationship is with public housing agencies. The Department can neither impose nor enforce requirements on entities with which the Department has no legally enforceable agreement.

Comment: One commenter suggested that the rule add additional language to three sections. The additions are as follows:

A new § 983.56(b)(4): ''(4) Monitoring of supportive services. (i) The PHA may determine that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) suffice to establish the units as ''excepted units'' for purposes of this section.

''(ii) Where the owner has not entered into contracts with public agencies to deliver supportive services or where the PHA has reasonably determined that the monitoring and reporting requirements specified in § 983.203(d)(ii) and certified by the owner in § 983.209(b)(i) do not suffice to establish units as 'excepted units' for purposes of § 983.56(b)(2)(B), the PHA may require the owner to submit such documentation as is reasonably required to establish the units as excepted units for purposes of this section.''

New §§ 983.283(d)(i) and (ii), to be added at the end (before the semicolon) of § 983.203(d): ''including (i) the public agencies other than the PHA, if any, with whom the owner and/or its affiliates and/or its subcontractors intends to contract to provide funding for or direct supportive services for any units receiving PBV assistance; and (ii) a description of the monitoring and reporting requirements regarding the delivery and efficacy of the supportive services under any contracts identified under (i).''

The following, to be added at the end (before the period) of § 983.209(b): ''* * * and the owner and/or its affiliates and/or its subcontractors are in compliance with any existing contracts with public agencies to provide funding for or direct supportive services for any units receiving PBV assistance.''

HUD Response: HUD has considered these comments and has determined that, because of the variety of local circumstances and supportive services that may be provided, it is preferable for PHAs, which know the local area and the needs of residents, to administer the details of this aspect of the statute and regulations.

Comment: The site selection standards in proposed § 983.57 would require that project-based assistance ''be consistent with the goal of expanding housing opportunities'' and that projects using PBV be sited to ''promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.'' One commenter stated that this standard would prevent affordable housing from being developed in areas previously dominated by urban blight, thus attracting residents. Properties outside areas with a high concentration of low-income persons are mostly unaffordable or unwilling to accept government subsidy. Conversely, another commenter stated an objection to the proposed rule's elimination of any standard for deconcentration and expansion of housing and economic opportunity, and suggested that HUD adopt an alternative standard, based on waiver requests, that allows PBV units in mixed-income projects and neighborhoods undergoing ''gentrification'' while ensuring that the PHA also creates PBV units in non-poor neighborhoods. Another commenter stated that the rule should allow projects to be sited in areas of poverty concentration where it would allow access to supportive services. ''It is the supportive services that will ultimately help lift a family out of poverty rather than the location of the housing outside an area of concentrated poverty.''

HUD Response: The requirement that project-based voucher contracts be consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities is a clear statutory mandate and, therefore, cannot be changed as suggested by these commenters. In addition, these are factors under SEMAP scoring. This final rule provides guidelines that PHAs must consider in selecting project-based voucher proposals to ensure that, in selecting projects under the program, the statutory goal of deconcentrating poverty and expanding housing and economic opportunities is satisfied.

Comment: Two commenters questioned whether the site and neighborhood standards in proposed § 983.57(d) should apply to the PBV program. Four commenters stated that some of the site and neighborhood standards do not seem meant to apply to existing buildings. One commenter stated that the PHA should determine whether in the context of its affordable housing goals it makes sense to provide PBVs to the project. Also, the rule should be clearer on whether the PHA or HUD makes the determination that site and neighborhood standards are met. Two commenters stated that the PHA should make the determination. One commenter stated that the proposed rule is unclear about the process for satisfying site and neighborhood

standards, and that units may be lost because landlords in low poverty areas will not wait to rent their units on the private market while a review process is underway.

HUD Response: HUD has considered the comments, but does not adopt them. The standard for existing housing is reasonable and not as stringent as the standard for New Construction. The requirements of proposed § 983.57(d) (§ 983.58(d) of this final rule) are applicable to existing housing under the PBV program. The rule details the requirements that must be considered in determining whether site and neighborhood standards are satisfied.

Comment: Several commenters questioned proposed § 983.58 on environmental reviews. Commenters stated that environmental review requirements should not apply to existing units because actions such as demolition, rehabilitation, and construction are not taking place. A commenter stated that properties for which an environmental review was previously done under another program should be exempt from environmental reviews in the PBV program. Another commenter stated that the section is overbroad as drafted, because it appears to prohibit PBV contracts being executed with owners who have purchased properties prior to HUD completing its environmental review. A commenter stated that where a PBV contract is for existing units and will have an initial HAP term of 5 years or less, parts 50 and 58 should not apply. A commenter stated that ''to apply these requirements to existing public accommodations will make it even more difficult for landlords in strong markets to participate in the Special Mobility Program * * *.'' Moreover, the delays in waiting for approvals will result in lost units.

HUD Response: Existing housing as used in the PBV regulation is normally categorically excluded from the requirements for an environmental assessment and finding of no significant impact under the National Environmental Policy Act (NEPA). However, existing housing is subject to the applicable federal environmental laws and authorities listed at 24 CFR 58.5.

The responsible entity will conduct the environmental review in accordance with 24 CFR part 58 (or HUD will complete an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review). In the case of existing housing that is reviewed under part 58, the responsible entity must determine whether or not PBV assistance is categorically excluded from review under NEPA and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

Assistance to a project previously approved under another HUD program for which an environmental review was completed under 24 CFR part 58 is considered supplemental assistance and is categorically excluded and not subject to further review under the related laws in 24 CFR 58.5, if the approval is made by the same responsible entity that conducted the environmental review on the original project and re-evaluation of the environmental findings is not required under 24 CFR 58.47. This exemption is limited to contracts for the same units that previously had an environmental review completed under part 58.

In accordance with the NEPA and the Council on Environmental Quality's implementing regulations, the Department does place limitations on actions before completion of the environmental review. The final rule is clear at § 983.58(d) that the PHA may not enter an Agreement or a HAP contract with an owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under part 983, until an environmental review is complete. However, there is no intent to prohibit an owner from acquiring a property before the owner enters the PHA's property selection process under the PBV program.

Comment: A commenter stated that in proposed § 983.59 and elsewhere, there are provisions regarding the selection of PHA-owned units that are problematic, because the rule establishes up-front procedural hurdles that could be addressed in a less burdensome way by monitoring PHA performance. For example, initial rents must be based on an appraisal by a licensed and certified appraiser. Also, HUD has to approve in advance an independent entity that will perform rent reasonableness and housing quality standards (HQS) determinations. Another commenter stated that the PHA should be allowed to attach PBVs to PHA-owned units without a request for proposals or review by another entity. Similarly, a commenter stated it supported removing the requirement for independent appraisal of PHA-owned units, and stated that PHAs should have the option of allowing an owner to submit an independent appraisal of the requested rents as part of the project selection process.

Similarly, a commenter stated that ''in a variety of ways, the proposed rule makes it extremely difficult for PHAs to expand the supply of publicly-owned affordable housing through use of project-based vouchers.'' This commenter cites language primarily from the proposed § 983.59, as well as from proposed language concerning the competitive selection of units. A commenter stated that ''* * * the best way to protect tenants and the public is not through front-end procedural barriers * * * but rather through subsequent monitoring of the outcomes. PHAs * * * should be trusted to comply with the law unless they are shown to have violated the trust.'' This commenter suggested changes to §§ 983.51(e) and 983.59. The change to 983.51(e) would exempt units owned by the PHA from the review of the selection process, and would provide that the ''selection of PHA-owned units will be deemed approved by the HUD field office if the field office fails to act within 30 days of receipt of the required information concerning the selection process.'' The changes to § 983.59 would be to permit agencies of local government (in cases where the PHA is not part of the local government) to determine rent reasonableness and HQS compliance without HUD approval, and to permit PHAs to select an independent entity other than a unit of local government to perform the same function, also without HUD approval.

HUD Response: HUD has considered these comments, but does not adopt them. The proposed regulation governing PHA-owned units is not intended to reject the use of performance standards nor to impose a more administratively burdensome process than necessary, but rather to protect, to the extent possible, taxpayer dollars by ensuring that such dollars are appropriated fairly and without undue influence and favoritism. It should also be noted that the law requires that an independent agency inspect units and determine the reasonableness of rents in the case of PHA-owned housing under the tenant-based program. The law establishes these same requirements for the project-based component of the voucher program.

Subpart C (§§ 983.101–983.103)

Comment: Proposed § 983.101 requires units to comply with HQS and lead-based paint regulations at 24 CFR part 35. A commenter stated, as to proposed § 983.101(c), that lead paint requirements at 24 CFR part 35, particularly at 24 CFR 35.720(c) and 35.730, which involve reporting by local health officials, could be problematic in

the PBV program. This commenter stated that the rule should be revised to require PHAs to give the local health department the addresses of all PBV units, and to require the PHA to notify each unit owner of their obligations. Also, unit owners need to be informed of their obligation to verify with the health department when they learn the information (about elevated lead levels) from a source other than local health officials.

HUD Response: These comments relate to matters beyond the scope of this rulemaking. Since the proposed rule did not involve the lead paint regulations, those regulations were not made available for public comment. A separate public rulemaking procedure would be required to address lead paint issues.

Comment: One commenter stated that HUD needs to define what qualifies as a unit generally complying with HQS. Two commenters stated that instead of requiring PHAs to inspect all units for HQS compliance prior to unit selection and again prior to HAP execution, the rule should give PHAs discretion to do only one inspection. One commenter also stated that if a project has a Real Estate Assessment Center (REAC) score higher than 60, it should not be necessary to do an inspection after each turnover. One commenter stated that it is unclear what steps a PHA must take to ensure that existing units comply with § 504 of the Rehabilitation Act of 1973 and the Fair Housing Act. One commenter stated that the requirement for inspection of a sample of units at least annually seems to conflict with the SEMAP requirement of inspecting each unit under contract at least annually.

HUD Response: HUD disagrees with the comments relating to a definition of general compliance with HQS, and with the comment relating to Public Housing Assessment System (PHAS) scores. Only in the case of selecting existing units, and for the purpose of defining them as existing units, must the PHA ensure that all of the units substantially comply with HQS. HUD has elected not to define what qualifies as a unit substantially complying with HQS since the units must comply fully with HQS prior to HAP execution. The law also requires that units be inspected for compliance with HQS, regardless of PHAS score. Furthermore, compliance of existing units under Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act is defined in 24 CFR Section 8 subpart C. HUD agrees with the comment regarding SEMAP. SEMAP scoring for inspections will be adjusted to remove all PBV units as reflected in the Public Housing Information Center (PIC) from the annual inspection indicator.

Comment: Proposed § 983.103(d) requires an annual inspection of a random sample of 20 percent of all PBV units in each building of a project. Some commenters stated that inspections should be of a random sample of units in a project, rather than units in a building. One commenter stated that the section should be revised to require inspection of at least two units or 20 percent of the units, whichever is more. Alternatively, this section should restrict the random sample method to multifamily buildings. An inspection of only one unit in a small building does not provide enough of a sample. One commenter supported this section as proposed.

HUD Response: HUD considered the comments regarding random inspections of a project rather than a building, but is not adopting them. The statute requires annual compliance with inspection requirements except that the agency shall not be required to make annual inspections of each assisted unit in the development. HUD believes that the sample should be drawn on a building basis in order to get a good cross-section of the condition of the units in a project. HUD has interpreted the law by requiring at least 20 percent of the units in a building be inspected annually. A development or project could consist of several buildings and a random sample of the project or development would not necessarily ensure an inspection in each building. In response to the issue of sample size, HUD believes that the inspection of at least one unit in buildings where five or fewer PBV units are located is, due to the small number of units involved, an adequate sample.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units (§§ 983.151–983.156)

Comment: Proposed § 983.152(c)(1)(ii) requires that the location of contract units be described in the agreement to enter into a HAP contract. One commenter stated that because units can float, it seeks confirmation that this provision requires identification of the building, not the exact unit.

HUD Response: The ''location of the contract units on site'' does refer to the location of the contract units in a building in which PBV units will be located and must be described in the HAP contract. Floating units are addressed in § 983.206.

Comment: Proposed §§ 983.153(a) and 983.55 require a subsidy layering review prior to execution of the Agreement by the owner and the PHA. Commenters stated that subsidy layering analysis should be done prior to the Agreement only when some kind of governmental assistance is being provided to the project. ''For instance, we do not think subsidy layering would apply where a PHA chose to use PBVs in a project that already has an FHA insured mortgage'' and no new assistance. A commenter stated that subsidy layering requirements should be clarified and explained with a ''clear road map'' so as not to ''chill'' PHAs and developers.

HUD Response: The Final Rule retains the requirement for subsidy layering reviews because it is statutory. Section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (codified at 42 U.S.C. 3545) requires that the Secretary certify that ''assistance within the jurisdiction of the Department'' to any housing project shall not be more than is necessary to provide affordable housing after taking into account ''other government assistance.''

Comment: Proposed § 983.154(b)(3) requires the owner and the owner's contractors and subcontractors to comply with applicable federal labor standards, and requires the PHA to monitor that compliance. One commenter stated that the rule should allow PHAs to work with other agencies that have an interest in the project to monitor compliance with the Davis-Bacon Act.

HUD Response: HUD considered this comment but did not adopt it because, although a PHA can subcontract any of its functions, the PHA is still ultimately responsible for monitoring to ensure that the owner and owner's contractors and subcontractors comply with applicable federal labor standards (see HUD handbook 1344.1, Federal Labor Standards Compliance in Housing and Community Development Programs).

Comment: Two commenters stated that the conflict-of-interest provision in § 983.154(e) is too vague and needs additional definition.

HUD Response: The provisions of 24 CFR Section 982 subpart D apply to the project-based voucher program in accordance with Section 983.2(a). Specifically, Section 982.161 details conflict of interest provisions.

Comment: Proposed § 983.155(a) states that the Agreement must state the completion deadline and that the owner must provide evidence of completion. Three commenters stated that the completion deadline should be between the owner and PHA, not HUD. If the project is not completed, the owner will not get the PBVs. HUD should leave the completion determinations to the PHA.

HUD Response: HUD agrees with commenters that the completion deadline should be arranged between the owner and the PHA. Although HUD may specify additional documentation that must be submitted by the owner to evidence completion of the housing, the additional documentation must be submitted to the PHA, not to HUD.

Subpart E—Housing Assistance Payments Contract (§§ 983.201–983.209)

Comment: One commenter stated that in the Special Mobility Program, landlords commit to a number of Section 8 units, but they may not know which specific units will be available. The requirement in proposed § 983.203(c) to identify the location of each contract unit may be difficult to meet. This commenter stated that the rule should be modified to allow HQS inspection and HAP amendment to occur as units become available, with adjustments to lease terms as needed.

HUD Response: The regulation as proposed resolves this issue, since it allows floating units. In § 983.206(a), at the discretion of the PHA, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. HQS and rent reasonableness must be determined for the new units. Section 983.206(b), allows for amendment of the contract within 3 years of initial execution to add additional units in a building. Leases and HAP contracts do not run concurrently as in the tenant-based program.

Comment: A number of commenters disagreed with the provision for one-year extensions of HAP contracts in proposed § 983.205(b). These commenters stated that the length of extensions should be up to the PHA, and should be for up to the length of the initial term. Commenters stated that the statute allows longer extensions, and that the one-year limitation violates the statute. One commenter suggested that § 983.205(b) should be revised as follows:

> In the initial contract, the PHA and owner may agree that, subject to appropriations, they will extend the term of the HAP contract prior to its expiration for a duration agreed upon by the parties if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families and the owner has complied with the contract during the initial term. Subsequent extensions are subject to the same limitations.

Two commenters stated that annual extensions are too administratively burdensome. One commenter also stated that contractors need an assurance of a longer term. Some commenters stated that one-year extensions could impede the ability of owners to obtain financing, and that the minimum extension should be five years. One commenter stated that the limitation increases the risk to investors who are risk-averse. Three commenters stated that the limitation may also interfere with using LIHTCs. One commenter also suggested that § 983.305(b) be revised to be extendable ''for up to an additional 10 years.''

One commenter stated that (as of the time of the comment) annual contributions contracts (ACCs) are only being extended for 3 months. This places the PHA in an awkward position to enter even into a one-year HAP with an owner.

HUD Response: HUD has considered all of the comments and agrees that renewal terms should be more than one year. Accordingly, PHAs will be allowed to approve extensions after the initial term on a five-year or shorter basis as determined by the PHA.

Comment: Proposed § 983.205(d) allows the owner to terminate a contract if the rent falls below the initial rent. In this case, families are given tenant-based assistance. A number of commenters disagreed with this provision.

Five commenters stated that instead of allowing the owner to terminate the contract if rent falls below initial rent, as provided in proposed § 983.205(d), the rule should not allow PHAs to reduce rents below initial rents. Two of these commenters stated also that the proposed rule is contrary to the statutory provision on rent adjustment and will discourage participation in the program. The statute delegates the determination of rent to PHA and owner, outside of HUD's rulemaking power. Two commenters stated that the initial guidance provided by HUD requires rent adjustments only at the request of owner, and that an arbitrary reduction in rent based on a change in payment standard can create financial stress for the property. One commenter stated that the rule should clarify whether, if the HAP contract is terminated under § 983.205(d), the tenants are eligible to receive enhanced or regular vouchers. Two commenters stated that although the rule protects tenants if rents are reduced and the owner opts out, it may endanger the project because converting the assistance to tenant-based removes a unit and would limit the units available for the intended population and threaten the viability of the project. The rule should remove disincentives for the owner to participate and protect funders by modifying § 983.301(a)(3) to provide that rents are redetermined at the request of the owner, and deleting §§ 983.205(d) and 983.302(c).

HUD Response: HUD has considered all of the comments and has addressed changes to rent adjustments in § 983.302. However, HUD believes that the law is very specific for setting rents and that HUD lacks the ability to limit rent reductions. Should the owner terminate the HAP contract in accordance with § 983.205(d), families are eligible to receive the same regular (not enhanced) tenant-based vouchers for which they are eligible, at their request, after living in a project-based unit for 12 months.

Comment: One commenter stated that the proposed rule provides that units do not float. PBV units should be permitted to float within a building or development so long as the PHA meets HUD requirements. This commenter suggests new language for 983.206(a):

> At the discretion of the PHA and subject to all PBV requirements, the HAP contract may permit PBV units to float within a building or development. The owner must maintain the same number of units and the same number of bedrooms. Prior to attaching PBV subsidy to a unit within a building or development, all PBV requirements must be met, including an inspection confirming that the unit meets HQS standards and a rent reasonableness determination.

One commenter supported a provision to amend the HAP contract by allowing units to ''float.'' It should be made clear that this should only be done at turnover or where families lose assistance due to being over income to prevent displacement, and there should be safeguards against replacement of accessible units with non-accessible ones. One commenter stated that the rule should not require HAP contract amendments when, because of administrative burden, units are added or substituted. Another commenter stated that allowing units to be substituted ''is a great enhancement.'' However, the commenter stated that the restriction of substitutions to 3 years after HAP execution (§ 983.206(b)) should be removed, to allow the PHA to help an additional family in cases where the assistance drops to zero but the family prefers to stay in the unit and pay market rent.

HUD Response: HUD believes the flexibility sought by the commenters already exists and therefore is not adopting the proposed change to § 983.206(a). In § 983.206(a), at the discretion of the PHA, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a

previously covered contract unit. Further restrictions regarding ''floating'' units is not necessary since substituting units must be in compliance with all PBV requirements. HUD believes that units cannot be assisted without a contractual agreement obligating the assistance necessitating a revision to the HAP contract. Section 983.206(a) does not restrict the substitution of units to three years. The three-year limit applies only to adding new units to the original PBV contract.

Comment: Proposed § 983.206(c) states that even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. Five commenters stated that in order to protect against displacement and transition to lower-income families over time, HUD should change its position that there is a single anniversary date for all units under HAP contract within the full term of the contract. One of these commenters stated that some proposals may require a complex transition of units into the program over time. The PHA and owner should be able to structure the admission requirements in the PHA's administrative plan in a manner to best serve both current residents and those on the PHA waiting list.

HUD Response: HUD does not accept that in order to protect against displacement and transition to lower-income families over time, HUD must change its position on a single anniversary date for all units under one HAP contract. The commenter did not elaborate on how the same anniversary date for all units under the same contract would displace and transition lower-income families. Once units are accepted into the program, they are placed under a HAP contract. Eligible current residents are given priority for admission in accordance with 983.251(b).

Comment: Proposed § 983.209 requires the owner to certify to certain matters. Three commenters stated that the owner may not be able to certify that each unit receiving assistance is occupied by a family referred by the PHA because some families receiving assistance due to displacement provisions will not have been referred by the PHA.

HUD Response: In response to these comments, HUD will clarify that only families referred by the PHA may be assisted. Section 983.251(b) protects in-place families by providing a priority for admission to the PBV program. However, these families must also be determined eligible by the PHA and referred to the owner by the PHA.

Comment: One commenter stated that the prohibition on renting to the owner's relatives in proposed § 983.209(e) should be subject to an exception when necessary to make a reasonable accommodation, as in current 24 CFR 982.306(d).

HUD Response: The comment was not adopted. HUD intentionally differentiates in this case between the tenant-based voucher and project-based voucher programs. To allow an owner of a project-based voucher development to rent to close family relatives (whether disabled or not) creates a systematic incentive to owners to misuse the program. Persons requesting a reasonable accommodation in policies in order to effectively participate in the housing choice voucher program are not harmed by restricting the exception to renting to relatives to the tenant-based program.

Subpart F—Occupancy (§§ 983.251–983.261)

Comment: Proposed § 983.251 regulates how families are selected for the PBV program. Commenters stated that the PHA and the owner should be able to structure the admission requirements to best serve both current residents and those on the waiting list. While generally supporting the anti-displacement provision (§ 983.251(b)(2)), the commenters stated that this provision should be revised in the final rule to allow discretion in providing current families with PBV assistance. A commenter also stated that owners and PHAs should be given the flexibility to lease units on a rolling basis in compliance with the PHA's waiting list policy. Owners should be able to contract for the maximum number of units needed to accommodate the greatest number of eligible households in a way that can be financially supported over time.

HUD Response: HUD does not agree with these comments. Eligible in-place families should not be penalized if units in the building are selected to receive project-based assistance. However, project-based assistance is limited to 25 percent of the units in a building which means that not all of the eligible families in the building can receive project-based voucher assistance. However, eligible in-place families must be given an absolute preference on the waiting list for units that become available.

Comment: Regarding proposed 983.251(a)(1), one commenter stated that public housing families should have the choice to move to PBV units without having to put themselves on a separate Section 8 waiting list.

HUD Response: The comment was not accepted because the statute governing the project-based voucher program requires that PHAs select families to receive project-based assistance from its waiting list.

Comment: A number of commenters stated that they support protection for in-place families provided in § 983.251(b). One of these commenters stated that this provision would help prevent families from becoming homeless. Another commenter stated that an eligible family should have a choice between a voucher or relocation benefits. Another commenter stated that eligibility should be determined at the HAP execution stage, so that a family could become eligible during construction, and that HUD should consider making the residency determination at the proposal acceptance stage. Since the units can float, any ineligible units can be switched at the time of execution of the HAP contract. This commenter also stated that HUD should disregard in-place families when assessing a PHA's compliance with income-targeting requirements since these tenants are already in occupancy and constitute a continuing tenancy. Another commenter stated that it supports the minimizing displacement provision; however, because existing units will now be eligible for PBV, the ''inclusion of minimizing displacement should be available to the families of existing units selected for PBV.'' Another commenter, while expressing general support, also stated that some in-place families might not be appropriate for the project. For example, the in-place family may be a single individual and the project may be for chronically mentally ill homeless individuals. Another commenter stated that it supports approving existing housing with tenants in place. Otherwise, the supply of housing would be limited, and issues of preference usually get resolved on turnover. ''The benefits outweigh the slowing down of assistance to those on the waiting list.''

HUD Response: The suggestion regarding a choice between a voucher and relocation benefits was not adopted. This is because relocating an in-place family in these circumstances would be inconsistent with HUD's policy to minimize displacement. An in-place family cannot otherwise be placed ahead of others on a PHA's waiting list unless a PHA develops such a preference. The comment regarding establishing eligibility at the time of HAP execution would not be consistent with HUD policy to minimize

displacement and protect in-place tenants. Providing such protection is appropriate only when a decision is made to provide PBV assistance. It is for this reason that HUD determined that an in-place family must be eligible on the proposal selection date. The suggestion involving choosing appropriate in-place families cannot be considered because it would be inconsistent with civil rights laws. Specifically, the PHA's administrative plan cannot provide for a selection preference for the program based on a specific disability.

Comment: Two commenters stated that priority for in-place families for assistance needs to be balanced against the needs of the families on the waiting list, and suggests limiting the number of prioritized in-place families to 20 to 30 percent of the total. One commenter advocated ''allowing owners some discretion in determining which families are eligible for PBV assistance, consistent with administrative plan and waiting list policies.'' Another commenter stated that the section clarifying that PHAs must offer assistance to eligible in-place tenants who occupy proposed contract units will facilitate the use of PBVs to preserve existing housing. However, the rule should give PHAs the flexibility, between the time the Agreement and HAP are executed, to substitute new tenants as the in-place tenants. Also, PHAs should be allowed to select units with ineligible tenants and move the tenants to appropriate units. A commenter stated that the PHA should have flexibility to offer tenant-based vouchers to in-place families. Also, the rule should clarify whether in-place families have priority for the program or the particular project they occupy. A commenter stated that from a practical perspective, it will not ordinarily be necessary to use occupied units in partially assisted developments because of turnover. While there may be meritorious cases for using an occupied unit, a PHA could use this provision to steer assistance toward favored sites and tenants.

HUD Response: The suggestion to provide priority for only 20 to 30 percent of in-place families is contrary to HUD policy to minimize displacement. The law requires that PHAs determine eligibility of families under the project-based voucher program and PHA selection of families from the waiting list. The PHA must give in-place families that are eligible for assistance a selection preference to minimize displacement. When such families move out of the PBV unit, the unit will then become available for a waiting list family.

Comment: Proposed § 983.251(c) governs the selection of families from the PBV waiting list. One commenter stated that the rule should allow for preferences for persons with disabilities for units in which disabled individuals will be receiving specialized services if the persons are recognized by Congress as a protected class because of their disabilities. Placing preferences for these recognized classes would minimize the need for waivers. Another commenter stated that HUD, in supportive housing with ''wraparound services,'' should allow PHAs and owners to select the applicants who need the services and allow preferences based on eligibility for services offered at specific complexes. Another commenter stated that ''in some circumstances, supportive housing projects that serve people with disabilities that grant preference to applicants who are eligible for the supportive services offered may be entirely appropriate * * *''

HUD Response: HUD agrees with the commenters. HUD is revising this final rule to allow a selection preference for disabled persons in need of the services offered at a particular PBV project.

Comment: Proposed § 983.251(c)(3) provides for project or building-specific waiting lists. Three commenters stated that they support project-specific waiting lists. One commenter stated that it supported selection criteria for individual projects. Two commenters stated that ''we applaud the proposed rule's clear statement that a PHA may maintain project-specific waiting lists, a policy that is essential for permanent supportive housing to operate efficiently.'' Another commenter stated that it supports separate waiting lists for PBV units.

HUD Response: HUD agrees with the commenters. The rule gives PHAs the ability to establish project-specific waiting lists.

Comment: Two commenters objected to the income-targeting provision in proposed § 983.251(c)(6). One stated that the PBV program will create disincentives for PHAs because this section would require that 75 percent of families be extremely low-income. This will result in higher assistance payments and fewer families being served. Another commenter stated that income targeting should be removed entirely. It is not in line with upcoming budget reductions and does not allow PHAs to make decisions on how to spend their funding.

HUD Response: HUD has considered these comments but declines to adopt them for the following reason. Section 8(o)(13)(J) makes the statutory requirements governing income targeting applicable to the project-based voucher program. The income targeting requirements are program-wide requirements. PHAs need not apply the requirements on a project-by-project basis.

Comment: Commenters stated that § 983.251(c) should be revised to allow for preferences based on eligibility for supportive services being offered, while at the same time preserving, for persons with disabilities, the principle that participation in supportive services is voluntary. Two commenters agreed with preferences based on eligibility for supportive services and stated that the civil rights concepts embodied in Section 504 and part 982 regulations should be preserved in this rule.

These commenters recommended an additional paragraph be added to proposed § 983.251(c) providing that ''in appropriate circumstances to be determined by the PHA in its PHA plan * * * the PHA may adopt preferences on its project-specific lists for families who are eligible for the services to be offered in conjunction with an individual project, building, or set of units. However, the owner must permit occupancy by any qualified person with a disability who could benefit from the housing or services provided, regardless of the person's disability.''

HUD Response: HUD agrees. The final rule allows a selection preference for disabled persons in need of the services offered at the PBV project.

Comment: Proposed § 983.251(c)(5) provides that ''the PHA may place families referred by the PBV owner on its PBV waiting list.'' One commenter stated that this section should clarify that the PHA may not provide owner-referred families with any admission rights not enjoyed by other families. Otherwise, the owners would become the gatekeepers for the PBV program. This, the commenter argued, would be inappropriate. Another commenter stated that this section and proposed § 981.251(c)(3) (providing for separate project or building waiting lists) essentially negate (c)(1) (providing for selection from the PHA waiting list), and allow landlords to make referrals to a site-based list that can have its own preferences. This appears inconsistent with the statute and would allow individuals referred by the landlord to jump over the community-wide waiting list. Unlike public housing, there is no provision for civil rights monitoring of these lists. This commenter recommended certain revisions:

In proposed § 983.251(c)(3), strike the last sentence reading, ''In either case, the waiting list may establish criteria or

preferences for occupancy of particular units.''

Revise proposed § 983.251(c)(5) to read, ''Subject to its waiting list policies and selection preferences specified in the PHA administrative plan, the PHA may place families referred by the PBV owner on its PBV waiting list.''

HUD Response: HUD has considered these comments and believes that the commenters misunderstood HUD's intent. The PHA must administer its waiting list in accordance with its administrative plan that governs admission policies. The PHA may establish preferences for selecting families from its waiting list. The law governing the PBV program requires that families be selected from the PHA's waiting list and allows the PHA to place on its waiting list families referred by an owner. The statute further provides that a PHA may maintain a separate waiting list for a particular project.

Comment: Proposed § 983.251(c)(7) provides that in selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer to the owner those families that require such features (see 24 CFR 8.26 and 100.202). A commenter stated that this section should also include material regarding the owner's duties in connection with families that require accessibility features.

HUD Response: This commenter's suggestion was not adopted since a requirement to provide materials regarding owner's duties in connection with families that require accessibility features is beyond the scope of this rulemaking.

Comment: A commenter stated that the waiting list system should allow owner referrals during times of under-utilization and PHA referrals to owners during times of over-utilization. Another commenter stated that the rule should remove the requirement to use the PHA's waiting list when the project serves homeless or special needs populations, as such populations are not well-served by using PHA waiting lists.

HUD Response: The rule retains the proposed rule language. The statute requires that the PHA maintain waiting lists for project-based units. However, the PHA may use separate waiting lists for PBV units in individual projects or buildings or may use a single waiting list for the PHA's whole PBV program. PHAs may also give a selection preference for homeless individuals and homeless families.

Comment: Commenters stated that there is nothing in the rule to cover tenants who become over-income. This commenter states that there should be a 6-month grace period as in the tenant-based program, citing § 982.455 (which provides that the HAP contract terminates 180 days after the last housing assistance payment to the owner). Income changes may be temporary, or the family could relocate to a unit with higher gross rent for which they are eligible. One commenter states that a sentence should be added to proposed § 983.259 that reads ''if a family is over-income, subsidy shall be suspended for six months.''

HUD Response: HUD disagrees that there should be a 6-month grace period for families that no longer require housing assistance in a PBV unit. The provisions of Section 982.455 do not apply to the PBV program. If a unit is occupied by a family for which housing assistance is no longer required, the PHA has the option of removing this unit from the HAP contract or substituting the unit with a comparable unit in the building for occupancy by another eligible family in need rather than hold off on the use of the assistance for six months.

Comment: Proposed § 983.254(b) provides that if any contract units have been vacant for a period of 120 or more days since owner notice of vacancy, the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such a period. One commenter stated that HUD should clarify that this reduction is not the same as termination of the HAP, but merely an adjustment to the payment. In addition, HUD should make clear that the PHA would still have the duty to fully utilize its Section 8 funding in some manner, such as in the tenant-based program. The commenter based this argument on 42 U.S.C. 1439(a) and 42 U.S.C. 1437f(o)(K). One commenter stated that it should be more clearly stated that the PHA may not reduce the units under HAP contract if the units have been vacant 120 days or more due to the PHA's failure to refer a sufficient number of families to owner.

HUD Response: HUD has considered the comment, but is not adopting it for the following reasons. HUD believes that the regulation is clear upon scrutiny. A reduction in the number of units under the PBV HAP contract is not synonymous with termination of the HAP contract. Funding utilization is the responsibility of the PHA regardless of whether the vouchers are project-based or tenant-based. Since the owner can refer families to the PHA's waiting list for PBV, HUD disagrees that units should not be removed from the HAP contract if the units have been vacant 120 days or more due to the PHA's failure to refer a sufficient number of families to the owner. Additionally, subject to a PHA's policy on vacancy payments, an owner is not receiving subsidy on units that remain unoccupied and the PHA can remove such units from the HAP contract.

Comment: Proposed § 983.256(c)(3) states that the lease must state ''the term of the lease (initial term and any provision for renewal).'' One commenter stated that this section should be revised to require a renewal provision in the lease or tenancy addendum.

HUD Response: The lease used in the PBV program is comparable to lease requirements in the tenant-based program. HUD does not require specific renewal provisions in the lease or tenancy addendum since this is a matter of local rental practice and is up to the owner.

Comment: Proposed § 983.257 states that ''Section 982.310 of this chapter applies with the exception that § 982.310(d)(1)(iii) and (iv) does not apply to the PBV program. (In the PBV program, ''good cause'' does not include a business or economic reason or desire to use the unit for personal, family, or a non-residential rental purpose.)'' Two commenters stated that ''we do not understand why in the PBV program it would not be good cause to terminate a tenancy for business or economic reasons similar to the voucher program.''

HUD Response: In the tenant-based program, each HAP contract is for a specific unit. In the project-based program, most HAP contracts will be for more than one unit. Since HAP contracts under the PBV program will be for multiple units, the owner cannot claim a business or economic reason to terminate a tenancy since the unit is obligated, under any HAP contract, to be an assisted unit for the term of the contract. The regulation provides, however, that if the owner terminates a lease without good cause, the unit must be removed from the housing assistance payments contract.

Comment: Two commenters stated that HUD should use 24 CFR part 247 (which applies to section 221(d)(3) and (d)(5) below market interest rate projects; projects under section 236 of the National Housing Act; and projects under section 202 of the Housing Act of 1959) as the rule for termination. Part 247 requires good cause for termination, and the proposed section does not. Under the proposal, an owner can in effect capriciously remove a tenant from the PBV program and force the tenant into the tenant-based program. One

commenter also stated that as an alternative, if HUD does not adopt the standard in 24 CFR part 247, HUD should add a clause in § 983.256 of this final rule that would require owners to offer lease renewal unless they have good cause to do otherwise. One commenter also stated that good cause should be required for termination of tenancy.

HUD Response: The final rule clarifies provisions on lease termination in response to comments. As a general matter, 24 CFR 982.310 (other than paragraphs (d)(1)(iii) and (iv)) applies and describes the events that constitute good cause for lease termination. Final § 983.257(b) describes the owner's options upon lease expiration: To renew the lease; refuse to renew for ''good cause'' as defined; or refuse to renew without good cause, in which case the PHA would provide the family with a tenant-based voucher and remove the unit from the HAP contract. In this latter case, the unit would be removed from the PBV HAP contract. HUD believes that these changes clarify the issue.

Comment: Proposed § 983.259 provides that if the PHA determines that a family is occupying a wrong-size unit, the PHA must offer the family the opportunity to receive continued housing assistance in another unit. This assistance may be in the form of another Section 8 project-based unit, tenant-based voucher assistance, or other comparable project-based or tenant-based assistance.

Two commenters stated that wrong-size unit termination provision is unfair to the project when the fault is with the family and not the owner. The owner should be able to evict the family under these circumstances. The same should apply when the PHA offers the family other comparable assistance and the family fails to act on the offer.

Referring to relocation from a wrong-size unit, a commenter stated that tenants should have more choice of the replacement assistance to be provided and the right to reject a unit for good cause, and that the rule should require the PHA to offer an appropriately sized affordable unit. Also, if an appropriate alternate unit is identified, the tenant should have an opportunity to reject the unit for good cause. This commenter asks that current § 983.205(b), which provides many of these features, be retained in this rule.

HUD Response: HUD considered but did not adopt these comments for the following reasons. Although the owner may evict a family in accordance with the lease, the PHA must terminate assistance for any unit occupied by an ineligible family once sufficient time is provided on a tenant-based voucher, or another form of comparable assistance is offered to the family and then refused. HUD disagrees that a family should have the right to reject the offer of another PBV or comparable unit for cause, as that would prolong the time until the unit could be made available to another needy family. However, the regulation in Section 983.259(c)(2) does not preclude the PHA from establishing a policy on unit offers when offering another form of continued housing assistance.

Comment: Proposed § 983.260 gives the family a right to move with tenant-based assistance after one year in the project-based unit. One commenter stated that the occupancy period before the option to move should be extended to two years, because many project-based programs have a supportive services option that goes beyond one year. In addition, other project-based units should be given as a moving option. Finally, the rule should include tenant protection so that tenants don't pay more rent than they would in the voucher program. Another commenter stated that this provision should be changed in the case of transitional supportive housing so that the tenant is encouraged to complete the tenant's services plan before moving. Also, the PHA should be able to substitute other comparable housing. Another commenter stated that it supported the option to move after 12 months, however, there should be stronger language requiring owners to fulfill their PBV commitments before issuing vouchers to families that wish to move, and the PHA must have sufficient funding to fill the vacated unit. One commenter stated that it supports the ability of a family to leave with a tenant-based voucher because it will be an incentive to participate in transitional housing programs.

HUD Response: The right of tenants to move after one year is statutory and cannot be revised in the manner suggested. Transitional housing is not a factor because, as noted above, transitional housing often has requirements incompatible with this aspect of the PBV program, and hence is not eligible for assistance under this program.

Comment: Three commenters stated that the provision allowing families to move after 12 months should be eliminated. It will complicate waiting lists, contradict PHA preferences, and restrict capacity for assistance. Owners may be reluctant to participate knowing they could lose their tenants in a year, and families could circumvent the tenant-based waiting list. It adversely impacts the PHA and allows applicants to jump the waiting list.

HUD Response: Tenant mobility after 12 months is a statutory requirement and cannot be eliminated. However, when the family moves out of a unit with project-based assistance, the PHA is required to refer other families to the owner to be selected to occupy vacated units.

Comment: Proposed § 983.260(a) would have provided that ''if the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.'' A commenter stated that there should be good cause exceptions allowing family to move within the first year.

HUD Response: The comment is not adopted. The statute provides only for continued assistance under the tenant-based voucher program or other comparable assistance after the family has occupied the dwelling unit under a PBV HAP contract for 12 months. This final rule places this statement in a new § 983.260(d).

Comment: Commenters stated that, to follow § 504 and HUD's ADA regulations and avoid unnecessary concentration and isolation of persons with disabilities, the rule should adopt project size limits for persons with disabilities similar to the 811 program Notice of Funding Availability (NOFA). These commenters suggested a new § 983.263 be added setting size limits for buildings serving disabled persons. Independent living projects would be capped at 24 PBV units serving persons with disabilities. Group homes serving persons with disabilities would be capped at six PBV units. The language would also include criteria for the HUD field office to grant exceptions to these limits.

HUD Response: HUD disagrees with comments that would unduly restrict the PBV program by limiting the size of buildings or group homes occupied by persons with disabilities.

Comment: Proposed § 983.261(c) provides that a family residing in an excepted unit that no longer meets the criteria for a ''qualifying family'' in connection with the 25 percent per building cap exception must vacate the unit within a reasonable period of time established by the PHA. Four commenters stated that the rule should also state that a family in an excepted unit (that is, a unit excepted from the 25 percent cap on project basing) not in compliance with its FSS obligations can be evicted.

HUD Response: The law requires that excepted units must be made available to families that receive services. If the

family no longer qualifies for the excepted unit because it is in non-compliance with its obligations to receive supportive services, the PHA may terminate assistance on that basis. (See final § 983.261(c)). If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. (See final § 983.261(d)).

Subpart G—Rent to Owner (§§ 983.301–983.305)

Comment: A commenter stated that ''we do not favor the proposed rent limits,'' that is, the higher of 110 percent FMR or the HUD-approved exception rent. These limits are too restrictive, and will limit project basing to the lower end of the market and interfere with income mixing. Another commenter agreed and stated that while there are sharp reductions in payment standards due to budgetary concerns, FMRs are not falling. The program will not attract quality developers and favorable financing. Two commenters stated that the statute allows for a different payment standard, as well as a higher payment standard, as long as the rent reasonableness test is met. Two other commenters stated that they object to § 983.301(b)(1) as unjustifiably eliminating flexibility to use a higher range of payment standard in particular cases. Such a rule will reduce the willingness of landlords to enter the program and thus have the opposite effect of encouraging PHAs to set higher payment standards across the board, potentially increasing overall costs. One of these commenters stated that §§ 983.205(d) and 983.302(c) should be deleted, and §§ 983.301(a)(3) and 983.301(b) should be revised to read as follows (new material is in *italics*):

§ 983.301(a)(3): The rent to owner is redetermined *at the request of the owner and not more frequently than the annual* contract anniversary in accordance with this section and § 983.302.

§ 983.301(b): ''*Amount of rent to owner.* Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) *110 percent of the fair market rent* for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner; *except that the rent to owner never is required to be less than the initial approved rent to owner.*

Another commenter also stated that the rents should be required to be redetermined only at the request of the owner and that the requirement to annually redetermine rent be removed.

HUD Response: The final rule provides that the rent to owner may be established in accordance with the statutory maximum. Thus, the final rule provides at Section 983.301(b):

Amount of rent to owner. Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

Comment: One commenter stated that the rent provisions take away the PHA's flexibility to set rents by limiting the rents to the existing tenant-based payment standard. By statute, PHAs have authority to raise the rent to the higher of 110 percent of FMR or the PHA's payment standard. Two commenters stated that in economically robust areas the maximum rent of 110 percent of FMR is more appropriate, and rent reasonableness checks will keep a PHA from overpaying. Three other commenters made similar comments.

HUD Response: The commenters' concerns have been addressed in the HUD response immediately above.

Comment: One commenter stated that proposed § 983.301(a)(3) should be rewritten to state: ''The rent to owner is determined at the request of the owner and not more frequently than the annual contract anniversary in accordance with this section and § 983.302.''

HUD Response: The final rule addresses the commenter's concern. It provides that the rent to owner shall be redetermined when the owner requests an increase in the rent to owner at the annual anniversary of the HAP contract or when there is a 5 percent decrease in the published FMR.

Comment: Two commenters stated that limiting rents to the PHA payment standard means that if the payment standard is reduced, rents must be reduced. This provision of the rule seems contrary to the statutory provision on rent adjustments (8)(o)(13)(I)). If this provision remains it would likely discourage owner willingness to accept PBV contracts. In addition, lack of rent stability would make it hard to leverage additional financing.

A number of commenters stated that § 983.301(b) should state that the PHA may establish a separate payment standard for a PBV project.

HUD Response: HUD agrees and is adopting an FMR-based standard as described in the above responses.

Comment: Proposed § 983.301(c) provides for a different rent-to-owner calculation for certain LIHTC units. Three commenters stated that the higher rent for LIHTC units appears to apply only when there are LIHTC units not receiving PBV assistance. This appears to prohibit the higher tax credit rent for buildings that are 100 percent PBV. These commenters stated that for projects for the elderly, persons with disabilities, and families receiving supportive services, HUD should determine what the maximum tax credit rent would be and set the rent accordingly. One commenter stated that the rule runs counter to the Department's existing treatment of Section 8 assistance in conjunction with LIHTCs. As currently proposed, the rule would lead to concentration in qualified census tracts. Low-income families need services and those services must be supported by project rents. This commenter recommends that HUD adhere to its existing treatment of Section 8 assistance with LIHTCs in PIH notices 2003–32 and 2002–22.

HUD Response: HUD has determined that it is inappropriate to allow owners to collect higher rents from voucher families than they are allowed to collect from tax credit families. HUD has determined that allowing higher rents would result in a duplicative subsidy. Accordingly, LIHTC projects under 24 CFR 983.304(c)(1)(v) will be treated in the same manner as Section 236 and Section 221(d)(3) below-market interest rate (BMIR) projects. HUD believes that the rule text, as drafted, accurately reflects the language of § 8(o)(13)(H) of the 1937 Act (42 U.S.C. 1437f(o)(13)(H)).

Comment: One commenter stated that proposed § 983.301(f)(2) (providing that the PHA may not apply different payment standard and utility allowance amounts in the project-based and tenant-based programs) is inconsistent with the statute.

HUD Response: HUD considered the comment regarding utility allowance schedules, but is not adopting it. The final rule provides that the PHAs may not establish rents under the PBV program that differ from the PHAs' tenant-based payment standards. The statute governing the PBV program is silent on utility allowance schedules. Utility allowance schedules are

determined based on community rates and average consumption. It is therefore not necessary to establish separate utility allowance schedules for the PBV program.

Comment: Proposed § 983.302 provides for an annual redetermination of the rent to owner prior to the annual anniversary of the HAP contract. A number of commenters stated that § 982.302(c) should be deleted from the rule because it is contrary to statute and would discourage owners, lenders, and investors from program participation. This section states that if the annual redetermination shows that the rent to the owner has decreased, the actual rent to the owner must be decreased regardless of whether the owner has requested an adjustment.

HUD Response: HUD disagrees with the interpretation that the proposed § 983.302(c) is contrary to the statute. HUD believes that any rent adjustments under the statute may not exceed the maximum permitted under the law (*i.e.*, an amount determined by the PHA, not to exceed 110 percent of the applicable FMR (or any exception payment standard approved by the Secretary)) and that the statute does not limit adjustments to upward adjustments. Nonetheless, to accommodate the commenter's concerns, the final rule provides that upon an owners request for a rent adjustment or when there is a 5 percent or greater decrease in the published FMR, rents shall be redetermined.

Comment: In proposed § 983.301(c)(3) on LIHTC rents, the word ''chargeable'' would be better than the word ''charged'' in the phrase ''the 'tax credit rent' is the rent charged for comparable units of the same bedroom size* * *'' *HUD Response:* The comment was considered but not adopted. The use of the word ''charged'' appropriately conveys the definition of tax credit rent that the owner is collecting for the unit.

Comment: Proposed § 983.303 provides that the rent to owner must not exceed the reasonable rent as determined by the PHA. Three commenters, while agreeing that rents are subject to the rent reasonableness test, stated that the rule establishes numerous times at which the PHA must determine rent reasonableness. This, the three commenters argued, is unduly burdensome and will inhibit participation in the program by lenders and investors. HUD should require only an annual determination, they argued. Another commenter stated that a rent comparability study should be conducted initially and then once every 5 years, except where an upward rent adjustment is proposed. No statutory section requires annual redeterminations of rent during a contract unless rents are increased. One commenter stated that PHAs should be required only once a year to determine rent reasonableness and at the time a new PBV contract is executed. Another commenter stated that two comparables, rather than three, should be required. Another commenter stated that rent, once determined to be reasonable, should not be redetermined at no less than 3-year intervals. Another commenter stated that the requirement that rents be redetermined annually will result in reduced rent to the owner if the payment standard is reduced. This is contrary to section 8(o)(13)(I) of the 1937 Act, which delegates rent determinations to the PHA and to the owner. Furthermore, this provision will make it difficult to use PBV with HOME funds because it is inconsistent with HOME regulations.

HUD Response: The final rule retains the requirements concerning rent reasonableness determinations. Section 8(o)(10)(A) of the United States Housing Act of 1937 requires that rents under the program be reasonable. The implication is that rents must be reasonable at all times. The circumstances under which a PHA is required to redetermine rent reasonableness under the PBV program are not overly burdensome. The final rule also retains the requirement that three comparables must be used. Three comparables, as opposed to two, will more accurately reflect market rental conditions.

Comment: Proposed § 983.304 provides that in the case of projects with HOME funds or other subsidies, the PBV rent may not exceed the rent permitted under the other subsidy program. Four commenters stated objections to this section. This section would appear to authorize PHAs to continue an ongoing subsidy layering review that would create uncertainty with respect to rent levels and discourage participation by private lenders and investors. Two commenters stated that an owner interested in preservation should be able to seek a waiver to allow a Section 236 subsidy in a partially assisted Section 8 project to be allocated to the units with no Section 8 assistance. These commenters state that in § 983.304(b)(2) the words ''subsidized'' and ''(basic rent)'' should be deleted. One commenter stated that § 983.304(d) lacks clarity and suggests a revision to § 983.304(d)(the new material is in *italics*):

''At its discretion, a PHA may reduce the initial rent to owner *to reflect the assumptions used in the award of other subsidy,* including tax credit or tax exemption, grants, or other subsidized financing.''

HUD Response: Rents at projects receiving other forms of subsidy (*e.g.* Section 236) combined with project-based voucher assistance are restricted to the rent restrictions of the applicable subsidized program. Thus, the PBV rent may not exceed the subsidized rent established under the procedures for other subsidized programs.

Subpart H—Payment to Owner

Comment: Proposed § 983.351(b) provides for monthly payments to the owner for each unit that complies with HQS and is leased to and occupied by an eligible family. Four commenters stated that this provision should also indicate that the PHA will include any vacancy payments that it has previously agreed to provide in its monthly assistance payment to the owner.

HUD Response: HUD has considered this comment and is not adopting it. Section 983.351 is titled ''PHA payment to owner for *occupied unit* (emphasis added).'' Units for which an owner is receiving vacancy payments are not occupied and are discussed in Section 983.352.

Comment: Proposed § 983.352(b) provides for vacancy payments at the discretion of the PHA. One commenter stated that vacancy payments should be mandatory for all PHAs.

HUD Reponse: The statute governing the PBV program requires that if the HAP contract allows for vacancy payments, that such payments may be made at a PHA's discretion.

Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled ''Regulatory Planning and Review''). OMB determined that this rule is a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection between the hours of 8 a.m. and 5 p.m. in the Office of Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The undersigned, in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)), has reviewed and

approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule is exclusively concerned with PHAs that administer tenant-based housing assistance under section 8 of the United States Housing Act of 1937. Specifically, the rule would give PHAs the option of project-basing up to 20 percent of their annual budget authority under the tenant-based program. Under the definition of ''Small governmental jurisdiction'' in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). This Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of Regulations, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the public comments by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number).

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This final rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this rule is 14.871.

List of Subjects in 24 CFR Part 983

Grant programs—housing and community development, Low- and moderate-income housing, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR part 983 to read as follows:

■ 1. Revise 24 CFR part 983 to read as follows:

PART 983—PROJECT–BASED VOUCHER (PBV) PROGRAM

Subpart A—General

Sec.

Subpart B—Selection of PBV Owner Proposals

Subpart C—Dwelling Units

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

Subpart E—Housing Assistance Payments Contract

Subpart F—Occupancy

Subpart G—Rent to owner

Subpart H—Payment to Owner

Authority: 42 U.S.C. 1437f and 3535(d).

Subpart A—General

§ 983.1 When the PBV rule (24 CFR part 983) applies.

Part 983 applies to the project-based voucher (PBV) program. The PBV program is authorized by section 8(o)(13) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f(o)(13)).

§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.

(a) *24 CFR Part 982.* Part 982 is the basic regulation for the tenant-based voucher program. Paragraphs (b) and (c) of this section describe the provisions of part 982 that do not apply to the PBV program. The rest of part 982 applies to the PBV program. For use and

applicability of voucher program definitions at § 982.4, see § 983.3.

(b) *Types of 24 CFR part 982 provisions that do not apply to PBV.* The following types of provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) Provisions on issuance or use of a voucher;

(2) Provisions on portability;

(3) Provisions on the following special housing types: shared housing, cooperative housing, manufactured home space rental, and the homeownership option.

(c) *Specific 24 CFR part 982 provisions that do not apply to PBV assistance.* Except as specified in this paragraph, the following specific provisions in 24 CFR part 982 do not apply to PBV assistance under part 983.

(1) In subpart E of part 982: paragraph (b)(2) of § 982.202 and paragraph (d) of § 982.204;

(2) Subpart G of part 982 does not apply, with the following exceptions:

(i) Section 982.10 (owner temination of tenancy) applies to the PBV Program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(ii) Section 982.312 (absence from unit) applies to the PBV Program, but to the extent that those provisions differ from § 983.256(g), the provisions of § 983.256(g) govern; and

(iii) Section 982.316 (live-in aide) applies to the PBV Program;

(3) Subpart H of part 982;

(4) In subpart I of part 982: § 982.401(j); paragraphs (a)(3), (c), and (d) of § 982.402; § 982.403; § 982.405(a); and § 982.406;

(5) In subpart J of part 982: § 982.455;

(6) Subpart K of Part 982: subpart K does not apply, except that the following provisions apply to the PBV Program:

(i) Section 982.503 (for determination of the payment standard amount and schedule for a Fair Market Rent (FMR) area or for a designated part of an FMR area). However, provisions authorizing approval of a higher payment standard as a reasonable accommodation for a particular family that includes a person with disabilities do not apply (since the payment standard amount does not affect availability of a PBV unit for occupancy by a family or the amount paid by the family);

(ii) Section 982.516 (family income and composition; regular and interim examinations);

(iii) Section 982.517 (utility allowance schedule);

(7) In subpart M of part 982:

(i) Sections 982.603, 982.607, 982.611, 982.613(c)(2); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), cooperative housing (§ 982.619), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

§ 983.3 PBV definitions.

(a) *Use of PBV definitions.* (1) *PBV terms (defined in this section).* This section defines PBV terms that are used in this part 983. For PBV assistance, the definitions in this section apply to use of the defined terms in part 983 and in applicable provisions of 24 CFR part 982. (Section 983.2 specifies which provisions in part 982 apply to PBV assistance under part 983.)

(2) *Other voucher terms (terms defined in 24 CFR 982.4).* (i) The definitions in this section apply instead of definitions of the same terms in 24 CFR 982.4.

(ii) Other voucher terms are defined in § 982.4, but are not defined in this section. Those § 982.4 definitions apply to use of the defined terms in this part 983 and in provisions of part 982 that apply to part 983.

(b) *PBV definitions. 1937 Act.* The United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*).

Activities of daily living. Eating, bathing, grooming, dressing, and home management activities.

Admission. The point when the family becomes a participant in the PHA's tenant-based or project-based voucher program (initial receipt of tenant-based or project-based assistance). After admission, and so long as the family is continuously assisted with tenant-based or project-based voucher assistance from the PHA, a shift from tenant-based or project-based assistance to the other form of voucher assistance is not a new admission.

Agreement to enter into HAP contract (Agreement). The Agreement is a written contract between the PHA and the owner in the form prescribed by HUD. The Agreement defines requirements for development of housing to be assisted under this section. When development is completed by the owner in accordance with the Agreement, the PHA enters into a HAP contract with the owner. The Agreement is not used for existing housing assisted under this section. HUD will keep the public informed about changes to the Agreement and other forms and contracts related to this program through appropriate means.

Assisted living facility. A residence facility (including a facility located in a larger multifamily property) that meets all the following criteria:

(1) The facility is licensed and regulated as an assisted living facility by the state, municipality, or other political subdivision;

(2) The facility makes available supportive services to assist residents in carrying out activities of daily living; and

(3) The facility provides separate dwelling units for residents and includes common rooms and other facilities appropriate and actually available to provide supportive services for the residents.

Comparable rental assistance. A subsidy or other means to enable a family to obtain decent housing in the PHA jurisdiction renting at a gross rent that is not more than 40 percent of the family's adjusted monthly gross income.

Contract units. The housing units covered by a HAP contract.

Development. Construction or rehabilitation of PBV housing after the proposal selection date.

Excepted units (units in a multifamily building not counted against the 25 percent per-building cap). See § 983.56(b)(2)(i).

Existing housing. Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date. (The units must fully comply with the HQS before execution of the HAP contract.)

Household. The family and any PHA-approved live-in aide.

Housing assistance payment. The monthly assistance payment for a PBV unit by a PHA, which includes:

(1) A payment to the owner for rent to owner under the family's lease minus the tenant rent; and

(2) An additional payment to or on behalf of the family, if the utility allowance exceeds the total tenant payment, in the amount of such excess.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the program. See 24 CFR 982.401.

Lease. A written agreement between an owner and a tenant for the leasing of a PBV dwelling unit by the owner to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

Multifamily building. A building with five or more dwelling units (assisted or unassisted).

Newly constructed housing. Housing units that do not exist on the proposal selection date and are developed after the date of selection pursuant to an Agreement between the PHA and owner for use under the PBV program.

Partially assisted building. A building in which there are fewer contract units than residential units.

PHA-owned unit. A dwelling unit owned by the PHA that administers the voucher program. PHA-owned means that the PHA or its officers, employees, or agents hold a direct or indirect interest in the building in which the unit is located, including an interest as titleholder or lessee, or as a stockholder, member or general or limited partner, or member of a limited liability corporation, or an entity that holds any such direct or indirect interest.

Premises. The building or complex in which the contract unit is located, including common areas and grounds.

Program. The voucher program under section 8 of the 1937 Act, including tenant-based or project-based assistance.

Proposal selection date. The date the PHA gives written notice of PBV proposal selection to an owner whose proposal is selected in accordance with the criteria established in the PHA's administrative plan.

Qualifying families (for purpose of exception to 25 percent per-building cap). See § 983.56(b)(2)(ii).

Rehabilitated housing. Housing units that exist on the proposal selection date, but do not substantially comply with the HQS on that date, and are developed, pursuant to an Agreement between the PHA and owner, for use under the PBV program.

Rent to owner. The total monthly rent payable by the family and the PHA to the owner under the lease for a contract unit. Rent to owner includes payment for any housing services, maintenance, and utilities to be provided by the owner in accordance with the lease. (Rent to owner must not include charges for non-housing services including payment for food, furniture, or supportive services provided in accordance with the lease.)

Responsible entity (RE) (for environmental review). The unit of general local government within which the project is located that exercises land use responsibility or, if HUD determines this infeasible, the county or, if HUD determines that infeasible, the state.

Single-family building. A building with no more than four dwelling units (assisted or unassisted).

Site. The grounds where the contract units are located, or will be located after development pursuant to the Agreement.

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

State-certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a state that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The state's criteria must include a requirement that the individual has achieved a satisfactory grade upon a state-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331–3352), the individual must comply with any additional standards for state-certified appraisers imposed by HUD.

Tenant-paid utilities. Utility service that is not included in the tenant rent (as defined in 24 CFR 982.4), and which is the responsibility of the assisted family.

Total tenant payment. The amount described in 24 CFR 5.628.

Utility allowance. See 24 CFR 5.603.

Utility reimbursement. See 24 CFR 5.603.

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being is too large or too small compared to the guideline.

§ 983.4 Cross-reference to other Federal requirements.

The following provisions apply to assistance under the PBV program.

Civil money penalty. Penalty for owner breach of HAP contract. See 24 CFR 30.68.

Debarment. Prohibition on use of debarred, suspended, or ineligible contractors. See 24 CFR 5.105(c) and 24 CFR part 24.

Definitions. See 24 CFR part 5, subpart D.

Disclosure and verification of income information. See 24 CFR part 5, subpart B.

Environmental review. See 24 CFR parts 50 and 58 (see also provisions on PBV environmental review at § 983.58).

Fair housing. Nondiscrimination and equal opportunity. See 24 CFR 5.105(a) and section 504 of the Rehabilitation Act.

Fair market rents. See 24 CFR part 888, subpart A.

Fraud. See 24 CFR part 792. PHA retention of recovered funds.

Funds. See 24 CFR part 791. HUD allocation of voucher funds.

Income and family payment. See 24 CFR part 5, subpart F (especially § 5.603 (definitions), § 5.609 (annual income), § 5.611 (adjusted income), § 5.628 (total tenant payment), § 5.630 (minimum rent), § 5.603 (utility allowance), § 5.603 (utility reimbursements), and § 5.661 (section 8 project-based assistance programs: approval for police or other security personnel to live in project).

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to an Agreement covering nine or more assisted units.

Lead-based paint. Regulations implementing the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846) and the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856). See 24 CFR part 35, subparts A, B, H, and R.

Lobbying restriction. Restrictions on use of funds for lobbying. See 24 CFR 5.105(b).

Noncitizens. Restrictions on assistance. See 24 CFR part 5, subpart E.

Program accessibility. Regulations implementing Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). See 24 CFR parts 8 and 9.

Relocation assistance. Regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655). See 49 CFR part 24.

Section 3—Training, employment, and contracting opportunities in development. Regulations implementing Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u). See 24 CFR part 135.

Uniform financial reporting standards. See 24 CFR part 5, subpart H.

Waiver of HUD rules. See 24 CFR 5.110.

§ 983.5 Description of the PBV program.

(a) *How PBV works.* (1) The PBV program is administered by a PHA that already administers the tenant-based voucher program under an annual contributions contract (ACC) with HUD. In the PBV program, the assistance is ''attached to the structure.'' (See description of the difference between ''project-based'' and ''tenant-based'' rental assistance at 24 CFR 982.1(b).)

(2) The PHA enters into a HAP contract with an owner for units in existing housing or in newly constructed or rehabilitated housing.

(3) In the case of newly constructed or rehabilitated housing, the housing is developed under an Agreement between the owner and the PHA. In the Agreement, the PHA agrees to execute a HAP contract after the owner completes the construction or rehabilitation of the units.

(4) During the term of the HAP contract, the PHA makes housing assistance payments to the owner for units leased and occupied by eligible families.

(b) *How PBV is funded.* (1) If a PHA decides to operate a PBV program, the PHA's PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA's voucher ACC. This pool of funding is used to pay housing assistance for both tenant-based and project-based voucher units and to pay PHA administrative fees for administration of tenant-based and project-based voucher assistance.

(2) There is no special or additional funding for project-based vouchers. HUD does not reserve additional units for project-based vouchers and does not provide any additional funding for this purpose.

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a project-based voucher program. HUD approval is not required.

§ 983.6 Maximum amount of PBV assistance.

(a) The PHA may select owner proposals to provide project-based assistance for up to 20 percent of the amount of budget authority allocated to the PHA by HUD in the PHA voucher program. PHAs are not required to reduce the number of PBV units selected under an Agreement or HAP contract if the amount of budget authority is subsequently reduced.

(b) All PBC and project-based voucher units for which the PHA has issued a notice of proposal selection or which are under an Agreement or HAP contract for PBC or project-based voucher assistance count against the 20 percent maximum.

(c) The PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC.

§ 983.7 Uniform Relocation Act.

(a) *Relocation assistance for displaced person.* (1) A displaced person must be provided relocation assistance at the levels described in and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24.

(2) The cost of required relocation assistance may be paid with funds provided by the owner, or with local public funds, or with funds available from other sources. Relocation costs may not be paid from voucher program funds; however, provided payment of relocation benefits is consistent with state and local law, PHAs may use their administrative fee reserve to pay for relocation assistance after all other program administrative expenses are satisfied. Use of the administrative fee reserve in this manner must be consistent with legal and regulatory requirements, including the requirements of 24 CFR 982.155 and other official HUD issuances.

(b) *Real property acquisition requirements.* The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B.

(c) *Responsibility of PHA.* The PHA must require the owner to comply with the URA and 49 CFR part 24.

(d) *Definition of initiation of negotiations.* In computing a replacement housing payment to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the Agreement between the owner and the PHA.

§ 983.8 Equal opportunity requirements.

(a) The PBV program requires compliance with all equal opportunity requirements under federal law and regulation, including the authorities cited at 24 CFR 5.105(a).

(b) The PHA must comply with the PHA Plan civil rights and affirmatively furthering fair housing certification submitted by the PHA in accordance with 24 CFR 903.7(o).

§ 983.9 Special housing types.

(a) *Applicability.* (1) For applicability of rules on special housing types at 24 CFR part 982, subpart M, see § 983.2.

(2) In the PBV program, the PHA may not provide assistance for shared housing, cooperative housing, manufactured home space rental, or the homeownership option.

(b) *Group homes.* A group home may include one or more group home units. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

§ 983.10 Project-based certificate (PBC) program.

(a) *What is it?* ''PBC program'' means project-based assistance attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001, and in accordance with:

(1) The regulations for the PBC program at 24 CFR part 983, codified as of May 1, 2001 and contained in 24 CFR part 983 revised as of April 1, 2002; and

(2) Section 8(d)(2) of the 1937 Act, as in effect before October 21, 1998 (the date of enactment of Title V of Public Law 105–276, the Quality Housing and Work Responsibility Act of 1998, codified at 42 U.S.C. 1437 *et seq.*).

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983 codified as of May 1, 2001, except that 24 CFR 983.151(c) on renewals does not apply. Consistent with the PBC HAP, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

Subpart B—Selection of PBV Owner Proposals

§ 983.51 Owner proposal selection procedures.

(a) *Procedures for selecting PBV proposals.* The PHA administrative plan must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing (§§ 983.53 and 983.54), complies with the cap on the number of PBV units per building (§ 983.56), and meets the site selection standards (§ 983.57).

(b) *Selection of PBV proposals.* The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

(1) PHA request for PBV Proposals. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.

(2) Selection of a proposal for housing assisted under a federal, state, or local government housing assistance,

community development, or supportive services program that requires competitive selection of proposals (*e.g.*, HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

(c) *Public notice of PHA request for PBV proposals.* If the PHA will be selecting proposals under paragraph (b)(1) of this section, PHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

(d) *PHA notice of owner selection.* The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

(e) *PHA-owned units.* A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. Under no circumstances may PBV assistance be used with a public housing unit.

(f) *Public review of PHA selection decision documentation.* The PHA must make documentation available for public inspection regarding the basis for the PHA selection of a PBV proposal.

§ 983.52 Housing type.

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement.

(a) *Existing housing*—A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with Subpart D of this part do not qualify as existing housing.

(b) Subpart D of this part applies to newly constructed and rehabilitated housing.

§ 983.53 Prohibition of assistance for ineligible units.

(a) *Ineligible unit.* The PHA may not attach or pay PBV assistance for units in the following types of housing:

(1) Shared housing;

(2) Units on the grounds of a penal, reformatory, medical, mental, or similar public or private institution;

(3) Nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care. However, the PHA may attach PBV assistance for a dwelling unit in an assisted living facility that provides home health care services such as nursing and therapy for residents of the housing;

(4) Units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students of the institution;

(5) Manufactured homes;

(6) Cooperative housing; and

(7) Transitional Housing.

(b) *High-rise elevator project for families with children.* The PHA may not attach or pay PBV assistance to a high-rise elevator project that may be occupied by families with children unless the PHA initially determines there is no practical alternative, and HUD approves such finding. The PHA may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis.

(c) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing.

(d) *Prohibition against selecting unit occupied by an ineligible family.* Before a PHA selects a specific unit to which assistance is to be attached, the PHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance. The PHA must not select or enter into an Agreement or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

§ 983.54 Prohibition of assistance for units in subsidized housing.

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

(a) A public housing dwelling unit;

(b) A unit subsidized with any other form of Section 8 assistance (tenant-based or project-based);

(c) A unit subsidized with any governmental rent subsidy (a subsidy that pays all or any part of the rent);

(d) A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

(e) A unit subsidized with Section 236 rental assistance payments (12 U.S.C. 1715z–1). However, the PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments;

(f) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the PHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);

(g) A Section 202 project for non-elderly persons with disabilities (assistance under Section 162 of the Housing and Community Development Act of 1987, 12 U.S.C. 1701q note);

(h) Section 811 project-based supportive housing for persons with disabilities (42 U.S.C. 8013);

(i) Section 202 supportive housing for the elderly (12 U.S.C. 1701q);

(j) A Section 101 rent supplement project (12 U.S.C. 1701s);

(k) A unit subsidized with any form of tenant-based rental assistance (as defined at 24 CFR 982.1(b)(2)) (*e.g.*, a unit subsidized with tenant-based rental assistance under the HOME program, 42 U.S.C. 12701 *et seq.*);

(l) A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or by the PHA in accordance with HUD requirements. For this purpose, ''housing subsidy'' does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering)

housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

(b) *When subsidy layering review is conducted.* The PHA may not enter an Agreement or HAP contract until HUD or an independent entity approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

(c) *Owner certification.* The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

§ 983.56 Cap on number of PBV units in each building.

(a) *25 percent per building cap.* Except as provided in paragraph (b) of this section, the PHA may not select a proposal to provide PBV assistance for units in a building or enter into an Agreement or HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building that will receive PBV assistance during the term of the PBV HAP is more than 25 percent of the number of dwelling units (assisted or unassisted) in the building.

(b) *Exception to 25 percent per building cap.* (1) *When PBV units are not counted against cap.* In the following cases, PBV units are not counted against the 25 percent per building cap:

(i) Units in a single-family building;

(ii) Excepted units in a multifamily building.

(2) Terms (i) ''Excepted units'' means units in a multifamily building that are specifically made available for qualifying families.

(ii) ''Qualifying families'' means:

(A) Elderly or disabled families; or

(B) Families receiving supportive services. PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered. If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. If a family in an excepted unit fails without good cause to complete its FSS contract of participation or if the family fails to complete the supportive services requirement as outlined in the PHA administrative plan, the PHA will take the actions provided under § 983.261(d), and the owner may terminate the lease in accordance with § 983.257(c). Also, at the time of initial lease execution between the family and the owner, the family and the PHA must sign a statement of family responsibility. The statement of family responsibility must contain all family obligations including the family's participation in a service program under this section. Failure by the family without good cause to fulfill its service obligation will require the PHA to terminate assistance. If the unit at the time of such termination is an excepted unit, the exception continues to apply to the unit as long as the unit is made available to another qualifying family.

(C) The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA administrative plan must state the form and frequency of such monitoring.

(3) *Set-aside for qualifying families.* (i) In leasing units in a multifamily building pursuant to the PBV HAP, the owner must set aside the number of excepted units made available for occupancy by qualifying families.

(ii) The PHA may refer only qualifying families for occupancy of excepted units.

(c) *Additional, local requirements promoting partially assisted buildings.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. For example, a PHA may:

(1) Establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per-building cap of less than 25 percent.

§ 983.57 Site selection standards.

(a) *Applicability.* The site selection requirements in paragraph (d) of this section apply only to site selection for existing housing and rehabilitated PBV housing. The site selection requirements in paragraph (e) of this section apply only to site selection for newly constructed PBV housing. Other provisions of this section apply to selection of a site for any form of PBV housing, including existing housing, newly constructed housing, and rehabilitated housing.

(b) *Compliance with PBV goals, civil rights requirements, and HQS.* The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that:

(1) Project-based assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR part 903 and the PHA Administrative Plan. In developing the standards to apply in determining whether a proposed PBV development will be selected, a PHA must consider the following:

(i) Whether the census tract in which the proposed PBV development will be located is in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

(ii) Whether a PBV development will be located in a census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition;

(iii) Whether the census tract in which the proposed PBV development will be located is undergoing significant revitalization;

(iv) Whether state, local, or federal dollars have been invested in the area that has assisted in the achievement of the statutory requirement;

(v) Whether new market rate units are being developed in the same census tract where the proposed PBV development will be located and the likelihood that such market rate units will positively impact the poverty rate in the area;

(vi) If the poverty rate in the area where the proposed PBV development will be located is greater than 20

percent, the PHA should consider whether in the past five years there has been an overall decline in the poverty rate;

(vii) Whether there are meaningful opportunities for educational and economic advancement in the census tract where the proposed PBV development will be located.

(2) The site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d(4)) and HUD's implementing regulations at 24 CFR part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–3629); and HUD's implementing regulations at 24 CFR parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959–1963 Comp., p. 652) and HUD's implementing regulations at 24 CFR part 107. The site must meet the section 504 site selection requirements described in 24 CFR 8.4(b)(5).

(3) The site meets the HQS site standards at 24 CFR 982.401(l).

(c) *PHA PBV site selection policy.* (1) The PHA administrative plan must establish the PHA's policy for selection of PBV sites in accordance with this section.

(2) The site selection policy must explain how the PHA's site selection procedures promote the PBV goals.

(3) The PHA must select PBV sites in accordance with the PHA's site selection policy in the PHA administrative plan.

(d) *Existing and rehabilitated housing site and neighborhood standards.* A site for existing or rehabilitated housing must meet the following site and neighborhood standards. The site must:

(1) Be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(3) Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(4) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.

(e) *New construction site and neighborhood standards.* A site for newly constructed housing must meet the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site must not be located in an area of minority concentration, except as permitted under paragraph (e)(3) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(3) A project may be located in an area of minority concentration only if:

(i) Sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration (see paragraph (e)(3)(iii), (iv), and (v) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (e) (3)(vi)) of this section for further guidance on this criterion).

(iii) As used in paragraph (e)(3)(i) of this section, ''sufficient'' does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(iv) Units may be considered ''comparable opportunities,'' as used in paragraph (e)(3)(i) of this section, if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(v) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(E) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(F) A significant proportion of minority households has been successful in finding units in non-minority areas under the tenant-based assistance programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(vi) Application of the ''overriding housing needs'' criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably improving the economic character of the area (a ''revitalizing area''). An ''overriding housing need,'' however, may not serve as the basis for determining that a site is acceptable, if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status, or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of

circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(7) Except for new construction, housing designed for elderly persons, travel time, and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers, must not be excessive.

§ 983.58 Environmental review.

(a) *HUD environmental regulations.* Activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58.

(b) *Who performs the environmental review?* (1) Under 24 CFR part 58, a unit of general local government, a county or a state (the ''responsible entity'' or ''RE'') is responsible for the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related applicable federal laws and authorities in accordance with 24 CFR 58.5 and 58.6.

(2) If a PHA objects in writing to having the RE perform the federal environmental review, or if the RE declines to perform it, then HUD may perform the review itself (24 CFR 58.11). 24 CFR part 50 governs HUD performance of the review.

(c) *Existing housing.* In the case of existing housing under this part 983, the RE that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

(d) *Limitations on actions before completion of the environmental review.* (1) The PHA may not enter into an Agreement or HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until one of the following occurs:

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and request for release of funds;

(ii) The responsible entity has determined that the project to be assisted is exempt under 24 CFR 58.34 or is categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b); or

(iii) HUD has performed an environmental review under 24 CFR part 50 and has notified the PHA in writing of environmental approval of the site.

(2) HUD will not approve the release of funds for PBV assistance under this part if the PHA, the owner, or any other party commits funds (*i.e.*, enters an Agreement or HAP contract or otherwise incurs any costs or expenditures to be paid or reimbursed with such funds) before the PHA submits and HUD approves its request for release of funds (where such submission is required).

(e) *PHA duty to supply information.* The PHA must supply all available, relevant information necessary for the RE (or HUD, if applicable) to perform any required environmental review for any site.

(f) *Mitigating measures.* The PHA must require the owner to carry out mitigating measures required by the RE (or HUD, if applicable) as a result of the environmental review.

§ 983.59 PHA-owned units.

(a) *Selection of PHA-owned units.* The selection of PHA-owned units must be done in accordance with § 983.51(e).

(b) *Inspection and determination of reasonable rent by independent entity.* In the case of PHA-owned units, the following program services may not be performed by the PHA, but must be performed instead by an independent entity approved by HUD.

(1) Determination of rent to owner for the PHA-owned units. Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on an appraisal by a licensed, state-certified appraiser; and

(2) Inspection of PHA-owned units as required by § 983.103(f).

(c) *Nature of independent entity.* The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

(d) *Payment to independent entity and appraiser.* (1) The PHA may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity and appraiser for their services.

(2) The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

Subpart C—Dwelling Units

§ 983.101 Housing quality standards.

(a) *HQS applicability.* Except as otherwise provided in this section, 24 CFR 982.401 (housing quality standards) applies to the PBV program. The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, housing quality standards in 24 CFR part 982 apply to the PBV program. (Shared housing, cooperative housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.)

(c) *Lead-based paint requirements.* (1) The lead-based paint requirements at § 982.401(j) of this chapter do not apply to the PBV program.

(2) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(d) *HQS enforcement.* Parts 982 and 983 of this chapter do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(e) *Additional PHA quality and design requirements.* This section establishes the minimum federal housing quality

standards for PBV housing. However, the PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, and any such additional requirements must be specified in the Agreement.

§ 983.102 Housing accessibility for persons with disabilities.

(a) *Program accessibility.* The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA shall ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR part 8, subpart C.

(b) *Design and construction.* Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable.

§ 983.103 Inspecting units.

(a) *Pre-selection inspection.* (1) *Inspection of site.* The PHA must examine the proposed site before the proposal selection date.

(2) *Inspection of existing units.* If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with the HQS. To qualify as existing housing, units must substantially comply with the HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with the HQS.

(b) *Pre-HAP contract inspections.* The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with the HQS.

(c) *Turnover inspections.* Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with the HQS.

(d) *Annual inspections.* (1) At least annually during the term of the HAP contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this annual inspection requirement.

(2) If more than 20 percent of the annual sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

(e) *Other inspections.* (1) The PHA must inspect contract units whenever needed to determine that the contract units comply with the HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(2) The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of the HQS. (Family HQS obligations are specified in 24 CFR 982.404(b).)

(3) In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

(f) *Inspecting PHA-owned units.* (1) In the case of PHA-owned units, the inspections required under this section must be performed by an independent agency designated in accordance with § 983.59, rather than by the PHA.

(2) The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located.

(3) The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA owner.

Subpart D—Requirements for Rehabilitated and Newly Constructed Units

§ 983.151 Applicability.

This Subpart D applies to PBV assistance for newly constructed or rehabilitated housing. This Subpart D does not apply to PBV assistance for existing housing. Housing selected under this subpart cannot be selected as existing housing, as defined in § 983.52, at a later date.

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Requirement.* The PHA must enter into an Agreement with the owner. The Agreement must be in the form required by HUD headquarters (see § 982.162 of this chapter).

(b) *Purpose of Agreement.* In the Agreement the owner agrees to develop the contract units to comply with the HQS, and the PHA agrees that, upon timely completion of such development in accordance with the terms of the Agreement, the PHA will enter into a HAP contract with the owner for the contract units.

(c) *Description of housing.* (1) At a minimum, the Agreement must describe the following features of the housing to be developed (newly constructed or rehabilitated) and assisted under the PBV program:

(i) Site;

(ii) Location of contract units on site;

(iii) Number of contract units by area (size) and number of bedrooms and bathrooms;

(iv) Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;

(v) Utilities available to the contract units, including a specification of utility services to be paid by owner (without charges in addition to rent) and utility services to be paid by the tenant;

(vi) Indication of whether or not the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205 and the accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR 8.22 and 8.23 apply to units under the Agreement. If these requirements are applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement, as specified in paragraph (c)(i)(viii) of this section.

(vii) Estimated initial rents to owner for the contract units;

(viii) Description of the work to be performed under the Agreement. If the Agreement is for rehabilitation of units, the work description must include the rehabilitation work write up and, where determined necessary by the PHA, specifications, and plans. If the Agreement is for new construction, the work description must include the working drawings and specifications.

(2) At a minimum, the housing must comply with the HQS. The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing, over and above the HQS, and any such additional requirement must be specified in the Agreement.

§ 983.153 When Agreement is executed.

(a) *Prohibition of excess subsidy.* The PHA may not enter the Agreement with the owner until the subsidy layering review is completed (see § 983.55).

(b) *Environmental approval.* The PHA may not enter the Agreement with the owner until the environmental review is completed and the PHA has received the environmental approval (see § 983.58).

(c) *Prompt execution of Agreement.* The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner.

§ 983.154 Conduct of development work.

(a) *Development requirements.* The owner must carry out development work in accordance with the Agreement and the requirements of this section.

(b) *Labor standards.* (1) In the case of an Agreement for development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in development of the housing.

(2) The HUD prescribed form of Agreement shall include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

(3) The owner and the owner's contractors and subcontractors must comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

(c) *Equal opportunity.* (1) *Section 3*—Training, employment, and contracting opportunities. The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135.

(2) *Equal employment opportunity.* The owner must comply with federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964–1965 Comp., p. 339), 11625 (3 CFR, 1971–1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198) and 12138 (3 CFR, 1977 Comp., p. 393).

(d) *Eligibility to participate in federal programs and activities.* The Agreement and HAP contract shall include a certification by the owner that the owner and other project principals (including the officers and principal members, shareholders, investors, and other parties having a substantial interest in the project) are not on the U.S. General Services Administration list of parties excluded from federal procurement and nonprocurement programs.

(e) *Disclosure of conflict of interest.* The owner must disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

§ 983.155 Completion of housing.

(a) *Completion deadline.* The owner must develop and complete the housing in accordance with the Agreement. The Agreement must specify the deadlines for completion of the housing and for submission by the owner of the required evidence of completion.

(b) *Required evidence of completion.* (1) *Minimum submission.* At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

(i) Owner certification that the work has been completed in accordance with the HQS and all requirements of the Agreement; and

(ii) Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

(2) *Additional documentation.* At the discretion of the PHA, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion. For example, such documentation may include:

(i) A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and

(ii) An architect's certification that the housing complies with:

(A) HUD housing quality standards;

(B) State, local, or other building codes;

(C) Zoning;

(D) The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or

(E) Any additional design or quality requirements pursuant to the Agreement.

§ 983.156 PHA acceptance of completed units.

(a) *PHA determination of completion.* When the PHA has received owner notice that the housing is completed:

(1) The PHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with the HQS and any additional requirement imposed by the PHA under the Agreement.

(2) The PHA must determine if the owner has submitted all required evidence of completion.

(3) If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

(b) *Execution of HAP contract.* If the PHA determines that the housing has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

Subpart E—Housing Assistance Payments Contract

§ 983.201 Applicability.

Subpart E applies to all PBV assistance under part 983 (including assistance for existing, newly constructed, or rehabilitated housing).

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. The HAP contract must be in the form required by HUD headquarters (see 24 CFR 982.162).

(b) *Purpose of HAP contract.* (1) The purpose of the HAP contract is to provide housing assistance payments for eligible families.

(2) The PHA makes housing assistance payments to the owner in accordance with the HAP contract. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term.

§ 983.203 HAP contract information.

The HAP contract must specify:

(a) The total number of contract units by number of bedrooms;

(b) Information needed to identify the site and the building or buildings where the contract units are located. The information must include the project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;

(c) Information needed to identity the specific contract units in each building. The information must include the number of contract units in the building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;

(d) Services, maintenance, and equipment to be supplied by the owner without charges in addition to the rent to owner;

(e) Utilities available to the contract units, including a specification of utility

services to be paid by the owner (without charges in addition to rent) and utility services to be paid by the tenant;

(f) Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8;

(g) The HAP contract term;

(h) The number of units in any building that will exceed the 25 percent per building cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly or disabled families and families receiving supportive services); and

(i) The initial rent to owner (for the first 12 months of the HAP contract term).

§ 983.204 When HAP contract is executed.

(a) *PHA inspection of housing.* (1) Before execution of the HAP contract, the PHA must inspect each contract unit in accordance with § 983.103(b).

(2) The PHA may not enter into a HAP contract for any contract unit until the PHA has determined that the unit complies with the HQS.

(b) *Existing housing.* In the case of existing housing, the HAP contract must be executed promptly after PHA selection of the owner proposal and PHA inspection of the housing.

(c) *Newly constructed or rehabilitated housing.* (1) In the case of newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement and the owner has furnished all required evidence of completion (see §§ 983.155 and 983.156).

(2) In the HAP contract, the owner certifies that the units have been completed in accordance with the Agreement. Completion of the units by the owner and acceptance of units by the PHA is subject to the provisions of the Agreement.

§ 983.205 Term of HAP contract.

(a) *Ten-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to ten years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than ten years.

(b) *Extension of term.* Within one year before expiration, the PHA may agree to extend the term of the HAP contract for an additional term of up to five years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

(c) *Termination by PHA—insufficient funding.* (1) The HAP contract must provide that the term of the PHA's contractual commitment is subject to the availability of sufficient appropriated funding (budget authority) as determined by HUD or by the PHA in accordance with HUD instructions. For purposes of this section, ''sufficient funding'' means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

(2) The availability of sufficient funding must be determined by HUD or by the PHA in accordance with HUD instructions. If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the PHA has the right to terminate the HAP contract by notice to the owner for all or any of the contract units. Such action by the PHA shall be implemented in accordance with HUD instructions.

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA, if the amount of the rent to owner for any contract unit, as adjusted in accordance with § 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

§ 983.206 HAP contract amendments (to add or substitute contract units).

(a) *Amendment to substitute contract units.* At the discretion of the PHA and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Prior to such substitution, the PHA must inspect the proposed substitute unit and must determine the reasonable rent for such unit.

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a building that will receive PBV assistance or other project-based assistance will not exceed 25 percent of the number of dwelling units (assisted or unassisted) in the building or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same building. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

(c) *Staged completion of contract units.* Even if contract units are placed under the HAP contract in stages commencing on different dates, there is a single annual anniversary for all contract units under the HAP contract. The annual anniversary for all contract units is the annual anniversary date for the first contract units placed under the HAP contract. The expiration of the HAP contract for all the contract units completed in stages must be concurrent with the end of the HAP contract term for the units originally placed under HAP contract.

§ 983.207 Condition of contract units.

(a) *Owner maintenance and operation.* (1) The owner must maintain and operate the contract units and premises in accordance with the HQS, including performance of ordinary and extraordinary maintenance.

(2) The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the PHA and in the lease with each assisted family.

(3) At the discretion of the PHA, the HAP contract may also require continuing owner compliance during the HAP term with additional housing quality requirements specified by the PHA (in addition to, but not in place of, compliance with the HUD-prescribed HQS). Such additional requirements may be designed to assure continued compliance with any design, architecture, or quality requirement specified in the Agreement.

(b) *Remedies for HQS violation.* (1) The PHA must vigorously enforce the owner's obligation to maintain contract units in accordance with the HQS. The PHA may not make any HAP payment to the owner for a contract unit covering any period during which the contract unit does not comply with the HQS.

(2) If the PHA determines that a contract unit is not in accordance with the housing quality standards (or other HAP contract requirement), the PHA may exercise any of its remedies under

the HAP contract for all or any contract units. Such remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

(c) *Maintenance and replacement—Owner's standard practice.* Maintenance and replacement (including redecoration) must be in accordance with the standard practice for the building concerned as established by the owner.

§ 983.208 Owner responsibilities.

The owner is responsible for performing all of the owner responsibilities under the Agreement and the HAP contract. 24 CFR 982.452 (Owner responsibilities) applies.

§ 983.209 Owner certification.

By execution of the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

(a) All contract units are in good and tenantable condition. The owner is maintaining the premises and all contract units in accordance with the HQS.

(b) The owner is providing all the services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases with assisted families.

(c) Each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements.

(d) To the best of the owner's knowledge, the members of the family reside in each contract unit for which the owner is receiving housing assistance payments, and the unit is the family's only residence.

(e) The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit.

(f) The amount of the housing assistance payment is the correct amount due under the HAP contract.

(g) The rent to owner for each contract unit does not exceed rents charged by the owner for other comparable unassisted units.

(h) Except for the housing assistance payment and the tenant rent as provided under the HAP contract, the owner has not received and will not receive any payment or other consideration (from the family, the PHA, HUD, or any other public or private source) for rental of the contract unit.

(i) The family does not own or have any interest in the contract unit.

Subpart F—Occupancy

§ 983.251 How participants are selected.

(a) *Who may receive PBV assistance?* (1) The PHA may select families who are participants in the PHA's tenant-based voucher program and families who have applied for admission to the voucher program.

(2) Except for voucher participants (determined eligible at original admission to the voucher program), the PHA may only select families determined eligible for admission at commencement of PBV assistance.

(b) *Protection of in-place families.* (1) The term ''in-place family'' means an eligible family residing in a proposed contract unit on the proposal selection date.

(2) In order to minimize displacement of in-place families, if a unit to be placed under contract that is either an existing unit or one requiring rehabilitation is occupied by an eligible family on the proposal selection date, the in-place family must be placed on the PHA's waiting list (if the family is not already on the list) and, once its continued eligibility is determined, given an absolute selection preference and referred to the project owner for an appropriately sized PBV unit in the project. (However, the PHA may deny assistance for the grounds specified in 24 CFR 982.552 and 982.553.) Admission of such families is not subject to income-targeting under 24 CFR 982.201(b)(2)(i), and such families must be referred to the owner from the PHA's waiting list. A PHA shall give such families priority for admission to the PBV program. This protection does not apply to families that are not eligible to participate in the program on the proposal selection date.

(c) *Selection from PHA waiting list.* (1) Applicants who will occupy PBV units must be selected by the PHA from the PHA waiting list. The PHA must select applicants from the waiting list in accordance with the policies in the PHA administrative plan.

(2) The PHA may use a separate waiting list for admission to PBV units or may use the same waiting list for both tenant-based assistance and PBV assistance. If the PHA chooses to use a separate waiting list for admission to PBV units, the PHA must offer to place applicants who are listed on the waiting list for tenant-based assistance on the waiting list for PBV assistance.

(3) The PHA may use separate waiting lists for PBV units in individual projects or buildings (or for sets of such units) or may use a single waiting list for the PHA's whole PBV program. In either case, the waiting list may establish criteria or preferences for occupancy of particular units.

(4) The PHA may merge the waiting list for PBV assistance with the PHA waiting list for admission to another assisted housing program.

(5) The PHA may place families referred by the PBV owner on its PBV waiting list.

(6) Not less than 75 percent of the families admitted to a PHA's tenant-based and project-based voucher programs during the PHA fiscal year from the PHA waiting list shall be extremely low-income families. The income-targeting requirements at 24 CFR 982.201(b)(2) apply to the total of admissions to the PHA's project-based voucher program and tenant-based voucher program during the PHA fiscal year from the PHA waiting list for such programs.

(7) In selecting families to occupy PBV units with special accessibility features for persons with disabilities, the PHA must first refer families who require such accessibility features to the owner (see 24 CFR 8.26 and 100.202).

(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who need services offered at a particular project in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

(1) *Preference limits.* (i) The preference is limited to the population of families (including individuals) with disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

(ii) Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and

(iii) For whom such services cannot be provided in a nonsegregated setting.

(2) Disabled residents shall not be required to accept the particular services offered at the project.

(3) In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project.

(e) *Offer of PBV assistance.* (1) If a family refuses the PHA's offer of PBV assistance, such refusal does not affect the family's position on the PHA waiting list for tenant-based assistance.

(2) If a PBV owner rejects a family for admission to the owner's PBV units,

such rejection by the owner does not affect the family's position on the PHA waiting list for tenant-based assistance.

(3) The PHA may not take any of the following actions against an applicant who has applied for, received, or refused an offer of PBV assistance:

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

(ii) Deny any admission preference for which the applicant is currently qualified;

(iii) Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA selection policy;

(iv) Remove the applicant from the waiting list for tenant-based voucher assistance.

§ 983.252 PHA information for accepted family.

(a) *Oral briefing.* When a family accepts an offer of PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on the following subjects:

(1) A description of how the program works; and

(2) Family and owner responsibilities.

(b) *Information packet.* The PHA must give the family a packet that includes information on the following subjects:

(1) How the PHA determines the total tenant payment for a family;

(2) Family obligations under the program; and

(3) Applicable fair housing information.

(c) *Providing information for persons with disabilities.* (1) If the family head or spouse is a disabled person, the PHA must take appropriate steps to assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet, including in alternative formats.

(2) The PHA shall have some mechanism for referring to accessible PBV units a family that includes a person with mobility impairment.

(d) *Providing information for persons with limited English proficiency.* The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with obligations contained in Title VI of the Civil Rights Act of 1964 and Executive Order 13166.

§ 983.253 Leasing of contract units.

(a) *Owner selection of tenants.* (1) During the term of the HAP contract, the owner must lease contract units only to eligible families selected and referred by the PHA from the PHA waiting list.

(2) The owner is responsible for adopting written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

(3) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(b) *Size of unit.* The contract unit leased to each family must be appropriate for the size of the family under the PHA's subsidy standards.

§ 983.254 Vacancies.

(a) *Filling vacant units.* (1) The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving the owner notice, the PHA must make every reasonable effort to refer promptly a sufficient number of families for the owner to fill such vacancies.

(2) The owner must lease vacant contract units only to eligible families on the PHA waiting list referred by the PHA.

(3) The PHA and the owner must make reasonable good faith efforts to minimize the likelihood and length of any vacancy.

(b) *Reducing number of contract units.* If any contract units have been vacant for a period of 120 or more days since owner notice of vacancy (and notwithstanding the reasonable good faith efforts of the PHA to fill such vacancies), the PHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (by number of bedrooms) that have been vacant for such period.

§ 983.255 Tenant screening.

(a) *PHA option.* (1) The PHA has no responsibility or liability to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny admission to an applicant based on such screening.

(2) The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

(b) *Owner responsibility.* (1) The owner is responsible for screening and selection of the family to occupy the owner's unit.

(2) The owner is responsible for screening of families on the basis of their tenancy histories. An owner may consider a family's background with respect to such factors as:

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

(iii) Respecting the rights of other residents to the peaceful enjoyment of their housing;

(iv) Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and

(v) Compliance with other essential conditions of tenancy;

(c) *Providing tenant information to owner.* (1) The PHA must give the owner:

(i) The family's current and prior address (as shown in the PHA records); and

(ii) The name and address (if known to the PHA) of the landlord at the family's current and any prior address.

(2) When a family wants to lease a dwelling unit, the PHA may offer the owner other information in the PHA possession about the family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members.

(3) The PHA must give the family a description of the PHA policy on providing information to owners.

(4) The PHA policy must provide that the PHA will give the same types of information to all owners.

§ 983.256 Lease.

(a) *Tenant's legal capacity.* The tenant must have legal capacity to enter a lease under state and local law. ''Legal capacity'' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

(b) *Form of lease.* (1) The tenant and the owner must enter a written lease for the unit. The lease must be executed by the owner and the tenant.

(2) If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form, except as provided in paragraph (b)(4) of this section. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

(3) In all cases, the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

(4) The PHA may review the owner's lease form to determine if the lease complies with state and local law. The PHA may decline to approve the tenancy if the PHA determines that the lease does not comply with state or local law.

(c) *Required information.* The lease must specify all of the following:

(1) The names of the owner and the tenant;

(2) The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);

(3) The term of the lease (initial term and any provision for renewal);

(4) The amount of the tenant rent to owner. The tenant rent to owner is subject to change during the term of the lease in accordance with HUD requirements;

(5) A specification of what services, maintenance, equipment, and utilities are to be provided by the owner; and

(6) The amount of any charges for food, furniture, or supportive services.

(d) *Tenancy addendum.* (1) The tenancy addendum in the lease shall state:

(i) The program tenancy requirements (as specified in this part);

(ii) The composition of the household as approved by the PHA (names of family members and any PHA-approved live-in aide).

(2) All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum shall prevail over other provisions of the lease.

(e) *Changes in lease.* (1) If the tenant and the owner agree to any change in the lease, such change must be in writing, and the owner must immediately give the PHA a copy of all such changes.

(2) The owner must notify the PHA in advance of any proposed change in lease requirements governing the allocation of tenant and owner responsibilities for utilities. Such changes may be made only if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine reasonable rent, in accordance with § 983.303(c), based on any change in the allocation of responsibility for utilities between the owner and the tenant, and the redetermined reasonable rent shall be used in calculation of rent to owner from the effective date of the change.

(f) *Initial term of lease.* The initial lease term must be for at least one year.

(g) *Lease provisions governing tenant absence from the unit.* The lease may specify a maximum period of tenant absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination of assistance actions due to family absence from the unit is subject to 24 CFR 982.312, except that the HAP contract is not terminated if the family is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction.

(a) In general. 24 CFR 982.310 applies with the exception that § 982.310(d)(1)(iii) and (iv) do not apply to the PBV program. (In the PBV program, ''good cause'' does not include a business or economic reason or desire to use the unit for an individual, family, or non-residential rental purpose.) 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse apply to this part.

(b) Upon lease expiration, an owner may:

(1) Renew the lease;

(2) Refuse to renew the lease for good cause as stated in paragraph (a) of this section;

(3) Refuse to renew the lease without good cause, in which case the PHA would provide the family with a tenant-based voucher and the unit would be removed from the PBV HAP contract.

(c) If a family resides in a project-based unit excepted from the 25 percent per-building cap on project-basing because of participation in an FSS or other supportive services program, and the family fails without good cause to complete its FSS contract of participation or supportive services requirement, such failure is grounds for lease termination by the owner.

§ 983.258 Security deposit: amounts owed by tenant.

(a) The owner may collect a security deposit from the tenant.

(b) The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

(c) When the tenant moves out of the contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts which the tenant owes under the lease.

(d) The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

(e) If the security deposit is not sufficient to cover amounts the tenant owes under the lease, the owner may seek to collect the balance from the tenant. However, the PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

§ 983.259 Overcrowded, under-occupied, and accessible units.

(a) *Family occupancy of wrong-size or accessible unit.* The PHA subsidy standards determine the appropriate unit size for the family size and composition. If the PHA determines that a family is occupying a:

(1) Wrong-size unit, or

(2) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must promptly notify the family and the owner of this determination, and of the PHA's offer of continued assistance in another unit pursuant to paragraph (b) of this section.

(b) *PHA offer of continued assistance.* (1) If a family is occupying a:

(i) Wrong-size unit, or

(ii) Unit with accessibility features that the family does not require, and the unit is needed by a family that requires the accessibility features, the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

(2) The PHA policy on such continued housing assistance must be stated in the administrative plan and may be in the form of:

(i) Project-based voucher assistance in an appropriate-size unit (in the same building or in another building);

(ii) Other project-based housing assistance (*e.g.*, by occupancy of a public housing unit);

(iii) Tenant-based rental assistance under the voucher program; or

(iv) Other comparable public or private tenant-based assistance (*e.g.*, under the HOME program).

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by the PHA).

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA.

§ 983.260 Family right to move.

(a) The family may terminate the assisted lease at any time after the first year of occupancy. The family must give the owner advance written notice of intent to vacate (with a copy to the PHA) in accordance with the lease.

(b) If the family has elected to terminate the lease in this manner, the PHA must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the voucher program or other comparable tenant-based rental assistance.

(c) Before providing notice to terminate the lease under paragraph (a) of this section, a family must contact the PHA to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental assistance.

(d) If the family terminates the assisted lease before the end of one year, the family relinquishes the opportunity for continued tenant-based assistance.

§ 983.261 When occupancy may exceed 25 percent cap on the number of PBV units in each building.

(a) Except as provided in § 983.56(b), the PHA may not pay housing assistance under the HAP contract for contract units in excess of the 25 percent cap pursuant to § 983.56(a).

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly or disabled families; or to families receiving supportive services.

(c) If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received FSS supportive services or any other service as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a ''qualifying family'' in connection with the 25 percent per building cap exception (*e.g.*, a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with § 983.206(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (*e.g.*, a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

Subpart G—Rent to Owner

§ 983.301 Determining the rent to owner.

(a) *Initial and redetermined rents.* (1) The amount of the initial and redetermined rent to owner is determined in accordance with this section and § 983.302.

(2) The amount of the initial rent to owner is established at the beginning of the HAP contract term. For rehabilitated or newly constructed housing, the Agreement states the estimated amount of the initial rent to owner, but the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

(3) The rent to owner is redetermined at the owner's request for a rent increase in accordance with this section and § 983.302. The rent to owner is also redetermined at such time when there is a five percent or greater decrease in the published FMR in accordance with § 983.302.

(b) *Amount of rent to owner.* Except for certain tax credit units as provided in paragraph (c) of this section, the rent to owner must not exceed the lowest of:

(1) An amount determined by the PHA, not to exceed 110 percent of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;

(2) The reasonable rent; or

(3) The rent requested by the owner.

(c) *Rent to owner for certain tax credit units.* (1) This paragraph (c) applies if:

(i) A contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986 (see 26 U.S.C. 42);

(ii) The contract unit is not located in a qualified census tract;

(iii) In the same building, there are comparable tax credit units of the same unit bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

(iv) The tax credit rent exceeds the applicable fair market rental (or any exception payment standard) as determined in accordance with paragraph (b) of this section.

(2) In the case of a contract unit described in paragraph (c)(1) of this section, the rent to owner must not exceed the lowest of:

(i) The tax credit rent minus any utility allowance;

(ii) The reasonable rent; or

(iii) The rent requested by the owner.

(3) The ''tax credit rent'' is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (*e.g.*, additional assistance such as tenant-based voucher assistance).

(4) A ''qualified census tract'' is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which:

(i) At least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI); or

(ii) Where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

(d) *Rent to owner for other tax credit units.* Except in the case of a tax credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units is determined pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine reasonable rent in accordance with § 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent.

(f) *Use of FMRs and utility allowance schedule in determining the amount of rent to owner.* (1) *Amounts used.* (i) *Determination of initial rent (at beginning of HAP contract term).* When determining the initial rent to owner, the PHA shall use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract.

(ii) *Redetermination of rent to owner.* When redetermining the rent to owner, the PHA shall use the most recently

published FMR and the PHA utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA may use the amounts in effect at any time during the 30-day period immediately before the redetermination date.

(2) *Exception payment standard and PHA utility allowance schedule.* (i) Any HUD-approved exception payment standard amount under 24 CFR 982.503(c) applies to both the tenant-based and project-based voucher programs. HUD will not approve a different exception payment standard amount for use in the PBV program.

(ii) The PHA may not establish or apply different utility allowance amounts for the PBV program. The same PHA utility allowance schedule applies to both the tenant-based and PBV programs.

(g) *PHA-owned units.* For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the annual anniversary of the HAP contract are determined by the independent entity approved by HUD in accordance with § 983.59. The PHA must use the rent to owner established by the independent entity.

§ 983.302 Redetermination of rent to owner.

(a) The PHA must redetermine the rent to owner:

(1) Upon the owner's request; or

(2) When there is a five percent or greater decrease in the published FMR in accordance with § 983.301.

(b) *Rent increase.* (1) The PHA may not make any rent increase other than an increase in the rent to owner as determined pursuant to § 983.301. (Provisions for special adjustments of contract rent pursuant to 42 U.S.C. 1437f(b)(2)(B) do not apply to the voucher program.)

(2) The owner must request an increase in the rent to owner at the annual anniversary of the HAP contract by written notice to the PHA. The length of the required notice period of the owner request for a rent increase at the annual anniversary may be established by the PHA. The request must be submitted in the form and manner required by the PHA.

(3) The PHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with all requirements of the HAP contract, including compliance with the HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

(c) *Rent decrease.* If there is a decrease in the rent to owner, as established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(d) *Notice of rent redetermination.* Rent to owner is redetermined by written notice by the PHA to the owner specifying the amount of the redetermined rent (as determined in accordance with §§ 983.301 and 983.302). The PHA notice of the rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract.

(e) *Contract year and annual anniversary of the HAP contract.* (1) The contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

(2) The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. The adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

(3) See § 983.206(c) for information on the annual anniversary of the HAP contract for contract units completed in stages.

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent as determined by the PHA.

(b) *Redetermination.* The PHA must redetermine the reasonable rent:

(1) Whenever there is a five percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary;

(2) Whenever the PHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building; and

(4) Whenever there is any other change that may substantially affect the reasonable rent.

(c) *How to determine reasonable rent.* (1) The reasonable rent of a contract unit must be determined by comparison to rent for other comparable unassisted units.

(2) In determining the reasonable rent, the PHA must consider factors that affect market rent, such as:

(i) The location, quality, size, unit type, and age of the contract unit; and

(ii) Amenities, housing services, maintenance, and utilities to be provided by the owner.

(d) *Comparability analysis.* (1) For each unit, the PHA comparability analysis must use at least three comparable units in the private unassisted market, which may include comparable unassisted units in the premises or project.

(2) The PHA must retain a comparability analysis that shows how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(3) The comparability analysis may be performed by PHA staff or by another qualified person or entity. A person or entity that conducts the comparability analysis and any PHA staff or contractor engaged in determining the housing assistance payment based on the comparability analysis may not have any direct or indirect interest in the property.

(e) *Owner certification of comparability.* By accepting each monthly housing assistance payment from the PHA, the owner certifies that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises. The owner must give the PHA information requested by the PHA on rents charged by the owner for other units in the premises or elsewhere.

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.58, rather than by the PHA. Reasonable rent must be determined in accordance with this section.

(2) The independent entity must furnish a copy of the independent entity determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

§ 983.304 Other subsidy: effect on rent to owner.

(a) *General.* In addition to the rent limits established in accordance with § 983.301 and 24 CFR 982.302, the following restrictions apply to certain units.

(b) *HOME.* For units assisted under the HOME program, rents may not exceed rent limits as required by the HOME program (24 CFR 92.252).

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

(ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) A project receiving low-income housing tax credits;

(vi) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

(d) *Combining subsidy.* Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements. See § 983.55.

(e) *Other subsidy: PHA discretion to reduce rent.* At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

(f) *Prohibition of other subsidy.* For provisions that prohibit PBV assistance to units in certain types of subsidized housing, see § 983.54.

§ 983.305 Rent to owner: effect of rent control and other rent limits.

In addition to the limitation to 110 percent of the FMR in § 983.301(b)(1), the rent reasonableness limit under §§ 983.301(b)(2) and 983.303, the rental determination provisions of § 983.301(f), the special limitations for tax credit units under § 983.301(c), and other rent limits under this part, the amount of rent to owner also may be subject to rent control or other limits under local, state, or federal law.

Subpart H—Payment to Owner

§ 983.351 PHA payment to owner for occupied unit.

(a) *When payments are made.* (1) During the term of the HAP contract, the PHA shall make housing assistance payments to the owner in accordance with the terms of the HAP contract. The payments shall be made for the months during which a contract unit is leased to and actually occupied by an eligible family.

(2) Except for discretionary vacancy payments in accordance with § 983.352, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

(b) *Monthly payment.* Each month, the PHA shall make a housing assistance payment to the owner for each contract unit that complies with the HQS and is leased to and occupied by an eligible family in accordance with the HAP contract.

(c) *Calculating amount of payment.* The monthly housing assistance payment by the PHA to the owner for a contract unit leased to a family is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

(d) *Prompt payment.* The housing assistance payment by the PHA to the owner under the HAP contract must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

(e) *Owner compliance with contract.* To receive housing assistance payments in accordance with the HAP contract, the owner must comply with all the provisions of the HAP contract. Unless the owner complies with all the provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

§ 983.352 Vacancy payment.

(a) *Payment for move-out month.* If an assisted family moves out of the unit, the owner may keep the housing assistance payment payable for the calendar month when the family moves out (''move-out month''). However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

(b) *Vacancy payment at PHA discretion.* (1) At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner (in the amounts determined in accordance with paragraph (b)(2) of this section) for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month.

(2) The vacancy payment to the owner for each month of the maximum two-month period will be determined by the PHA, and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit). Any vacancy payment may cover only the period the unit remains vacant.

(3) The PHA may make vacancy payments to the owner only if:

(i) The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and containing the date when the family moved out (to the best of the owner's knowledge and belief);

(ii) The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;

(iii) The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and

(iv) The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

(4) The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

§ 983.353 Tenant rent; payment to owner.

(a) *PHA determination.* (1) The tenant rent is the portion of the rent to owner paid by the family. The PHA determines the tenant rent in accordance with HUD requirements.

(2) Any changes in the amount of the tenant rent will be effective on the date stated in a notice by the PHA to the family and the owner.

(b) *Tenant payment to owner.* (1) The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance).

(2) The amount of the tenant rent as determined by the PHA is the maximum amount the owner may charge the family for rent of a contract unit. The tenant rent is payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, in accordance with the HAP contract and lease.

(3) The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

(4) The family is not responsible for payment of the portion of the rent to owner covered by the housing assistance payment under the HAP contract. The owner may not terminate the tenancy of an assisted family for nonpayment of the PHA housing assistance payment.

(c) *Limit of PHA responsibility.* (1) The PHA is responsible only for making housing assistance payments to the owner on behalf of a family in accordance with the HAP contract. The PHA is not responsible for paying the tenant rent, or for paying any other claim by the owner.

(2) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the tenant rent or to pay any other claim by the owner. The PHA may not make any payment to the owner for any damage to the unit, or for any other amount owed by a family under the family's lease or otherwise.

(d) *Utility reimbursement.* (1) If the amount of the utility allowance exceeds the total tenant payment, the PHA shall pay the amount of such excess as a reimbursement for tenant-paid utilities (''utility reimbursement'') and the tenant rent to the owner shall be zero.

(2) The PHA either may pay the utility reimbursement to the family or may pay the utility bill directly to the utility supplier on behalf of the family.

(3) If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§ 983.354 Other fees and charges.

(a) *Meals and supportive services.* (1) Except as provided in paragraph (a)(2) of this section, the owner may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(2) In assisted living developments receiving project-based assistance, owners may charge tenants, family members, or both for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of reasonable rent. Non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

(b) *Other charges by owner.* The owner may not charge the tenant or family members extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Dated: September 29, 2005.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 21, 121, 135, 145, and 183
Establishment of Organization Designation Authorization Program; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 121, 135, 145, and 183

[Docket No. FAA–2003–16685; Amendment Nos. 21–86, 121–311, 135–97, 145–23, and 183–12]

RIN 2120–AH79

Establishment of Organization Designation Authorization Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule establishes the Organization Designation Authorization (ODA) program. The ODA program expands the scope of approved tasks available to organizational designees; increases the number of organizations eligible for organizational designee authorizations; and establishes a more comprehensive, systems-based approach to managing designated organizations. This final rule also sets phaseout dates for the current organizational designee programs, the participants in which will be transitioned into the ODA program. This program is needed as the framework for the FAA to standardize the operation and oversight of organizational designees. The effect of this program will be to increase the efficiency with which the FAA appoints and oversees designee organizations, and allow the FAA to concentrate its resources on the most safety-critical matters.

DATES: This amendment becomes effective November 14, 2005. Affected parties, however, do not have to comply with the information collection requirements of §§ 183.43, 183.45, 183.53, 183.55, 183.57, 183.63, or 183.65 until the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement is published in the **Federal Register**. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical issues, Ralph Meyer, Delegation and Airworthiness Programs Branch, Aircraft Engineering Division (AIR–140), Aircraft Certification Service, Federal Aviation Administration, 6500 S. MacArthur Blvd., ARB Room 308, Oklahoma City, OK, 73169; telephone (405) 954–7072; facsimile (405) 954–2209, e-mail *ralph.meyer@faa.gov*. For legal issues, Karen Petronis, Office of the Chief Counsel, Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073; facsimile (202) 267–7971; e-mail *karen.petronis@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the FAA's Regulations and Policies' Web page at *http://www.faa.gov/regulationspolicies*; or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html*.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone can search the electronic form of comments received into our dockets by the individual's name who sends the comment (or signs the comment, if sent for an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.cfm*.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Chapter 447—Safety Regulation, Section 44702—Issuance of Certificates. Under paragraph 44702(d), the FAA Administrator may delegate to a qualified private person a matter related to issuing certificates, or related to the examination, testing, and inspection necessary to issue a certificate he is authorized by statute to issue under § 44702(a). Under paragraph (d), the Administrator is empowered to prescribe regulations and other materials necessary for the supervision of delegated persons. This regulation is within the scope of that authority in that it establishes a comprehensive program for the designation of organizations in 14 CFR part 183.

Background

History of Designation Programs

Since at least 1927, the federal government has used private persons to examine, test and inspect aircraft as part of the system for managing aviation safety. The current system of delegations has been evolving since the need for assistance by private persons was recognized over 70 years ago. Beginning in the 1940s, the FAA's predecessor agency, the Civil Aeronautics Administration (CAA) established programs to appoint designees to perform certain tasks for airman approvals, airworthiness approvals and certification approvals. These include the Designated Engineering Representative (DER), Designated Manufacturing Inspection Representative (DMIR), and Designated Pilot Examiner (DPE) programs.

In the 1950s, the rapid expansion of the aircraft industry led to the adoption of the Delegation Option Authorization (DOA) program to supplement the agency's limited resources for certification of small airplanes, engines and propellers. As the first program that delegated authority to an organization rather than an individual, DOA was intended to take advantage of the experience and knowledge inherent in a manufacturer's organization. Currently, DOAs are authorized for certification and airworthiness approvals for the products manufactured by the authorization holder.

The Federal Aviation Act of 1958 established the Federal Aviation Agency and codified the authority of the Administrator to delegate certain matters in section 314 of that Act. When that statute was recodified in the 1990s, the delegation authority was placed in 49 U.S.C. 44702(d) without substantive change to the authority of the Administrator.

The 1960s saw the creation of the Designated Alteration Station (DAS)

Program, which was intended to reduce delays in issuing supplemental type certificates (STCs) by allowing the approved engineering staffs of repair stations to issue STCs. As adopted, the DAS program allows eligible air carriers, commercial operators, domestic repair stations and product manufacturers to issue STCs and related airworthiness certificates.

In the 1970s the FAA reviewed its delegated organization programs, which then allowed the approval of major alteration data by a delegated organization, but not approval of major repair data. This review lead to the adoption of Special Federal Aviation Regulation (SFAR) 36 in 1978 to allow eligible air carriers, commercial operators, and domestic repair stations to develop and use major repair data without FAA approval of the data.

In the 1980s, the FAA established the Designation Airworthiness Representative (DAR) program to expand the airworthiness certification functions that individual designees may perform. At the same time, we allowed for organizations to serve as DARs, in a program known as Organizational Designated Airworthiness Representatives (ODARs).

Since the formation of the first organizational designee programs, organizational designees have gained significant experience in aircraft certification matters, and the FAA has gained significant experience in managing these designee programs. We have found that the quality of the approvals processed by these organizations equals those processed by the FAA. Delegation of tasks to these organizations has allowed the FAA to focus our limited resources on more critical areas.

Status of Designees

In understanding these programs, we consider it essential to remember that designees have a unique status. While we refer to these persons and organizations informally as ''designees'', under part 183 they are referred to as ''representatives of the Administrator.''

When acting as a representative of the Administrator, these persons or organizations are required to perform in a manner consistent with the policies, guidelines, and directives of the Administrator. When performing a delegated function, designees are legally distinct from and act independent of the organizations that employ them. The authority of these representatives to act comes from an FAA delegation and not a certificate. As provided by statute, the Administrator may at any time and for any reason, suspend or revoke a delegation. This is true even though some parts of the delegation regulations in part 183 and elsewhere refer to kinds of certificates that denote the authority granted.

An ODA issued under this program is a delegation made under section 44702(d), not a statutorily authorized certificate issued under section 44702(a). The authority of the Administrator to suspend, revoke, or withhold ODA authorization is not subject to appeal to the National Transportation Safety Board.

ODA Program Overview

The FAA is adopting the ODA program as a means to provide more effective certification services to its customers. This final rule adopts the regulatory basis of the ODA program. Companion FAA orders, similar to the draft Order made available for review, will describe the specifics of the program and provide guidance for FAA personnel and for organizations to which we grant an ODA. These orders will also provide information to FAA personnel on how to qualify, appoint, and oversee organizations in the ODA program.

As aviation industry needs continue to expand at a rate exceeding that of FAA resources, the need for the ODA program has become more apparent. According to a 1993 report by the General Accounting Office (GAO/RCED–93–155), the FAA's certification work has increased five-fold over the last 50 years. The ODA program is a consolidation and improvement of the piecemeal organizational delegations that have developed on an ''as needed'' basis over the last half century. As the FAA's dependence on designees has increased, so has the need to oversee designated organizations using a single, flexible set of procedures and a systems approach to management. Using our experience with both individual and organizational designees, we have designed the ODA program with these criteria in mind.

The ODA program improves the FAA's ability to respond to our steadily increasing workload by expanding the scope of authorized functions of FAA organizational designees, and by expanding eligibility for organizational designees. One way this program expands eligibility is by eliminating the requirement that an organization hold some type of FAA certificate before it would qualify for designation authorization.

The ODA program also allows the FAA to delegate any statutorily authorized functions to qualified organizations. Expansion of the available authorized functions will reduce the time and cost for these certification activities.

While our current delegations are limited to such organizations as manufacturers, air carriers, commercial operators, and repair stations, this rule formalizes the delegation of functions to any qualified organization. Accordingly, an organization with demonstrated competence, integrity, and expertise in aircraft certification functions is eligible to apply for an ODA.

Creation of the ODA program aids the expansion of the designee system by addressing the delegation of more functions related to aircraft certification, and new functions pertaining to certification and authorization of airmen, operators, and air agencies. For general aviation operations, the rule allows an ODA Unit member to issue airman certificates or authorizations under 14 CFR parts 61, 63, or 91. Additionally, the rule allows designated organizations to find compliance or conduct functions leading to the issuance of certificates or authorizations for any statutorily authorized function, including—

- Rotorcraft external load operations under 14 CFR part 133;
- Agricultural operations under 14 CFR part 137;
- Air agencies operations under 14 CFR part 141; and
- Training centers operators under 14 CFR part 142 (air carrier functions excluded).

Nothing in the establishment of the ODA program changes any authority or responsibility for compliance with the certification, airworthiness or operational requirements currently in place, such as part 21 or part 121. No current safety requirements are being removed or relaxed. The ODA program does not introduce any type of self-certification.

An Organization Designation Authorization includes both an ODA Holder and an ODA Unit. The ODA Holder is the parent organization to which the FAA grants an ODA Letter of Designation. The ODA Unit is an identifiable unit of two or more individuals within the ODA Holder's organization that performs the authorized functions. The regulations specify separate requirements for the ODA Holder and the ODA Unit.

Because the ODA program eliminates the requirement that an applicant hold an FAA certificate, organizations consisting of consultant engineering and inspection personnel could be eligible for an ODA. Under such circumstances, it is possible the ODA Holder would

have the same composition as the ODA Unit.

ODA Program Policy

As noted earlier in this preamble, FAA orders will outline the specifics of the ODA program and provide guidance for both FAA personnel and for organizations that obtain an ODA. These orders will describe the authorized functions for aircraft-related approvals, such as type certificates and airworthiness certificates, and certain operations-related approvals like airman certificates. While the regulations contain the general requirements of the ODA program, the orders will provide the administrative details. Providing the specifics in orders allows for flexibility to expand or revise the details of the ODA program without further rulemaking, especially since every type of delegated function that may be appropriate for an ODA Unit cannot be foreseen.

In addition to approved delegated functions and the eligibility requirements for delegated functions, the orders address the specific selection, appointment, and oversight procedures the FAA will follow in managing ODA Holders. Additional ODA program details may be described in other FAA orders or policies.

Application for ODA and Transition of Existing Delegation Holders

This rule provides that existing Designated Alteration Station (DAS), Delegation Option Authorization (DOA) and Special Federal Aviation Regulation 36 (SFAR 36) authorization programs will be phased out over three years beginning November 14, 2006. Additionally, Organizational Designated Airworthiness Representatives (ODARs) will no longer be appointed under part 183 subpart A, and will have to apply for an ODA within the three-year phaseout period. The FAA's priority during the phaseout period will be the transition of existing organizations to ODA.

The FAA intends to appoint *new* ODA applicants based on the need for their services. The ability of a particular FAA field office to appoint new ODA Holders will depend on the number of existing delegated organizations in an office's jurisdiction. During the three-year phaseout period of the current delegated organization programs, the only new applicants (those with no existing organizational delegation) the FAA expects to appoint are those with a significant history of certification work and whose workload could be better managed under an ODA.

FAA Offices that manage existing delegated organizations will oversee the transition of those organizations using the following criteria:

- A need to delegate the authorized functions.
- An organization's level of certification activity.
- The number and need for new ODA organizations.

Priority will be given to existing delegated organizations that have and are expected to maintain a significant workload in new areas authorized under the ODA regulations. For example, an existing DAS that desires to have both STC and Parts Manufacturer Approval (PMA) functions under an ODA would be a higher transition priority than a DAS that would not be adding any new functions. Similarly, the FAA may find it of greater benefit to appoint a new ODA with a heavier workload than transition of an existing organization with a lighter workload.

Based on these considerations, each FAA field office will develop a strategy for managing the ODA applications it receives. We expect that existing delegated organizations will cooperate with their managing offices in submission of their ODA applications. The FAA managing offices will, to the extent possible, develop a transition schedule that meets the organization's needs. The FAA will not accept ODA applications until November 14, 2006 in order to establish a smooth transition in prioritizing and processing applications. We are not able to predict how long it will take the agency to act on an individual application. Existing delegated organizations should apply for ODA as requested by their managing office, but not later than 18 months after the application period begins to ensure that its application may be processed and fully considered before the end of the three-year phaseout period.

The FAA will provide transition training for existing DAS, DOA, and SFAR 36 administrators to address the differences between ODA and existing programs. This training is required for these organizations' administrators before they may be appointed under ODA. The FAA is planning similar training for new ODA applicants that will more comprehensively address all aspects of the ODA program. Because of the substantial differences between ODA and ODAR requirements, ODAR administrators will have to complete this more comprehensive training prior to appointment as an ODA.

It is expected that DAS, DOA and SFAR 36 organizations will be able to transition to an ODA program with minimal changes to their existing procedures. These organizations will have to submit an application and make minimal changes to their procedures manuals in order to receive an ODA. The certification activity of existing organizations will also be reviewed to determine whether it is still in the FAA's interest to appoint the organization as an ODA. We expect that there will be greater impact to existing ODAR organizations, which will have to develop new procedures, such as internal evaluations and in-house training, which are not current ODAR requirements. Existing authorized representatives for all types of delegated organizations will be granted the same level of authority under the ODA program without additional review of their qualifications.

Impact on Individual Designee Programs

As noted in the NPRM, the FAA expects that a significant number of individual designees who work for larger organizations will become members of an ODA Unit and give up their individual designee status. The FAA may allow an ODA Unit staff member to remain a designee provided that there is a sufficient amount of designee work outside of his ODA activity to warrant continuation of the designee authority. The FAA applies this same philosophy to existing designees that are staff members for DAS, DOA, or SFAR 36 organizations. As commenters to the NPRM note, we do not expect that the ODA program will significantly reduce the number of consultant DERs, and the need for consultant DERs will remain dependent on their level of activity.

ODA Program Final Rule

In addition to establishing the ODA program, this final rule also includes revisions that standardize the duration of certificates for aircraft certification and flight standards individual designees; the designation of these individuals continues under part 183, subparts B and C. This final rule creates a new subpart D in part 183 that contains the regulations applicable to all types of organizational designees. This rule replaces existing DAS, DOA, SFAR 36, and ODAR delegation programs with a single delegation program for organizations. The regulations governing those other programs, subparts J and M of part 21, and SFAR 36, are being phased out under this rule by placing a suspension date of (Insert date 4 years after the effective date of this rule) for functions performed under those programs.

Disposition of Comments

The FAA received 40 comments to the NPRM from 36 commenters. Eleven of the 36 commenters, including the General Aviation Manufacturers Association (GAMA), Gulfstream Aerospace Corporation (Gulfstream Aerospace), the Aerospace Industries Association (AIA), and International Aero Engines (IAE), express general support for the rule. Fourteen commenters oppose the rule in general, with three of them adding specific comments, addressed below. Comments in opposition were received from United Airlines, the Professional Airways Systems Specialists, and the National Air Traffic Controllers Association. This discussion of comments is organized by each proposed rule topic or section for which we received comments.

Many of the general comments raise issues with material in the agency order that specifies certain details of the ODA program and application process. Most of those comments are considered outside the scope of this rulemaking since they do not address any part of the proposed rule language. A few of the comments regarding material in the draft order are addressed later in this section, but most will be addressed in the final version of the Order.

Similarly, some comments make suggestions beyond the scope of FAA authority, such as an investigation of designee fees by the Internal Revenue Service. While we have reviewed all of the material submitted, comments such as these that transcend FAA authority and the issues of the proposed rule will not be addressed individually.

General Comments

Commenters that support the ODA rule state that it will result in more efficient and effective use of industry and FAA resources. They state that the ODA rule would lighten some of the FAA workload and allow the FAA to better meet industry demand for certification activities. General Electric Aircraft Engines (GE Aircraft Engines), a member of the Aviation Rulemaking Advisory Committee (ARAC) that developed recommendations for an ODA rule, noted that it was particularly satisfying to see that the FAA had left intact the spirit of the recommendations developed by the ARAC. Other commenters affirm that the ODA program will reduce the amount of FAA oversight needed for individual designees, while increasing the FAA's capacity to issue approvals. Commenters also note that an expected benefit is the increased flexibility that will allow the FAA to establish additional delegation programs without needing to amend the rule.

Several opposing commenters assert that previous problems with designees or delegated organizations indicate that delegation is not beneficial. They state general opposition to the idea of delegation, or of expanding delegation to make it available to more organizations, and they generally do not think it is the most efficient use of FAA resources. Most commenters expressing opposition did not provide comments to any specific part of the proposed rule.

More than one commenter states that the FAA should be hiring more inspectors, not spending its limited resources creating an organizational designee system. Another common objection is that the proposed rule seeks to increase the number of designees used by the FAA.

In proposing this program, the FAA is not spending money that could be transferred to other unspecified programs such as 'hiring more inspectors', as suggested by commenters. The proposed ODA program is, at its simplest, a restatement of how we will be approving and overseeing organizational designees. The ODA program was not designed to increase the overall number of designees, but to increase the functions available to organizational designees. By doing so, the FAA hopes to reduce the number of individual designees and concentrate its oversight resources more effectively.

Many of the general opposing comments note a few specific instances in which the designee programs have experienced problems or been the subject of investigation. While the FAA does not dispute that some designee programs have experienced problems, we believe that the commenters are overstating their breadth because they are unfamiliar with the extent of the designee programs already in use compared to the number of problems reported. Today's rule phases out the assortment of delegated organization programs we currently manage in favor of a single system, and both the FAA and the affected organizations will be operating under organizational procedures that are familiar and effective. This rule will make the benefits of organizational delegation available to more types of organizations. Further, the FAA is always seeking to improve its designee programs, an example of which is the August 2002 implementation of new oversight processes that outline the participation of FAA offices involved in the oversight of delegated organizations. Included in the oversight program are routine evaluations of the delegated organization's performance by FAA managing offices. This oversight feature is included in the ODA program.

The FAA continues to seek input on improvements in oversight and management procedures for all of its designee programs. The Government Accountability Office (GAO) completed a review of the FAA designee system (GAO 05–40, ''FAA Needs to Strengthen the Management of its Designee Programs'') in October 2004. The FAA is taking steps to address the GAO's recommended means of improving the designee programs.

Additionally, the FAA is implementing an internal quality management system that will help assess the performance of the delegation programs and implement any needed corrective action.

Specific Comments

Comment: Chromalloy Gas Turbine Corporation opposes the rule because it has not been coordinated with foreign aviation authorities. The commenter notes that it worked with foreign authorities for years to gain acceptance of FAA-approved data (from designated engineering representatives (DERs)). Other commenters agree that it is important that foreign airworthiness authorities recognize approvals made by a designee. One commenter states that the FAA should pursue bilateral agreements to ensure mutual acceptance of FAA ODA and European Aviation Safety Agency Design Organization Approval (EASADOA) systems.

Response: Bilateral agreements are negotiated with individual countries, and an agreement may or may not provide for mutual acceptance of designee programs. The creation of ODA should not change acceptance of designee approvals where they already exist in a bilateral agreement. Nor does the ODA system prevent the use of DER approvals for organizations that prefer the DER system to support their certification activity. The FAA expects that, at a minimum, foreign authorities will be more accepting of ODA-approved repair data than they are of data developed under SFAR 36 since SFAR 36 data is not considered ''FAA-approved.''

Changing a domestic regulatory program is not, however, a means to presume acceptance of approved data under bilateral airworthiness agreements. Coordination and acceptance of such issues is neither simple nor accomplished quickly. The FAA has determined that it is better to put the ODA program in place for use

now and work out the more complex international acceptance issues over time.

As noted, we expect no impact to existing agreements regarding approvals performed by an ODA Holder. However, we do not currently plan to allow approvals issued by an EASADOA holder to be used within an ODA Holder's system (or vice-versa) without authority-to-authority coordination and agreement. No change to the rule has been made based on this comment.

Comment: One commenter does not support the rule because it is too costly to maintain and that the cost to the public is ''double taxation.'' Another commenter notes that the public deserves the safest and not the cheapest service.

Response: Neither commenter was specific in its criticism of the costs of the ODA program; most costs associated with the program will be borne by the ODA Holder, and may be passed on to its customers. No one is required to use the services of an ODA Holder; the FAA will continue to do approvals directly if requested. Nor is the goal of the ODA program to seek out the low bidder for services. The FAA will not make a decision to approve an ODA Holder simply because the applicant claims it can do the work cheaper. Those who use the services of an ODA Holder may incur costs that would not occur if the FAA did the approval. A user may nonetheless feel justified in incurring the cost of the service from the ODA Holder if, for example, the Holder can do it faster. The existence of ODA Holders is expected to free up more FAA resources by allowing non-critical tasks to be accomplished by the designee. None of the commenters gave any specific example of why the ODA program would be more costly to the agency than any of the current designee programs, and we have no reason to think it will be so. No change to the rule has been made based on this comment.

Comment: One commenter says the proposed ODA program significantly modifies the current regulatory oversight system, deteriorating the established technical FAA oversight by going to a ''systems'' oversight approach that would provide less specific and technical FAA oversight and would, in time, reduce safety.

Response: The FAA disagrees that a systems approach will provide less specific technical oversight, and believes it will increase safety. A systems approach is currently being used successfully to manage DAS and DOA organizations. The FAA has found that management of these organizations, rather than a number of individual employees that they might employ, is more efficient for both the FAA and industry and results in approvals that comply with the regulations. The FAA anticipates that these more effective delegation programs will increase safety by freeing up FAA resources for tasks more critical to safety. Additionally, Congress has shown support for system-based certification programs by mandating the issuance of Design Organization Certificates in the 2003 reauthorization of the FAA. Design organization certificates would give the certificate holder privileges similar to delegated organizations, but would have the authority of a certificate rather than a delegation. No change to the rule has been made based on this comment.

Comment: One commenter asserts that while the quality of approvals by designees may be comparable for aircraft certification functions, it is not true for designees such as examiners. The commenter points out problems with specific examiner programs, which resulted in the re-examination of a number of airmen.

Response: The FAA acknowledges that problems have been identified in some designee programs. However, the FAA does not agree that this necessarily indicates that these approvals are not, as a whole, comparable to those performed by the FAA. Additionally, the FAA has taken steps to improve the oversight of its individual and organizational designees; the ODA program is expected to result in further improvements. By restructuring delegation programs toward organizations, oversight of individuals is reduced, allowing the FAA workforce to focus on individual designee oversight when needed. No change to the rule has been made based on this comment.

Comment: Many of the commenters, including Piper Aircraft, AIA, and Boeing Commercial Airplanes (Boeing) say FAA review of individual ODA Unit members contradicts the intent of a systems approach. They also note current delegation rules are not based on a systems approach because the FAA must approve the individuals within the organization.

Response: The FAA intends to allow ODA Holders that have had significant experience as a delegated organization to appoint ODA Unit members with a minimum level of FAA involvement. The process will require an ODA Holder to notify the FAA of the names of proposed staff members before the ODA Holder conducts a full internal evaluation. If the FAA has reason to object to the appointment of an individual, we will do so before the organization does its full evaluation. The FAA anticipates that at some point experienced organizations may be able to select staff members without FAA review of the staff members' qualifications and authority. However, the FAA will review the ODA Unit member selection decisions made by ODA Holders until they demonstrate that they are capable of selecting qualified personnel for the ODA Unit. No change to the rule has been made based on this comment.

Comment: Several commenters, including IAE and United Technologies Corporation (United Technologies), recommend an additional ODA program type for airworthiness approvals. The commenters state that the programs, as defined, could restrict the ability of existing ODARs to obtain an ODA without obtaining additional engineering functions.

Response: We do not plan to have an ODA program specifically identified for airworthiness approvals. Although this specific program was not described in the draft order, the proposed functions will continue to be available as a delegated function under the ODA program. The ODA program structure allows an existing ODAR to obtain an ODA without requiring the addition of new functions or capabilities. No change to the rule has been made based on this comment.

Comment: IAE and United Technologies Corporation recommend that the FAA either set up an audit program that does not require an ODA Holder to report deficiencies that will result in enforcement actions, or create criteria for ''safety-related'' and ''non-safety related'' audit findings. Under such a proposal, the organization would only have to report safety-related findings.

Response: Under the FAA's compliance and enforcement program, voluntarily disclosed violations may not be subject to legal enforcement action. Requiring periodic audits by an organization is consistent with similar requirements imposed on certificate holders. The FAA expects ODA Holders to take an active role in the identification and resolution of deficiencies, including, non-compliances. No change to the rule has been made based on this comment.

Comment: GAMA, IAE, and United Technologies, among others, recommend that the FAA provide the public a chance to comment on whether a specific function should be delegated, and state that changes to the ODA program should be noted in the **Federal Register**. One commenter suggests that the public also be invited to comment on each applicant's qualifications.

Response: The FAA agrees that the public should be notified and given opportunity to provide input on proposed ODA programs. The FAA plans to continue its practice of publishing notice of proposed policies that implement new or changed programs such as ODA.

The FAA does not agree that it is appropriate to publish the names of applicants and request public comment on their qualifications. We do not have such a process for other designee programs, and decisions are based on the FAA's expertise and experience working with individual organizations. Public comment raises issues of bias against individuals and organizations and we would have to determine whether the person providing the comment was qualified to assess the applicant. The FAA is comfortable with its experience regarding determinations of an applicant's qualifications. No change to the rule has been made based on this comment.

Comment: IAE and United Technologies note that it would be a burden to industry if DMIRs and ODA Holders can't perform functions on the same project. They reference language in the NPRM preamble, which states that organizations that currently have individual designees could operate under both systems (but not on the same project or program).

Response: The FAA acknowledges that the NPRM language may have been confusing. The referenced language specifically applies to design approval projects, such as Type Certificate (TC) programs, issuing STCs, and developing PMA design approvals. For these types of projects, it is expected that all engineering and inspection functions related to the project would be performed under the ODA authority, rather than another designee program.

ODA Holders with DMIRs could continue to use both ODA and DMIR approvals on FAA-managed projects. All authorities and capabilities available in the ODAR system are available under the ODA program. The FAA anticipates that the need for separate DMIRs will decrease, since all delegated inspection and production functions are available under the ODA program. No change to the rule has been made based on this comment.

Comment: The United States Parachute Association (USPA) comments that parachute operations functions are not mentioned in the draft ODA order, but are provided for in the proposed rule language. The USPA fears that if the authority to issue parachute operations approvals is delegated, it could be held liable for issuing certificates of authorization currently issued by the FAA. The USPA does not believe this delegation is appropriate.

Response: The FAA agrees that a delegation of the approvals could negatively impact the long-standing safety record of parachute operations by introducing less-experienced third parties into the process. Accordingly, the FAA has determined that authorizations or waivers related to parachute operations will not be delegated at this time. Based on this comment, we have changed the rule language to remove all references to part 105 or parachute operations.

Comments on Specific Proposed Rule Language

Section titles are those from the proposed rule, and may differ from those in the final rule.

Section 183.1 Scope

Comment: Several commenters request clarification of the term ''private organization'' as used in § 183.1(b), since the introductory text of that section uses the term ''private persons.'' One commenter suggests including a definition of ''private organization'' in the introductory text of § 183.1 or in § 183.41 (Applicability and definitions).

Response: As defined in 14 CFR part 1, ''person'' includes both an individual and an organization. Section 183.1 seeks to distinguish an individual from an organization for purposes of designation under part 183. Both individuals and organizations may receive a designation, but the ODA rule only applies to organizations. No change to the rule has been made based on this comment.

Section 183.15 Duration of Certificates

Comment: Two commenters, including IAE and United Technologies, ask if the duration and renewal of certificates as proposed under this section are applicable to individual ODA Unit members.

Response: The language in § 183.15 only applies to individual designees under other programs, not to the individuals within the ODA Unit. ODA Unit members are not considered appointed by the FAA and their appointment is not subject to renewal by the FAA. However, the ODA Holder will have to periodically assess the individuals within their ODA Unit. No change to the rule has been made based on this comment.

Section 183.41 Applicability and Definitions

Comment: IAE and United Technologies state that the current ODAR program only requires one focal point. They propose that ODA should also allow a single focal point.

Response: The commenters misunderstood the proposed rule. Proposed § 183.41(b)(1) defines the authorized representatives within the ODA Unit. While there must be at least two authorized individuals within an ODA Holder's organization, only one ODA administrator is required. No change to the rule has been made based on this comment. Section 183.41 has been reformatted, and the definition of ''ODA Unit'' in paragraph (b) has been clarified.

Section 183.47 Eligibility (Now Titled Qualifications)

Comment: Many commenters, including GE Aircraft Engines, Gulfstream Aerospace, and Raytheon Aircraft Company (Raytheon Aircraft) recommend that the FAA permit foreign organizations located in foreign countries to obtain ODAs. They note that the FAA could use its ''no undue burden'' concept to determine eligibility for foreign organizations, and that such organizations would help enhance the relationship between the United States and foreign countries.

Response: The FAA agrees in part. Although DERs currently must be located within the United States, the FAA has appointed a limited number of airworthiness and manufacturing designees that are located in foreign countries. We agree that the regulatory language should not prevent foreign eligibility, and we have removed the phrase, ''located within the United States'', from proposed § 183.47(a)(1). The regulations for the individual designee programs do not restrict eligibility to persons in the United States. The limitations for each designee type are included in the policies for managing these programs. Similarly, the FAA might place a limitation on appointing ODA Holders in foreign countries in the associated FAA policy. The rule has been changed as noted to reflect this comment.

Comment: Texas Air Composites states that the FAA should revise § 183.47(a) to state that the applicant has ''personnel with sufficient experience'', rather than the organization. Otherwise, it could be misconstrued that the organization must have the experience. This could result in start-up or recently formed companies with qualified personnel not being granted an ODA because the organization is new.

Response: The experience requirement is meant to apply to the organization. Although an organization may have experienced individuals, that

group of individuals must have experience working with each other and with the FAA as an organization. This is the only way for the FAA to determine that they are qualified, and whether there is a need for the authorization. Recently formed companies would not be eligible until they gain the necessary experience and demonstrate that, historically, they have sufficient workload to justify the authorization. No change to the rule has been made based on this comment.

Comment: IAE and United Technologies state that the FAA must identify the criteria the agency will use to determine when a qualified organization will not be granted an ODA. Texas Air Composites further notes that not granting an ODA to a qualified applicant could result in a financial disadvantage.

Response: A fundamental principle of delegation is the FAA's discretion in appointing designees and delegated organizations. Even if qualified, an organization is not entitled to an authorization, and the FAA does not make delegation decisions based solely on an applicant's desire to have an authorization. Authorizations will be based on the need for the functions requested. Thus, we expect to give priority to organizations with demonstrated expertise and a large workload. In some cases, we expect it may be beneficial for the FAA to manage an organization's activity using individual designees. It is not possible to state all the reasons that the FAA might have to deny an application. The primary considerations will always be the need for the authorization and the ability of the FAA to oversee the organization's activity. No change to the rule has been made based on this comment.

Comment: Regarding proposed § 183.47(b)(1), IAE and United Technologies state the FAA should include Production Certificate and Technical Standard Order Authorization to the list of certificates used to establish eligibility. Also, regarding proposed § 183.47(d), a commenter believes the proposed regulatory language could be interpreted to deny an ODA to a company that holds a type certificate that was transferred into the company. The commenter suggests the FAA revise the language to clarify that those companies holding a transferred type certificate are eligible for an ODA.

Response: The FAA agrees that the proposed language of this section could be misinterpreted. Section 183.47 has been significantly modified to clarify that eligibility is based solely on experience performing the functions sought, and the title of the section changed to Qualifications. The proposed language identified many different certificate holders as eligible for ODA, but did not specify the authority available for each type of certificate holder.

Holding a certificate is not an eligibility requirement for ODA. However, most functions authorized under the ODA program require the applicant to have been issued and hold a certificate related to the function. The only aircraft certification functions currently anticipated for non-certificate holders are the approval of major alteration and major repair data. Our draft order states that functions such as issuing STCs or PMA supplements require the applicant to have previously obtained such certificates from the FAA. The language in § 183.47 has been revised to require only experience performing the desired function and experience with related FAA procedures and policies. The list of certificates has been removed from the rule language. The specific eligibility requirements for the available programs and functions are described in the associated FAA policy.

Comment: Several commenters, including IAE, United Technologies, Matsushita Avionics System Corporation and Gulfstream Aerospace recommend that the FAA make holders of PMAs that were granted by license eligible for an ODA. They state that PMA holders seeking production approval functions should not be required to have experience in both design and production approval to obtain an ODA. This would be an additional requirement from the ODAR system. The commenters recommend proposed § 183.47(c) be reworded as follows: ''An applicant seeking function in the area of production must have for the product, components, parts, or appliances for which the applicant is seeking designation authorization, a current PC, TSOA or PMA issued under Part 21 of this chapter.''

Response: The FAA agrees. A PMA holder may apply for an ODA to perform production and airworthiness functions even if it does not have any engineering design experience. As noted above, the qualification requirement has been revised to require only experience performing the desired function and experience with related FAA procedures and policies. The details of the specific eligibility requirements for the available programs and functions will be more fully described in the associated policy.

Section 183.49 Authorized Functions

Comment: Electronic Cable Specialists comments that the preamble language indicates that the FAA is not considering delegation of PMAs. The commenter states that design approvals for PMAs should be a part of the ODA program.

Response: The FAA agrees that an ODA Holder may issue PMA supplements. However, the FAA has never delegated the issuance of an original PMA, and we do not intend to do so under ODA. No change to the rule has been made based on this comment.

Comment: One commenter states that proposed § 183.49(c)(1) and (c)(3) appear to duplicate the provisions of § 183.29. The commenter believes that allowing DERs and ODA Unit members to perform the same functions would double the FAA's oversight workload.

Response: The FAA disagrees. The commenter presumes that a DER and ODA Unit member would be performing the same function. Although these proposed sections provide for functions similar to those performed by a DER, the performance of a function under an ODA is separate and distinct from a function performed by an individual designee. As such, oversight of ODA functions is separate from any individual designee oversight. No change to the rule has been made based on this comment.

Comment: One commenter recommends that the rule should have a subparagraph to denote inherently governmental functions that may not be delegated.

Response: Listing inherently governmental functions is not consistent with accepted regulatory drafting, or with the intent of this rule. The FAA's delegation regulations define only those functions that may be accomplished by designees. We have revised proposed § 183.49 by removing any reference to specific functions. The ODA rule allows the delegation of any function allowed by 49 U.S.C. 44702(d). No change to the rule has been made based on this comment.

Comment: AIA and Boeing note that the proposal does not indicate whether the ODA program will apply to part 34 (emissions) or part 36 (aircraft noise) standards. The commenters state that delegation in these areas would be a significant opportunity to gain efficiency in the certification process with no associated safety risk. They request that the rule state that parts 34 and 36 are included.

Response: The FAA does not agree that the rule should specifically note application to parts 34 and 36. As revised, the rule allows designees to make findings of compliance with any FAA requirements. The FAA anticipates that ODA Holders may perform noise

and emission-related functions to the extent currently performed by DERs, but does not expect an expansion of the authorized functions under the ODA program. No change to the rule has been made based on this comment.

Section 183.51 ODA Unit Personnel (Proposed § 183.51 Personnel)

Comment: Piper Aircraft recommends a provision in the rule or FAA policy requiring that ODA Unit members receive training similar to that of FAA personnel.

Response: The FAA disagrees that ODA Unit members need the same training as FAA personnel. Training requirements may not be appropriate for all types of ODA Unit members that may exist under an ODA program. For example, engineers may perform limited functions of a repetitive nature, such as burn test approvals, for which there is no associated FAA training. When appropriate, the training requirements for ODA Unit members will be defined in the FAA policy, but they are not appropriate to include in the rule language. No change to the rule has been made based on this comment.

Comment: One commenter states that the rule should specify that ODA staff members and ODA Unit Members must be United States citizens, must be subjected to the same background check as FAA employees, and must live in the United States.

Response: The FAA disagrees. Neither United States citizenship nor a federal employee background check are qualifications currently imposed on individual designees. Further, staff members of delegated organizations are not required to be United States citizens, nor are they subject to background checks by the FAA. The FAA expects that some ODA Holders will have staff members in foreign countries performing functions for them. The associated FAA orders will include any limitations regarding staff members in foreign countries. No change to the rule has been made based on this comment.

Comment: IAE and United Technologies state that the experience for determining conformity and issuing airworthiness approvals should be in inspection, not aircraft certification.

Response: The FAA agrees that inspection and related experience is appropriate for conformity and airworthiness approvals. Accordingly, we have removed the phrase ''in aircraft certification'' from § 183.51(b).

Comment: One commenter notes that the terms ''qualified'' and ''experienced'' are subject to many interpretations. The rule should be more specific in explaining what these terms mean.

Response: The FAA disagrees. Specifying what qualified and experienced means in the many possible types of administrators and personnel that might be needed in an ODA organization is inappropriate for regulatory standards. The language is consistent with other designee rules currently used by the FAA, and delegation remains at the discretion of the FAA. More detail regarding qualifications for ODA positions can be found in the associated FAA orders. No change to the rule has been made based on this comment.

Section 183.53 Procedures Manual

Comment: IAE and United Technologies state that the continued airworthiness requirements in proposed § 183.53(n) (revised as § 183.53(b)(13)) should be applicable only to engineering functions, and not to production approval holders.

Response: The FAA disagrees. The procedures manual requirement applies to ODA Holders performing either engineering design or manufacturing-related approvals. Manufacturing issues not specifically related to the engineering or type design functions may lead to service difficulties and require investigation by an ODA holder. While no change to the rule has been made based on this comment, the proposed requirement is now contained in § 183.53(c)(13) referencing continued responsibilities.

Comment: IAE and United Technologies recommend rewording the last sentence of the introductory text of § 183.53 regarding changes to the procedures manual, stating that there may be instances when the FAA will authorize an ODA Holder to implement minor changes to the manual without FAA approval. They suggest revising the sentence to state ''Changes may be implemented prior to FAA approval in accordance with the change procedure in the manual.''

Response: The FAA agrees that certain minor changes to the manual may be made without prior approval. However, the procedures manual must specify the types of changes that may be adopted without FAA approval. Proposed § 183.53 has been revised and its paragraphs redesignated. Section 183.53(b) allows certain changes to be made to the manual, and to require that the manual describe the types of changes that may be incorporated without specific FAA approval.

Comment: IAE and United Technologies state that the regulation is too detailed regarding the content of the procedures manual. The commenters fear that stating the content as a minimum requirement will discourage the adoption of industry practices that exceed the requirements in the regulation. They note that the details of procedures manuals are usually in Orders and advisory circulars.

Response: The FAA has determined that it is appropriate to specify procedures manual requirements in the regulation. Since this section of the rule defines only the required content of the manual, rather than how to perform authorized functions, ODA Holders will still be free to introduce good practices that satisfy the requirements. No change to the rule has been made based on this comment.

Section 183.55 Limitations

Comment: IAE and United Technologies Corporation suggest changing § 183.55(b) to add the term ''significant,'' since minor changes within an ODA Unit may not affect the Unit's qualifications.

Response: The FAA disagrees. The addition of the term ''significant'' would have no impact on the requirements of this paragraph. If changes within the ODA Unit or ODA Holder do not affect the qualifications of the ODA Unit or Holder, or the ability of the ODA Unit to perform authorized functions, then they do not have to be reported. No change to the rule has been made based on this comment.

Section 183.57 Responsibilities of an ODA Holder

Comment: Raytheon Aircraft and GAMA comment on the language of proposed § 183.57(c), which specifies that the ODA Holder must ''Ensure that no interference or conflicting restraints are placed on the ODA Unit or on the personnel performing the designated functions while complying with this part and the approved procedures manual.'' They state that the proposed language is not consistent with existing wording used in FAA Order 8100.9, paragraph 3–3(a). The commenters question why this section is different from the language of the existing order. Since the intent is the same, one commenter recommends that the FAA adopt wording similar to that in Order 8100.9. That Order states ''The authorization holder must ensure that the administrator and ARs [Authorized Representatives] remain free of any restraints that would limit the DOA's, DAS's, or SFAR 36's ability to ensure that authorized functions are performed in compliance with FAA regulations.''

Response: The FAA agrees that the intent of the proposed language is

similar to that stated in Order 8100.9. However, we have determined that the language used in the rule is preferable for the purpose of regulation since it also prohibits interference with the ODA Unit by the ODA Holder. No change to the rule has been made based on this comment.

Section 183.63 Records and Reports (Proposed § 183.61)

Comment: Two commenters state that the requirement to submit data in the proposed § 183.63(b)(3) should not apply to airworthiness certificates, export approvals, the production limitation records or ''any other approval authorized under this subpart.'' One commenter points out that production limitation record requirements are already addressed in the proposed § 183.63(b)(2), and that the retention requirements for airworthiness certificates and approvals should be consistent with record retention requirements imposed on other designees. The commenters recommend deletion of proposed § 183.63(b)(6) for the same reasons. The same commenters recommend conformity inspection records and airworthiness approvals be maintained for two years rather than indefinitely as proposed.

Response: The FAA agrees in part. Airworthiness certificates or approvals are generally maintained for two years by most types of designees. The final rule adopts a two-year requirement for those ODA Holders that only issue these types of certificates or approvals. However, ODA Holders that perform type design approvals, such as TC and STC programs, are required to maintain records typically submitted to and maintained by the FAA as part of standard certification projects. The airworthiness certificates or approvals associated with such design approval projects must be maintained indefinitely. As revised, § 183.61(a)(2) requires indefinite retention of airworthiness certificates or approvals performed as part of type design programs, and revised § 183.61(c) requires retention of other airworthiness approvals or certificates for two years. The FAA agrees that reference to production limitation record data in the proposed section § 183.63(b)(3) duplicated the requirement for the production certificate in the proposed § 183.63(b)(2). The requirement for production related records has also been incorporated in revised 183.61(a)(2). The retention requirement of proposed § 183.63(b)(6) is also incorporated in the revised 183.61(a)(2) as a general requirement for all approvals, rather than a stand-alone requirement.

Comment: Two commenters recommend retaining the periodic audit and records of corrective action required under proposed § 183.63(b)(9) for two years rather than indefinitely.

Response: The FAA agrees that these records need not be retained indefinitely. However, we consider periodic audit records an important means to document an organization's continued compliance with the requirements for the authorization. Two years may not be adequate in all cases, since the planned oversight evaluation interval of two years could result in the development and destruction of these records before review of the corrective action by the FAA. To ensure adequate documentation for oversight of the ODA Holder, § 183.61(b) requires these records be maintained for five years.

Comment: IAE and United Technologies state that the two year record retention requirements in proposed § 183.63(c)(1) should not be applied to a production approval holder (PAH) that holds an ODA since it is not required for an FAA inspector or designee. They add that part 21 already specifies the inspection data requirement for PAHs.

Response: The FAA agrees. While such requirements are not imposed on individual designees, the requirement is contained in the existing DOA rules. While necessary under the DOA rule, the FAA agrees that it is not necessary under the ODA program since the other production approval holder requirements in part 21 apply. The requirement proposed in § 183.63(c)(1) has been removed.

Comment: IAE and United Technologies state that the requirement of proposed § 183.63(b)(4) for an ODA Holder to maintain a list of products on which it has performed an authorized function should apply only to ''authorized engineering functions.'' The commenter points out that records retention for manufacturing functions should be the same as for other designees.

Response: The FAA disagrees that the list requirement should apply only to engineering functions. The purpose of this requirement is to maintain a list of the specific products for which the ODA holder issues approvals. For example, a manufacturer authorized to issue airworthiness certificates is required to maintain a list of the aircraft for which it issued airworthiness certificates, and a repair station authorized to approve alteration data is required to maintain a list of the aircraft for which it has approved alteration data. We have removed the proposed language specifying the means of identification, but no change to the rule has been made based on this comment.

Section 183.65 Data Review and Service Experience (Now § 183.63 Continuing Requirements: Products, Parts or Appliances)

Comment: AIA states that proposed § 183.65(b) would require an ODA Unit to submit information necessary for the FAA to implement corrective action. The ODA Unit is the interface between the ODA Holder and the FAA. A certificate holder's obligation to develop and submit information under § 21.99 and § 21.277(b) remains in effect. Several commenters note that the responsibility to investigate safety concerns should be directed toward the ODA Holder, not the ODA Unit.

Response: The FAA agrees that § 21.99 applies, but only to certificate holders. Further, § 21.277(b) applies only to Delegation Option Authorization holders, which are being phased out as part of this rulemaking. The language of proposed § 183.65(b) was intended to impose similar requirements on ODA Holders. We note that while the proposed rule would have imposed the information submission requirement on the ODA Unit, we agree that investigation of service problems is a responsibility of the ODA Holder. An ODA Unit would be involved only in determining whether any proposed solution or design change is in compliance with the regulations. Accordingly, the language in § 183.63 has been revised to indicate that it applies to the ODA Holder rather than the ODA Unit. We also note that in those cases where the ODA Holder is not the certificate holder, this section requires the ODA Holder to conduct investigation into potentially unsafe conditions or non-compliant conditions for those certificates they issued to another holder. Unlike § 21.99, this section introduces the requirement for investigating non-compliant conditions, while § 21.99 applies only to unsafe conditions. The rule has been revised as noted above as a result of this comment.

Comment: AIA states that § 183.65(a) requires that investigations into potentially unsafe conditions must take priority over all other delegated activities. The commenter is concerned that this text may be misinterpreted or misapplied in practice. The commenter states that organizations may have the capability to perform parallel activities on different projects, and does not want the requirement misapplied to affect ongoing projects. The commenter would like the preamble of the final rule to clarify the priority clause and the two purposes it says the clause serves.

Response: The FAA agrees that the text regarding priority of investigation into unsafe conditions may be misinterpreted, and that the language in the proposed rule is not appropriate. The investigation into unsafe conditions is an activity that is inherent upon the ODA Holder and not something the FAA delegates. We agree that it might be feasible for an ODA holder to adequately perform an investigation while certification activity continues. Since the FAA will continue to manage the ODA Holder's delegated activity, the FAA will determine whether an ODA Holder is placing sufficient emphasis on the investigation of service problems. We could restrict the ODA Holder's authority until its performance improves. The language regarding priority of the investigation has been deleted.

Comment: IAE and United Technologies state that the proposed rule would require an ODA Unit to investigate safety concerns that it or the FAA identifies. This is not a responsibility of current ODAR holders, and should not be imposed on ODA Holders that only have manufacturing inspection responsibilities. An ODA Unit may not have personnel with the expertise to conduct these investigations. If imposed, this requirement should be on the ODA Holder. The commenter also states that the responsibility to investigate is already covered under § 21.3. The language in the proposed rule would limit the FAA's ability to conduct investigations.

Response: The FAA agrees that an ODA Holder is responsible for investigation of service difficulties, and has revised the rule language accordingly. However, while the requirement may be redundant to § 21.3 for an ODAR, some ODA Holders might issue certificates to other persons, and the requirement to investigate safety concerns does not duplicate the requirements of part 21. The FAA does not agree that the proposed language would limit our ability to conduct investigations. The rule has been revised as noted above as a result of this comment.

Section 183.67 Transferability and Duration

Comment: Several commenters, including GE Aircraft Engines, Gulfstream, and Boeing, state that the authorization should not have an expiration date and should remain effective until the FAA revokes it or the applicant surrenders it. The commenters state that renewing authorizations is an unnecessary step and will only increase the FAA's workload. They also note that the rule does not specify the maximum duration of the ODA or how the FAA will determine individual expiration dates.

Response: The FAA disagrees; all FAA individual designee programs have expiration dates. The FAA determines expiration dates based on the experience and history of the organization and the functions they perform. Renewal of the authorization allows the FAA to periodically assess an organization's performance and determine whether the workload of the organization justifies continuing the authorization. No change to the rule has been made based on this comment.

Comments on the Proposed Regulatory Evaluation

Comment: United Airlines, which holds current DAS and SFAR 36 authorizations, opposes the rule because it would have to reapply under ODA to continue using its current authority. United Airlines comments that as proposed, an ODA would increase its administrative workload when compared to the current delegation program.

Response: As noted in the Initial Regulatory Evaluation, the FAA expects that the initial administrative burden will be slightly greater than that under the current programs. However, we expect that the annual administration costs will be about the same as the annual administration costs under its existing designation programs. As other commenters noted, the ODA program will provide organizations with greater work scheduling flexibility and the overall cost of their work will decrease because they can use their resources more efficiently. The ODA is also designed to streamline the process when an organization seeks to add to its designated functions. No change to the rule has been made based on this comment.

Comment: Boeing comments that our estimated ODA costs were an order of magnitude too low. In a telephone conversation (a summary of which is in the docket), a Boeing representative clarified that its written comment was based on the *total* cost to move from a DOA, DAS, or SFAR 36 designation to an ODA and not based on the *incremental* cost to move from a DDS to an ODA. The Boeing representative reported that the cost of going from a DDS to an ODA would be about 10 percent of the total cost that it had included in its comment. He concluded that FAA estimates in the Initial Regulatory Evaluation of the unit costs of moving from a DDS to an ODA (an initial cost of $13,480 for a large organization and $7,980 for a small organization and an annual cost of $13,450 for a large organization and $6,850 for a small organization) were reasonable.

Response: We agree and use those same unit cost values in the Final Regulatory Evaluation.

Comment: In the Initial Regulatory Evaluation, we estimated that the initial cost to obtain an ODA would be $7,320 for a large ODAR and $5,780 for a small ODAR. The IAE comments that its large manufacturing ODAR initial cost would be $7,260. Pratt and Whitney commented that its large manufacturing ODAR initial cost would be $12,020.

Response: Based on these responses, the Final Regulatory Evaluation uses an average of these costs resulting in an initial cost of $9,640 for the typical large ODAR that transitions to an ODA.

Comment: In the Initial Regulatory Evaluation, we estimated that the average annual cost for a large ODAR would be $6,410 and the annual cost for a small ODAR would be $5,310. In its comment, IAE reports that it currently spend $29,870 every two years for the oversight/audit for their ODAR. International Aero Engines estimates that the total cost of this annual requirement would be $56,660 over two years. Thus, their annual incremental compliance costs for an ODA would be $26,790 more (over two years) than their current ODAR costs, or $13,395 in additional annual costs.

Response: We used the IAE estimate of $13,395 as the annual cost in the Final Regulatory Evaluation for a large ODAR annual cost.

Comment: Pratt and Whitney estimated an annual cost of $138,900 for their ODA.

Response: It was not clear whether this estimate is the incremental cost of going from its current authorization or whether it is the total cost of operating an ODA. Consequently, in light of the Boeing and IAE comments, we determined that the IAE estimate was the appropriate estimate of the annual cost of a large ODAR.

Discussion of Changes and Clarifications to the Proposed Requirements

As noted above, we have significantly changed the format of the final rule language to simplify it and increase its readability. In some cases, text has been moved or regrouped into more intuitive sections and paragraphs, and the heading changed to better reflect the content of the section. Any substantive changes, of which there were few, are noted here. This section will not discuss

language changes made to clarify the intent or format of the rule.

Section 21.230 Compliance Dates

Proposed § 21.230 has been eliminated; it did not contain compliance dates as the title suggested. The expiration of DOA has been added to § 21.235. No reference to part 183 is included since a reference to ODA is not necessary. The proposed phrase ''no person may apply for'' is incorrect and has been revised to read ''the Administrator will no longer accept.''

Section 21.430 Compliance Dates

Proposed 21.430 has been eliminated; it did not contain compliance dates as the title suggested. The expiration of DAS has been added to § 21.435. No reference to part 183 is included since a reference to ODA is not necessary. The phrase ''no person may apply for'' is incorrect and has been changed to ''the Administrator will no longer accept.''

SFAR 36

The proposed revision to SFAR 36 section 4 has been revised to incorporate language from the current rule regarding the certificate holding district office that was inadvertently left out of the proposed rule revision. The language addressing application for an ODA under part 183 has been removed, since it is outside the scope of SFAR 36 and is not regulatory in nature.

A new expiration date for SFAR 36 has been incorporated into the text.

Section 183.1 Scope

The word ''private'' has been deleted from paragraphs (a) and (b) because it is unnecessary. The introductory text of this section contains the term ''private person,'' while paragraphs (a) and (b) are intended to distinguish designations granted to individuals from those granted to organizations.

Section 183.15 Duration of Certificates

Proposed paragraph 183.15(b) used the term ''Certificate of Authority;'' we have replaced it with the more generic term ''proof of authorization.'' Certificates of Authority are specific to certain types of designees, while the expiration date described in this section will be included on all types of documentation used to identify representatives of the Administrator.

Section 183.41 Applicability and Definitions

Proposed paragraph (a)(2) has been removed. The definitions in § 183.41(b) have been reordered in a more logical sequence. The definition of ODA Unit has been revised to prevent an interpretation that unit members are performing functions on ''behalf of the administrator.'' This definition implied that the ODA Unit members were the ''designees,'' when, in fact, the ODA Holder is the designated organization that is authorized to perform the functions on behalf of the Administrator. The ODA Unit is defined as the identified individuals within the ODA Holder who perform the functions.

Section 183.45 Issuance of Organization Designation Authorizations

The description of the contents of the Letter of Designation in paragraph (a) has been removed since it was non-regulatory in nature.

Section 183.47 Qualifications (Proposed § 183.47 Eligibility)

Section 183.47 has been extensively revised and re-titled ''Qualifications.'' The proposed section listed a number of FAA certificates and presumed that a holder of any such certificate was ''eligible'' for an ODA. In fact, the primary requirement to become an ODA Holder is sufficient experience performing the authorized functions. The certificates listed appeared to be requirements to perform certain functions, rather than eligibility requirements to be granted an ODA. The section has been revised to require only that an applicant have adequate facilities, experience performing the functions sought, and experience with FAA policies and procedures related to the functions sought. Based on comments received, we have deleted the proposed requirement that the ODA Holder have facilities located within the United States.

Section 183.49 Authorized Functions

Section 183.49 has been extensively revised. The list of specific authorized functions has been removed, as identification of these functions was not necessary. This section now provides the authority for the Administrator to delegate any statutorily authorized function.

Section 183.51 Personnel

Section 183.51 has been re-titled ''ODA Unit Personnel'' to more accurately describe its content. Paragraph 183.51(b) has been revised based on comments submitted. As proposed, the language inferred that experience and expertise ''in aircraft certification'' is required to make conformity determinations, or issue airworthiness certificates. What is required is experience and expertise in the function requested. The phrase ''in aircraft certification'' has been removed.

Section 183.53 Procedures Manual

Section 183.53 has been revised and its paragraphs redesignated. Based on comments received, the language has been revised to allow for an ODA Holder to make minor changes to the procedures manual without FAA approval. A description of the minor changes allowed must be defined in the approved procedures manual.

Proposed paragraph 183.53(c) has been clarified to require definition of the organizational structure and responsibilities of both the ODA Holder and ODA Unit. The proposed rule was unclear whether the requirement to define the organizational structure applied to the ODA Unit, ODA Holder, or both.

Proposed paragraph 183.53(e) has been revised to clarify that the ODA Holder must perform periodic audits of both the ODA procedures and the ODA Unit.

Proposed paragraph 183.53(h) has been revised to clarify that the procedures manual must contain only a description of the training required for ODA Unit members. As proposed, it appeared that the actual training material was required to be included in the manual.

Proposed paragraph 183.53(j) has been revised to require position descriptions and required qualifications only for the ODA Unit members.

A new procedures manual requirement has been added in revised paragraph 183.53(c)(15) requiring ''Any other information required by the Administrator necessary to supervise the ODA Holder in the performance of its authorized functions.'' This is intended to allow the FAA to revise future procedures manual requirements in policy materials without amending the rule language.

Section 183.55 Limitations

The substance of proposed paragraph 183.55(a) has been moved to § 183.49, and the remaining sections redesignated accordingly. Proposed paragraph 183.55(b) has been revised to require notification of any change that may affect performance of an authorized function, rather than only changes within the ODA Unit or ODA Holder. For example, changes that are not within the Unit or Holder, such as changes in facilities, may require reporting. Additionally, proposed paragraph 183.55(d) was revised to make the ODA Holder, rather than the ODA Unit subject to limitations specified by the Administrator.

Limitations are actually imposed on the ODA Holder, and flow down to the ODA Unit.

Section 183.57 Responsibilities of an ODA Holder

New paragraph 183.57(e) contains the requirement from proposed § 183.59 to notify the FAA of a change that may affect the ODA Holder's ability to meet the regulations requirements.

Section 183.59 Continued Eligibility

The provisions of proposed § 183.59 have been moved to § 183.57, and subsequent sections redesignated accordingly.

Section 183.61 Inspection

This section has been redesignated as § 183.59.

Section 183.63 Records and Reports

This section has been redesignated as § 183.61, and extensively revised based on comments received. The description of the content of records has been revised for clarity. Based on comments received, most airworthiness certificates and approvals must be maintained only for two years, rather than indefinitely as proposed. However, airworthiness certificates and approvals supporting type design approval projects must be maintained for the duration of the authorization. Based on comments received, the requirement to maintain inspection records proposed in § 183.63(c)(1) has been removed and periodic audit and corrective action records must be maintained for five years, rather than indefinitely, as proposed. Service difficulty records must also be maintained for five years rather than for two years as proposed in § 183.63(c)(2). These retention requirements are intended to allow access to a greater amount of service history information if an investigation is required.

Section 183.65 Data Review and Service Experience

This section has been redesignated 183.63, and retitled ''Continuing Requirements: Products, Parts or Appliances.'' Proposed paragraphs 183.65(a) and (b) have been revised to clarify the requirements on the ODA Holder. A new requirement has been added to require the ODA Holder to actively monitor service difficulties. This is now done by current delegated organizations and is appropriate for inclusion in the regulatory text. Based on comments received, the notification and investigation requirements now apply to the ODA Holder rather than the ODA Unit.

The intent of proposed § 183.65(c) regarding operational approvals has been moved to new § 183.65 and titled ''Continuing Requirements: Operational Approvals.'' The section has been revised to clarify that the ODA Holder must notify the FAA of problems with operational approvals and investigate those matters. This section requires that the ODA Holder inform the Administrator of any error in issuance of an operational approval (certificate or authorization), and when instructed by the Administrator, suspend issuance of any similar approval until corrective action is implemented. This section also requires that the ODA Holder investigate any problem.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the information collection requirements(s) in this final rule to the Office of Management and Budget for its review. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). OMB has not yet approved the collection of this information.

This rule was proposed in the **Federal Register** on January 21, 2004. At that time the FAA requested public comments on the proposed information collection requirements. Based on comments received, the proposed requirement for respondents to maintain aircraft inspection records has been removed, and periodic audit and corrective action records must be maintained for five years, rather than indefinitely. Additionally, service difficulty information must be retained for five years, rather than the proposed two years, to ensure adequate information is available in the event safety issues require investigation. See the disposition of comments and discussion of changes and clarifications to the proposed language for more information. No comments addressed recordkeeping or reporting cost or burden estimates.

Annual Burden Estimate: We estimate the proposed rule imposes an annual public reporting burden of $235,840 based on 4288 hours at $55.00 per hour. The estimated recordkeeping costs are $161,700, based on 2940 hours at $55.00 per hour. Both of these cost estimates are based on clerical, technical, and overhead expenses.

Estimates of the burden created by the rule are based on the following: The rule will phase out over three years the existing DAS and DOA rules contained in Subparts J and M of part 21, as well as SFAR No. 36. The collection and recordkeeping requirements imposed by those rules will transition to the requirements contained here over the initial three-year period. In addition, existing ODARs that are currently managed under part 183 will also be converted to ODA over the initial three-year period. As a result, the initial three-year burden will be large, with a smaller burden over the life of the program. It is expected that about 180 applications will be processed within the first three years of the program, with an estimated 10 more applications being submitted per year over the life of the program.

The annual cost to the Federal Government to analyze and process the information received is estimated to be $69,300 per year. This estimate is based on 1260 hours at $55.00 per hour.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Preamble Summary

This portion of the preamble summarizes our analysis of the economic impacts of the rule. We suggest readers seeking greater detail read the full regulatory evaluation, which is in the docket.

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 of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S.

standards, the Trade Act requires agencies to consider international standards and, where appropriate, to use them as the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, we determined this rule: (1) Has benefits that justify its costs, is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (2) does not have a significant economic impact on a substantial number of small entities; (3) has a neutral international trade impact; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized as follows.

Total Benefits and Costs of This Rulemaking

The aviation industry reported that the conversion to an ODA system allows them to schedule their manufacturing, modification, and repair activities more efficiently than they can under the current designee system. It also allows us to more effectively monitor the organizational designee system. Under certain assumptions discussed in detail in the Regulatory Evaluation, we estimate that the aviation industry could annually save about $3.445 million in opportunity costs and a total present value savings of $24.9 million between 2006 and 2015. We calculate that the total initial costs for the ODA program will be $1.725 million spread over three years. The incremental annual costs of operating ODA programs between 2006 and 2015 will be $17.4 million. The average annual cost will be $2.175 million. The present value of the total costs for the ODA program will be $12.3 million.

Who Is Potentially Affected by This Rulemaking

Aircraft manufacturers, air carriers, commercial operations, repair stations, and aircraft parts manufacturers may be affected by this rule.

Alternatives We Considered

We did not consider other alternatives to this final rule because the proposed rule had been developed in conjunction with the ARAC recommendations. We received positive industry responses to the proposed rule and we received no suggested alternatives other than to maintain the current system.

Cost Assumptions and Sources of Information

Period of analysis is 2006–2015.

Final rule will be effective by January 1, 2006.

Discount rate is 7 percent.

Fully burdened labor rate for an aviation engineer is $110 an hour.

The affected parties will be 4 aircraft and two propeller manufacturers that have 7 DOAs, 26 companies that have 33 DASs, 13 companies that have 13 SFAR 36 authorizations, 42 organizations that have 47 maintenance ODARs, and 81 organizations that have 89 manufacturing ODARs. We did not estimate a cost for the unknown number of organizations that do not currently have a designation authorization may choose to apply for an ODA.

We obtained data from members of an ARAC working group, existing DAS, DOA, and SFAR 36 holders, and from public comments on the proposed rule.

Estimated Benefits

We determined that the rule will generate both improved safety and reduced costs. By shifting our inspection focus from reviewing test results to overseeing the designation program, we will be able to more efficiently use our resources while extending our oversight coverage, thereby increasing safety. In the NPRM, we requested that commenters provide quantitative estimates of their cost savings from substituting an ODA for their current designation authorizations. We did not receive any quantitative estimates, but nearly all of the industry commenters noted that an ODA will allow them to more efficiently schedule their work and save them time. This view was also the consensus in the ARAC working group. Under certain assumptions discussed in the Regulatory Evaluation, we estimate that the aviation industry could annually save $3.445 million in undiscounted opportunity costs. We received comments from individuals who believe that the ODA program will increase costs. We disagree with those comments. Were an ODA to increase an organization's net costs, that organization has the option to not participate.

Costs of This Rulemaking

The average undiscounted initial cost for an existing DAS, DOA, or SFAR 36 holder to transition to an ODA will be $13,480 for a large program and $7,980 for a small program. The average annual incremental undiscounted cost will be $13,450 for an existing DAS, DOA, or SFAR 36 holder with a large program and $6,850 for those with a small program. We received two comments on the estimated costs for a manufacturing ODAR program to convert to an ODA. Taking the average of these costs, the average undiscounted initial cost for a large ODAR program will be $9,640 and $7,505 for a small ODAR program. The average incremental annual undiscounted cost will be $6,410 for a large ODAR program and $5,310 for a small ODAR program.

Cost Benefit Summary

Industry worked with us to improve our oversight efficiency and maintain system safety. This rule creates a more efficient system with benefits to both the industry and to the FAA. There were 10 industry comments that supported the proposed rule as being cost beneficial and one industry comment opposing it. As noted earlier, under certain assumptions described in Section III.C of the Regulatory Evaluation, the present value of the annual reduction in the opportunity costs from the ODA program could be $24.9 million, which is greater than the present value of the compliance costs of $12.3 million.

Changes From the NPRM to the Final Rule

Based on the comments received from the NPRM, we made three moderate changes in the unit cost estimates from those in the NPRM to those in the final rule. In response to two comments from manufacturers that hold ODARs, we increased our annual compliance costs for a large ODAR holder from the estimated $7,320 in the NPRM to $9,640 in the final rule analysis. In the NPRM, we had estimated that participants in the DDS program would have minimal costs. We received two comments stating that there will be costs for these programs to apply for an ODA. Based on the comments, we increased our initial compliance costs for DOA, DAS, and SFAR 36 holders from the estimated minimal amount in the NPRM to $13,480 in the final rule for a large program and $7,980 in the final rule for a small program. Finally, we increased our annual compliance costs for DOA, DAS, and SFAR 36 holders from a minimal amount in the NPRM to $13,450 in the final rule for a large program and $6,850 in the final rule for a small program. As a result, we calculate that the total initial costs for the final rule will be $1.725 million whereas we had estimated that it would

be $1.144 million in the NPRM. Whereas we had estimated that the annual incremental cost would be $1.102 million in the NPRM, for the final rule it will now be $2.175 million.

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 statutes, 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 Act. In the Final Regulatory Evaluation, we note two important considerations for a small business impact. First, three of the four categories of designations already operate under programs that are very similar to the ODA program. Only the ODARs do not currently operate under an ODA-like system. There are about 4,000 aircraft repair stations and aircraft parts manufacturers (nearly all of which are small entities). Twenty of the 47 maintenance ODARs and 42 of the 89 manufacturing ODARs are operated by small companies having fewer than 1,500 employees. While there are a substantial number of small entities, the rule will not have a significant impact. The rule will not require them to operate an ODA. They can apply for one, but it is their choice. That is, if an ODA makes business sense, a small business has the option of applying for it, but is not required to have one. Second, the expected efficiency gains for some of these companies will exceed the expected compliance costs.

In light of this evidence, the FAA Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

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 FAA assessed the potential effect of this final rule and determined that because the compliance costs are minimal, and there will likely be net cost savings from increased scheduling efficiencies for primarily domestic organizations, this final rule will slightly reduce costs for U.S. organizations. It has no effect on foreign organizations. Thus, the final rule has a minimal effect on foreign commerce.

Unfunded Mandates Reform Act

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.

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 statutes, 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 Act.

The rule will require every organization that has a designation authorization to apply for an ODA if it intends to continue to have a designation authorization. Most of the 4,000 entities that participate in the aviation industry do not have designation authorizations. Rather, they perform their necessary testing and examinations using FAA-approved individuals operating under standard practices. This rule does not require these entities to have an ODA program and they can continue to operate using the existing system. As a result, the Administrator certifies that the rule will not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

As the compliance costs are minimal, this final rule will have a minimal trade impact.

Unfunded Mandates Reform Act

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.''

We note that the rule would not impose a significant private sector cost. Thus, this rule does not contain such a mandate and the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in

paragraph 303(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 145

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 183

Aircraft, Airmen, Authority delegations (Government agencies), Reporting and recordkeeping requirements.

The Amendments

■ The Federal Aviation Administration amends parts 21, 121, 135, 145, and 183 of the Federal Aviation Regulations as follows:

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

■ 2. Section 21.235 is revised to read as follows:

§ 21.235 Application.

(a) An application for a Delegation Option Authorization must be submitted, in a form and manner prescribed by the Administrator, to the Aircraft Certification Office for the area in which the manufacturer is located.

(b) An application must include the names, signatures, and titles of the persons for whom authorization to sign airworthiness certificates, repair and alterations forms, and inspection forms is requested.

(c) After November 14, 2006, the Administrator will no longer accept applications for a Delegation Option Authorization.

(d) After November 14, 2009, no person may perform any function contained in a Delegation Option Authorization issued under this subpart.

■ 3. Section 21.435 is revised to read as follows:

§ 21.435 Application.

(a) An applicant for a Designated Alteration Station authorization must submit an application, in writing and signed by an official of the applicant, to the Aircraft Certification Office responsible for the geographic area in which the applicant is located. The application must contain:

(1) The repair station certificate number held by the repair station applicant, and the current ratings covered by the certificate;

(2) The air carrier or commercial operator operating certificate number held by the air carrier or commercial operator applicant, and the products it may operate and maintain under the certificate;

(3) A statement by the manufacturer applicant of the products for which he holds the type certificate;

(4) The names, signatures, and titles of the persons for whom authorization to issue supplemental type certificates or experimental certificates, or amend airworthiness certificates, is requested; and

(5) A description of the applicant's facilities, and of the staff with which compliance with § 21.439(a)(4) is to be shown.

(b) After November 14, 2006, the Administrator will no longer accept applications for a Designated Alteration Station authorization.

(c) After November 14, 2009, no person may perform any function contained in a Designated Alteration Station authorization issued under this subpart.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 4. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

PART 145—REPAIR STATIONS

■ 6. The authority citation for part 145 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44707, 44717.

■ 7. In parts 121, 135, and 145, Special Federal Aviation Regulation No. 36, the text of which is found at the beginning of part 121, is amended by revising the introductory text of section 4; revising the introductory text of section 7; revising the termination date to read as follows.

Special Federal Aviation Regulation No. 36

* * * * *

4. *Application.* The applicant for an authorization under this Special Federal Aviation Regulation must submit an application before November 14, 2006, in writing, and signed by an officer of the applicant, to the certificate holding district office charged with the overall inspection of the applicant's operations under its certificate. The application must contain—

* * * * *

7. *Duration of Authorization.* Each authorization issued under this Special Federal Aviation Regulation is effective from the date of issuance until, November 14, 2009, unless it is earlier surrendered, suspended, revoked or otherwise terminated. Upon termination of such authorization, the terminated authorization holder must:

* * * * *

This Special Federal Aviation Regulation terminates November 14, 2009.

* * * * *

PART 183—REPRESENTATIVES OF THE ADMINISTRATOR

■ 8. The authority citation for part 183 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 106(g), 40113, 44702, 44721, 45303.

■ 9. Section 183.1 is revised to read as follows:

§ 183.1 Scope.

This part describes the requirements for designating private persons to act as representatives of the Administrator in examining, inspecting, and testing persons and aircraft for the purpose of issuing airman, operating, and aircraft certificates. In addition, this part states the privileges of those representatives and prescribes rules for the exercising of those privileges, as follows:

(a) An individual may be designated as a representative of the Administrator under subparts B or C of this part.

(b) An organization may be designated as a representative of the Administrator by obtaining an Organization Designation Authorization under subpart D of this part.

■ 10. Section 183.15 is amended by removing paragraph (c), redesignating paragraph (d) as paragraph (c), and revising paragraphs (a) and (b) to read as follows:

§ 183.15 Duration of certificates.

(a) Unless sooner terminated under paragraph (c) of this section, a designation as an Aviation Medical Examiner is effective for one year after the date it is issued, and may be renewed for additional periods of one year at the Federal Air Surgeon's discretion. A renewal is effected by a letter and issuance of a new identification card specifying the renewal period.

(b) Unless sooner terminated under paragraph (c) of this section, a designation as Flight Standards or Aircraft Certification Service Designated Representative as described in §§ 183.27, 183.29, 183.31, or 183.33 is effective until the expiration date shown on the document granting the authorization.

* * * * *

■ 11. A new subpart D is added to part 183 to read as follows:

Subpart D—Organization Designation Authorization

Secs.

§ 183.41 Applicability and definitions.

(a) This subpart contains the procedures required to obtain an Organization Designation Authorization, which allows an organization to perform specified functions on behalf of the Administrator related to engineering, manufacturing, operations, airworthiness, or maintenance.

(b) *Definitions.* For the purposes of this subpart:

Organization Designation Authorization (ODA) means the authorization to perform approved functions on behalf of the Administrator.

ODA Holder means the organization that obtains the authorization from the Administrator, as identified in a Letter of Designation.

ODA Unit means an identifiable group of two or more individuals within the ODA Holder's organization that performs the authorized functions.

§ 183.43 Application.

An application for an ODA may be submitted after November 14, 2006. An application for an ODA must be submitted in a form and manner prescribed by the Administrator and must include the following:

(a) A description of the functions for which authorization is requested.

(b) A description of how the applicant satisfies the requirements of § 183.47 of this part;

(c) A description of the applicant's organizational structure, including a description of the proposed ODA Unit as it relates to the applicant's organizational structure; and

(d) A proposed procedures manual as described in § 183.53 of this part.

§ 183.45 Issuance of Organization Designation Authorizations.

(a) The Administrator may issue an ODA Letter of Designation if:

(1) The applicant meets the applicable requirements of this subpart; and

(2) A need exists for a delegation of the function.

(b) An ODA Holder must apply to and obtain approval from the Administrator for any proposed changes to the functions or limitations described in the ODA Holder's authorization.

§ 183.47 Qualifications.

To qualify for consideration as an ODA, the applicant must—

(a) Have sufficient facilities, resources, and personnel, to perform the functions for which authorization is requested;

(b) Have sufficient experience with FAA requirements, processes, and procedures to perform the functions for which authorization is requested; and

(c) Have sufficient, relevant experience to perform the functions for which authorization is requested.

§ 183.49 Authorized functions.

(a) Consistent with an ODA Holder's qualifications, the Administrator may delegate any function determined appropriate under 49 U.S.C. 44702(d).

(b) Under the general supervision of the Administrator, an ODA Unit may perform only those functions, and is subject to the limitations, listed in the ODA Holder's procedures manual.

§ 183.51 ODA Unit personnel.

Each ODA Holder must have within its ODA Unit—

(a) At least one qualified ODA administrator; and either

(b) A staff consisting of the engineering, flight test, inspection, or maintenance personnel needed to perform the functions authorized. Staff members must have the experience and expertise to find compliance, determine conformity, determine airworthiness, issue certificates or issue approvals; or

(c) A staff consisting of operations personnel who have the experience and expertise to find compliance with the regulations governing the issuance of pilot, crew member, or operating certificates, authorizations, or endorsements as needed to perform the functions authorized.

§ 183.53 Procedures manual.

No ODA Letter of Designation may be issued before the Administrator approves an applicant's procedures manual. The approved manual must:

(a) Be available to each member of the ODA Unit;

(b) Include a description of those changes to the manual or procedures that may be made by the ODA Holder. All other changes to the manual or procedures must be approved by the Administrator before they are implemented.

(c) Contain the following:

(1) The authorized functions and limitations, including the products, certificates, and ratings;

(2) The procedures for performing the authorized functions;

(3) Description of the ODA Holder's and the ODA Unit's organizational structure and responsibilities;

(4) A description of the facilities at which the authorized functions are performed;

(5) A process and a procedure for periodic audit by the ODA Holder of the ODA Unit and its procedures;

(6) The procedures outlining actions required based on audit results,

including documentation of all corrective actions;

(7) The procedures for communicating with the appropriate FAA offices regarding administration of the delegation authorization;

(8) The procedures for acquiring and maintaining regulatory guidance material associated with each authorized function;

(9) The training requirements for ODA Unit personnel;

(10) For authorized functions, the procedures and requirements related to maintaining and submitting records;

(11) A description of each ODA Unit position, and the knowledge and experience required for each position;

(12) The procedures for appointing ODA Unit members and the means of documenting Unit membership, as required under § 183.61(a)(4) of this part;

(13) The procedures for performing the activities required by § 183.63 or § 183.65 of this part;

(14) The procedures for revising the manual, pursuant to the limitations of paragraph (b) of this section; and

(15) Any other information required by the Administrator necessary to supervise the ODA Holder in the performance of its authorized functions.

§ 183.55 Limitations.

(a) If any change occurs that may affect an ODA Unit's qualifications or ability to perform a function (such as a change in the location of facilities, resources, personnel or the organizational structure), no Unit member may perform that function until the Administrator is notified of the change, and the change is approved and appropriately documented as required by the procedures manual.

(b) No ODA Unit member may issue a certificate, authorization, or other approval until any findings reserved for the Administrator have been made.

(c) An ODA Holder is subject to any other limitations as specified by the Administrator.

§ 183.57 Responsibilities of an ODA Holder.

The ODA Holder must—

(a) Comply with the procedures contained in its approved procedures manual;

(b) Give ODA Unit members sufficient authority to perform the authorized functions;

(c) Ensure that no conflicting non-ODA Unit duties or other interference affects the performance of authorized functions by ODA Unit members.

(d) Cooperate with the Administrator in his performance of oversight of the ODA Holder and the ODA Unit.

(e) Notify the Administrator of any change that could affect the ODA Holder's ability to continue to meet the requirements of this part within 48 hours of the change occurring.

§ 183.59 Inspection.

The Administrator, at any time and for any reason, may inspect an ODA Holder's or applicant's facilities, products, components, parts, appliances, procedures, operations, and records associated with the authorized or requested functions.

§ 183.61 Records and reports.

(a) Each ODA Holder must ensure that the following records are maintained for the duration of the authorization:

(1) Any records generated and maintained while holding a previous delegation under subpart J or M of part 21, or SFAR 36 of this chapter.

(2) For any approval or certificate issued by an ODA Unit member (except those airworthiness certificates and approvals not issued in support of type design approval projects):

(i) The application and data required to be submitted under this chapter to obtain the certificate or approval; and

(ii) The data and records documenting the ODA Unit member's approval or determination of compliance.

(3) A list of the products, components, parts, or appliances for which ODA Unit members have issued a certificate or approval.

(4) The names, responsibilities, qualifications and example signature of each member of the ODA Unit who performs an authorized function.

(5) A copy of each manual approved or accepted by the ODA Unit, including all historical changes.

(6) Training records for ODA Unit members and ODA administrators.

(7) Any other records specified in the ODA Holder's procedures manual.

(8) The procedures manual required under § 183.53 of this part, including all changes.

(b) Each ODA Holder must ensure that the following are maintained for five years:

(1) A record of each periodic audit and any corrective actions resulting from them; and

(2) A record of any reported service difficulties associated with approvals or certificates issued by an ODA Unit member.

(c) For airworthiness certificates and approvals not issued in support of a type design approval project, each ODA Holder must ensure the following are maintained for two years;

(1) The application and data required to be submitted under this chapter to obtain the certificate or approval; and

(2) The data and records documenting the ODA Unit member's approval or determination of compliance.

(d) For all records required by this section to be maintained, each ODA Holder must:

(1) Ensure that the records and data are available to the Administrator for inspection at any time;

(2) Submit all records and data to the Administrator upon surrender or termination of the authorization.

(e) Each ODA Holder must compile and submit any report required by the Administrator to exercise his supervision of the ODA Holder.

§ 183.63 Continuing requirements: Products, parts or appliances.

For any approval or certificate for a product, part or appliance issued under the authority of this subpart, or under the delegation rules of subpart J or M of part 21, or SFAR 36 of this chapter, an ODA Holder must:

(a) Monitor reported service problems related to certificates or approvals it holds;

(b) Notify the Administrator of:

(1) A condition in a product, part or appliance that could result in a finding of unsafe condition by the Administrator; or

(2) A product, part or appliance not meeting the applicable airworthiness requirements for which the ODA Holder has obtained or issued a certificate or approval.

(c) Investigate any suspected unsafe condition or finding of noncompliance with the airworthiness requirements for any product, part or appliance, as required by the Administrator, and report to the Administrator the results of the investigation and any action taken or proposed.

(d) Submit to the Administrator the information necessary to implement corrective action needed for safe operation of the product, part or appliance.

§ 183.65 Continuing requirements: Operational approvals.

For any operational authorization, airman certificate, air carrier certificate, air operator certificate, or air agency certificate issued under the authority of this subpart, an ODA Holder must:

(a) Notify the Administrator of any error that the ODA Holder finds it made in issuing an authorization or certificate;

(b) Notify the Administrator of any authorization or certificate that the ODA Holder finds it issued to an applicant not meeting the applicable requirements;

(c) When required by the Administrator, investigate any problem

concerning the issuance of an authorization or certificate; and

(d) When notified by the Administrator, suspend issuance of similar authorizations or certificates until the ODA Holder implements all corrective action required by the Administrator.

§ 183.67 Transferability and duration.

(a) An ODA is effective until the date shown on the Letter of Designation, unless sooner terminated by the Administrator.

(b) No ODA may be transferred at any time.

(c) The Administrator may terminate or temporarily suspend an ODA for any reason, including that the ODA Holder:

(1) Has requested in writing that the authorization be suspended or terminated;

(2) Has not properly performed its duties;

(3) Is no longer needed; or

(4) No longer meets the qualifications required to perform authorized functions.

Issued in Washington, DC, on September 30, 2005.

Marion C. Blakey,

Administrator.

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Federal Register

Thursday,
October 13, 2005

Part VI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ11

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), herein address the designation of critical habitat for *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale) pursuant to the Endangered Species Act of 1973, as amended (Act). We are designating zero acres of critical habitat for *A. coronata* var. *notatior*. We identified 15,232 acres (ac) (6,167 hectares (ha)) of habitat with features essential to the conservation of this taxon. However, all habitat with essential features for this taxon is located either within our estimate of the areas to be conserved and managed by the approved Western Riverside MSHCP on existing Public/Quasi-Public Lands (PQP) lands, or within areas where the MSHCP will ensure that future projects will not adversely alter essential hydrological processes, and therefore is excluded from critical habitat under section 4(b)(2) of the Act.

DATES: This rule becomes effective on November 14, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011 (telephone 760/431–9440). The final rule, economic analysis, and maps will also be available via the Internet at *http://carlsbad.fws.gov/SJVCDocs.htm.*

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address, (telephone 760/431–9440; facsimile 760/431–9624).

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 473 species, or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,253 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 two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*). 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

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves 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

It is our intent to discuss only those topics directly relevant to the subject of this final rule. For more information on

the biology, ecology, and distribution of this taxon, refer to the proposed listing rule published in the **Federal Register** on December 15, 1994 (59 FR 64812), the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the proposed critical habitat rule published in the **Federal Register** on October 6, 2004 (69 FR 59844).

Previous Federal Actions

Please see the final rule listing *Atriplex coronata* var. *notatior* as endangered for a description of previous Federal actions through October 13, 1998 (63 FR 54975). At the time of the final listing rule, the Service determined designation of critical habitat was not prudent because such designation would not benefit the species.

On November 15, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity and California Native Plant Society, challenging our ''not prudent'' determinations for eight plants including *Atriplex coronata* var. *notatior* (*CBD, et al.* v. *Norton*, No. 01–CV–2101 (S.D. Cal.)). A second lawsuit asserting the same challenge was filed against DOI and the Service by the Building Industry Legal Defense Foundation (BILD) on November 21, 2001 (*BILD* v. *Norton*, No. 01–CV–2145 (S.D. Cal.)). The parties in both cases agreed to remand the critical habitat determinations to the Service for additional consideration. In an order dated July 1, 2002, the U.S. District Court for the Southern District of California directed us to reconsider our not prudent finding and publish a proposed critical habitat rule for *A. coronata* var. *notatior*, if prudent, on or before January 30, 2004. In a motion to modify the July 1, 2002 order, the DOI and the Service requested that the due date for the proposed and final rules for *A. coronata* var. *notatior* be extended until October 1, 2004 and October 1, 2005, respectively. This motion was granted on September 9, 2003. The proposed rule was signed September 30, 2004 and published in the **Federal Register** October 6, 2004 (69 FR 59844). This final rule complies with the court's ruling.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Atriplex coronata* var. *notatior* and on the draft economic analysis of the proposed designation during two comment periods. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the draft economic analysis.

During the comment period that opened on October 6, 2004, and closed December 6, 2004, we received 5 comment letters directly addressing the proposed critical habitat designation: 3 from peer reviewers, and 2 from organizations or individuals. During the comment period that opened on August 31, 2005, and closed on September 15, 2005, we received 6 comment letters directly addressing the proposed critical habitat designation and the draft economic analysis: 3 were from a peer reviewer, and 3 were from organizations. One commenter supported our decision not to designate critical habitat for *Atriplex coronata* var. *notatior* and five opposed our decision. Comments received were grouped into 18 general issues specifically relating to the proposed critical habitat designation for *A. coronata* var. *notatior*, and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing. We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *A. coronata* var. *notatior*. All comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three peer reviewers. The peer reviewers were generally supportive of the designation of critical habitat. However, they did not support the exclusion of critical habitat for *Atriplex coronata* var. *notatior* based on the presence of an existing habitat conservation plan (HCP).

Peer Reviewer Comments on the Proposed Rule

1. *Comment:* The three peer reviewers submitted 26 comments on how to: reduce the redundancy and length of the rule; edit punctuation, wording, and terminology: and incorporate citations to help the rule be more clear and succinct.

Our Response: We have incorporated these comments into the final rule as appropriate.

2. *Comment:* The three peer reviewers submitted 38 comments on *Atriplex coronata* var. *notatior* and the Western Riverside MSHCP. These comments emphasized the importance of including in the final rule a clear, detailed explanation of the Western Riverside MSHCP, its associated Implementing Agreement (IA), the Service's formal section 7 consultation for the MSHCP, and the Service's responsibilities and authority under the MSHCP as they relate to *A. coronata* var. *notatior.*

Our Response: We appreciate the peer reviewers' concerns regarding the MSHCP and its associated documents, and we have incorporated detailed information on these as they relate to *Atriplex coronata* var. *notatior* under the section titled ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan.'' The MSHCP and its associated IA are available via the Internet at *http://rcip.org/conservation.htm,* and the Service's formal section 7 consultation and Conceptual Reserve Design map are available via the Internet at *http://www.fws.gov/pacific/carlsbad/WRV_MSHCP_BO.htm.*

3. *Comment:* The three peer reviewers submitted 12 comments that disagreed with our decision to exclude critical habitat based on the presence of an existing habitat conservation plan. Specific comments included: (1) The statement that the Service had failed to provide an adequate basis for the exclusion of lands from critical habitat; (2) that our decision to exclude lands from critical habitat based on the MSHCP's ability to protect the taxon's habitat was not adequately supported; and (3) that not all agencies are signatory to the MSHCP and therefore critical habitat should be identified for those projects and agencies operating outside the MSHCP.

Our Response: Section 4(b)(2) of the Act allows us to consider 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 an area as critical habitat will result in the extinction of the species. We have determined that benefits of exclusion of areas covered by the Western Riverside MSHCP outweigh the benefits of inclusion, and have included a more detailed analysis of the benefits of the MSHCP in this final rule

under the section titled ''Exclusions Under Section 4(b)(2) of the Act''.

4. *Comment:* The three peer reviewers submitted four comments that disagreed with the Service's statement in the rule that designation of critical habitat provides little additional protection to species (see **SUPPLEMENTARY INFORMATION** section above). Concern was expressed that a critical habitat proposal was not the appropriate venue for a discussion of the resource and procedural difficulties in designating critical habitat. It was suggested that critical habitat could be used as a tool to manage or end threats to the species, such as manure dumping. Additionally, it was suggested that the designation of critical habitat would give more recognition and attention to the habitat of *Atriplex coronata* var. *notatior.*

Our Response: As discussed in the **SUPPLEMENTARY INFORMATION** section and other sections of this and other critical habitat designations, we believe that (in most cases) various conservation mechanisms provide greater incentives and conservation benefits than designation of critical habitat. These include section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative programs with private and public landholders and tribal nations.

While we concur that critical habitat designation can provide some level of species protection, this can only be provided if there is a Federal nexus for those agencies planning actions that may impact the designated habitat. We are unaware of any Federal nexus that would generally apply to application of soil amendments, such as the dumping of manure.

5. *Comment:* Two peer reviewers submitted two comments that disagreed with the Service's statement that the exclusion of critical habitat based on existing HCPs offers ''unhindered, continued ability to seek new partnerships with future HCP participants.'' They commented that the Service should be able to continue working cooperatively with partners on HCPs and other conservation efforts once critical habitat has been designated, and asked that we provide further explanation of how the designation of critical habitat may impede cooperative conservation efforts, such as the MSHCP.

Our Response: Both HCPs and critical habitat designations are designed to provide conservation measures to protect species and their habitats. The advantage of seeking new conservation partnerships (through HCPs or other means) is that they can offer active management and other conservation measures for the habitat on a full-time and predictable basis. Critical habitat designation only prevents adverse modification of the habitat where there is a Federal nexus to the modifying activity. The designation of critical habitat may remove incentives to participate in the HCP processes, in part because of added regulatory uncertainty, increased costs to plan development and implementation, weakened stakeholder support, delayed approval and development of the plan, and greater vulnerability to legal challenge. We have in the past received direct statements of intent to withdraw from other forms of cooperative efforts beneficial to the conservation of listed species if those landowners' property was included in pending critical habitat designations. We work with HCP applicants to ensure that their plans meet the issuance criteria and that the designation of critical habitat on lands where an HCP is in development does not delay the approval and implementation of their HCP. Additionally, HCPs offer conservation of covered species whether or not the area is designated as critical habitat.

6. *Comment:* The three peer reviewers submitted five comments that recommended that the reader be referred, under the ''Previous Federal Actions'' section, to both the proposed listing rule published on December 15, 1994 (59 FR 64812), which included proposed critical habitat, and the final listing rule published on October 13, 1998 (63 FR 54975), which withdrew the 1994 critical habitat proposal due to the severe decline of the species.

Our Response: This reference has been incorporated into the Previous Federal Actions section above.

7. *Comment:* The three peer reviewers submitted four comments that recommended that the discussion on Special Management Considerations be expanded. Recommendations include citing specific language from the Act to support our statement that occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection, and clarifying the extent and limitations of management measures proposed under the MSHCP. The reviewers were concerned that the MSHCP had not yet resulted in the implementation of management actions that would address threats to the species, such as soil chemistry alteration resulting from manure dumping.

Our Response: In the ''Critical Habitat'' section of the proposed rule we provided a definition of critical habitat pursuant to section 3(5)(A) of the Act. Within the ''Special Management Considerations'' section below, we have expanded our discussion to address this comment. We have also provided a more detailed discussion of the management measures proposed under the MSHCP (see ''Exclusions Under Section 4(b)(2) of the Act'' section).

8. *Comment:* Two peer reviewers submitted seven comments that recommended that we incorporate changes into the final rule to better address the unique status of plants under the Act, including the limited protection plants are provided under section 9 of the Act, and the assistance critical habitat could provide to the protection and recovery of Atriplex coronata var. notatior.

Our Response: As stated in the ''Effects of Critical Habitat Designation'' section of the proposed rule, 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. 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. The designation of critical habitat would not change this. *Atriplex coronata* var. *notatior* is currently known to occur exclusively on private lands. If occupied private lands were designated as critical habitat, any actions with a Federal nexus that might adversely affect the critical habitat would require a consultation with us. However, consultation for activities (e.g., habitat modification) with a Federal nexus which might adversely impact the species in occupied habitat would be required even without the critical habitat designation. Since there is no prohibition against take of listed plants on private lands, activities without a Federal nexus which might adversely impact the species or its habitat would not require consultation with us even with a critical habitat designation.

9. *Comment:* The three peer reviewers submitted nine comments that stated that threats to the species were not adequately addressed in the proposed rule. Additional threats to discuss included the following: (1) Manure spreading which buries the seed bank, introduces vast quantities of organic material and nutrients, and alters soil composition and chemistry allowing for the invasion of alkali intolerant weeds; (2) activities posed by MSHCP covered

projects such as the State Route 79 Realignment Project, the Ramona Expressway, and the San Jacinto River Flood Control Project; and, (3) non-seasonal flows which may result from future development.

Our Response: We address the threats of manure spreading, MSHCP covered projects, and non-seasonal flows in the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' and ''Special Management Considerations or Protections'' sections of this final rule.

10. *Comment:* One peer reviewer suggested expanding the discussion of the species conservation needs to include *Atriplex coronata* var. *notatior's* requirement for a functioning hydrologic system, both in terms of local and riverine flooding.

Our Response: We have expanded our discussion of the reliance of *Atriplex coronata* var. notatior on functioning hydrologic systems under the ''Water and Physiological Requirements'' section of this final rule.

11. *Comment:* One peer reviewer stated that restoration of plant communities is essential to the recovery of *Atriplex coronata* var. *notatior,* noting the Service's role in evaluating proposed efforts to restore disturbed alkali habitats within the species range. The reviewer suggested addressing whether critical habitat would allow additional review of the success of restoration efforts.

Our Response: There are two ways in which restoration actions will be accomplished for the species under the MSHCP, and the Service is included in the review process for both. First, reserve managers are responsible for the maintenance and enhancement of floodplain processes of the San Jacinto River, Mystic Lake, and upper Salt Creek under the MSHCP. We anticipate that these actions will be addressed in Reserve Management Plans (RMPs) which are controlled and implemented through the Reserve Management Oversight Committee (RMOC) and coordinated with Reserve Managers. The Service is a member of the RMOC. Within 5 years of significant acquisition of new reserve lands in a management unit, RMPs must be submitted to the RMOC.

Second, several MSHCP policies require that if avoidance of certain sensitive habitats and species is not feasible, to ensure adequate replacement of lost functions and values, the MSHCP Permittee must make a Determination of Biologically Equivalent or Superior Preservation (DBESP) that demonstrates that a proposed action, including design features to minimize impacts and compensation measures, will provide equal or better conservation than avoidance of the sensitive habitats and species. The Service has a 60-day review and comment period for any DBESP prepared under the MSHCP. To date, two DBESPs have been submitted that will result in restoration activities that may benefit *Atriplex coronata* var. *notatior* (Lockhart 2004; LSA Associates Inc. 2005). Project proponents have elected to introduce the species into restored and created vernal pool habitat north of the upper Salt Creek populations once initial success criteria have been met, even though the proposed actions that resulted in impacts to vernal pool habitat did not directly affect *A. coronata* var. *notatior.*

Finally, and more directly, the designation of critical habitat provides only restrictions on adverse modification to that habitat where there is a Federal nexus for the modification. It provides no mechanism for positive conservation actions that might be beneficial to the species, such as additional review of or increased efforts toward restoration and recovery.

12. *Comment:* The three peer reviewers submitted six comments that pointed out inherent problems with censusing an annual plant such as *Atriplex coronata* var. *notatior,* which is only visible seasonally and is subject to changing rainfall conditions. The reviewers believe that population estimates provided in the proposed rule are confusing and should be presented in context.

Our Response: Because information on this narrow endemic species is very limited, we presented all census information we were aware of in the 2004 proposed critical habitat rule. However, it is important to recognize that numbers for this annual plant vary greatly in response to changing rainfall conditions. Additionally, the seasonally-flooded alkali vernal plain habitat which the species occupies is a very dynamic system. Areas that are suitable for the species within this dynamic habitat matrix change from year to year resulting in more variation in census numbers. We have expanded our description of the species habitat under the ''Water and Physiological Requirements'' and ''Sites for Reproduction, Germination, and Seed Dispersal'' sections of this final rule.

13. *Comment:* Two peer reviewers submitted four comments that stated that population estimates presented in the proposed rule are out of date and conflicting information is presented on the amount of alkali habitat available for the species. One peer reviewer has observed large fluctuations in significant populations of the species, and attributes impacts to heavy discing and manure dumping. This reviewer recommended that we use current GIS capabilities to produce a single habitat model for the species and monitor populations more frequently. Another peer reviewer recommended that the final rule incorporate the most recent estimates for the species which were submitted to our office by two of the peer reviewers on January 14, 2004 (Table 2, Bramlet and White 2004).

Our Response: In our 2004 proposed critical habitat rule, we included population and habitat estimates for the species from many sources, including our 1998 final rule, Bramlet's 1996 estimates, and Glenn Lukos Associates estimates from 2000. There is variation between these estimates, which has led to confusion regarding how much suitable habitat currently exists for the species. In addition, as discussed in our response to comment 12 above, populations of this annual plant fluctuate greatly from year to year. When conducting our analysis of the MSHCP, we used current GIS capabilities to model suitable habitat for the species. This is discussed in the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section of this final rule. We address impacts to the species from manure dumping in the ''Special Management Considerations or Protections'' section of this final rule.

Population estimates submitted by Bramlet and White (2004) are summarized as follows: (1) San Jacinto River populations (Habitat with Essential Features—Unit 1), 115,544 individuals, 9,141 ac (3699 ha) of suitable habitat; (2) Upper Salt Creek populations (Habitat with Essential Features—Unit 2), 51,996 individuals, 1,200 ac (486 ha) of suitable habitat; and, (3) Alberhill populations (Habitat with Essential Features—Unit 3), 185 individuals, 160 ac (65 ha) of suitable habitat. The total population and habitat estimates are 167,725 individuals and 10,501 ac (4250 ha) of suitable habitat, respectively. We are unable to compare these estimates with our habitat model or with the Units of habitat with essential features because Bramlet and White (2004) did not include a map of suitable habitat.

14. *Comment:* One peer reviewer commented on the differences in alkali soil types at different population centers. For example, the San Jacinto Wildlife Area (SJWA) has Willows, Traver, Chino, Waukena and Domino soils, the upper Salt Creek area has Willows, Traver, and Domino soils, and the Alberhill population is located on

Willows soils. The reviewer stated that approximately 80 percent of the individuals in the SJWA were on Willows soils, and approximately 99 percent of Glenn Lukos Associates records were on Willows soil. However, there is a more even distribution of the species across soil types at upper Salt Creek.

Our Response: We appreciate the peer reviewer's comments regarding alkali soils types at the different population centers and will take the information into account when working with the species and during our MSHCP implementation processes. See also our discussion of ''Primary Constituent Elements.''

15. *Comment:* Two peer reviewers submitted two comments that stated that *Atriplex coronata* var. *notatior* occurs in soils that are naturally nutrient poor. The reviewers believe that if natural runoff has been documented to provide essential minerals not otherwise available in the soil, the source should be cited.

Our Response: We appreciate the peer reviewers' comments on this matter. We have removed from the final rule our undocumented statement that natural runoff provides essential minerals to *Atriplex coronata* var. *notatior.*

16. *Comment:* The three peer reviewers submitted seven comments that recommended including in the final rule a better explanation of the importance of hydrological processes to *Atriplex coronata* var. *notatior.* The reviewers stated that stands of plants vary in size and location with rainfall and inundation of alkali habitat. Additionally, the species is not usually found in inundated areas but on small mounds within the floodplain and along the upper margins of normalized local flooding. The reviewers stated that both seasonal localized flooding and occasional large-scale flooding are important to the species. Seasonal localized flooding would distribute seeds locally, while large-scale flooding (which occurs every 20 to 50 years) would distribute seeds throughout the habitat, resetting the system by killing alkali scrub and erasing the impact of discing and other activities.

Our Response: We have expanded our discussion on the importance of hydrological processes to *Atriplex coronata* var. *notatior* under the ''Water and Physiological Requirements'' and ''Sites for Reproduction, Germination, and Seed Dispersal'' sections of this final rule.

17. *Comment:* Two peer reviewers submitted two comments that stated that removal of habitat and plants may be mandated in some portions of the species' range by local fire control ordinances, and that discing in crownscale habitat, if it is related to fire at all, is for fire prevention rather than fire suppression.

Our Response: Discing for fire prevention may currently occur within the species' range. However, as discussed under the Fuels Management section of the MSHCP (section 6.4), the impacts of fuels management on the MSHCP Conservation Area will be minimized as new reserve lands and new developments are proposed within the MSHCP plan area. The MSHCP requires that Conservation Area boundaries be established to avoid encroachment by the brush management zone in areas where Reserves are created adjacent to existing developed areas. Additionally, brush management zones must be incorporated into the development boundaries when new development is planned adjacent to the MSHCP Conservation Area or other undeveloped areas.

18. *Comment:* One peer reviewer stated that, based on general observations, seeds of the species are viable for greater than 5 years.

Our Response: In our 2004 proposed rule, we stated that ''Preliminary studies indicate that *Atriplex coronata* var. *notatior* seeds retain a relatively high viability for at least several seasons (Ogden Environmental and Energy Services Corporation 1993).'' We appreciate the peer reviewer's comment on this matter and will take the information into account when working with the species.

19. *Comment:* One peer reviewer recommended that we review the most current California Natural Diversity Database (CNDDB) records and herbarium specimens from the Rancho Santa Ana Botanic Garden and the University of California, Riverside, before finalizing boundaries of habitat with essential features.

Our Response: We have reviewed the most current CNDDB records and herbarium specimens from these two organizations. No new records have been submitted to these agencies since the publication of our proposed rule.

20. *Comment:* Two peer reviewers submitted seven comments that suggested alterations to Unit 1 of Habitat with Essential Features. The reviewers recommended defining the Unit to exclude upland and watershed areas that are not suitable for the species, as well as some heavily disced, irrigated agricultural fields that no longer support the species. One peer reviewer provided a detailed map showing upland and agricultural areas that are not suitable habitat for the species and thus should not be considered habitat with essential features. Two peer reviewers recommended making it clear in the text of the final rule that habitat for *Atriplex coronata* var. *notatior* does not extend into Railroad Canyon. The peer reviewers expressed concern that the Service may have excluded occupied habitat southwest of Interstate 215 based on future projects rather than known biological or soils data. Additionally, they recommended that Unit 1 be expanded to incorporate occupied habitat southwest of Interstate 215.

Our Response: We appreciate the peer reviewers' area-specific expertise and their recommendation not to include as habitat with essential features specific upland areas and heavily disced, irrigated agricultural fields. We concur with their recommendation that these areas should not be considered essential for the species and we will make use of their comments and map when working with the species and during our MSHCP implementation processes. Additionally, we concur with the peer reviewers that habitat for the species does not extend into Railroad Canyon. As explained in greater detail in the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section of this final rule, the occupied habitat areas southwest of Interstate 215 that are outside of our Units of habitat with essential features do not fall within our interpretation of the MSHCP Conservation Area. However, in accordance with the Additional Survey Needs and Procedures section of the MSHCP (section 6.3.2), property owners within the MSHCP Criteria Area must avoid 90 percent of those portions of the property that provide long-term conservation value for the species until the permitees have demonstrated that conservation goals for the species have been met. Additionally, the requirements of the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP (section 6.1.2) may result in additional conservation for this species.

21. *Comment:* One peer reviewer advised the Service to check the ownership of the San Jacinto Wildlife Area (SJWA) and stated that the SJWA is likely owned by the State of California or the Wildlife Conservation Board (WCB) rather than the California Department of Fish and Game (CDFG).

Our Response: We have been informed by the CDFG that legal title to all state lands is taken in the name of the State of California. The CDFG is the State Trustee Agency for the management of the fish and wildlife

resources of the State of California. As such, the CDFG is the State agency responsible for the management of the State lands comprising the SJWA. The WCB is the State agency responsible for the acquisition of lands in the name of the State of California for purposes of wildlife conservation and public access. Over the years the WCB has acquired virtually all the formerly private lands now comprising the state public lands of the SJWA (Paulek 2005 *in litt.*).

22. *Comment:* Two peer reviewers submitted two comments asking that the final rule explain that the SJWA was purchased and is managed by the CDFG primarily for waterfowl conservation. The reviewers stated that most of the conservation management implemented on the SJWA, such as flooding ponds in March when *Atriplex coronata* var. *notatior* blooms, is beneficial to waterfowl but not to *A. coronata* var. *notatior.* The reviewers further recommended describing any management obligations the CDFG may have for rare plants, including *A. coronata* var. *notatior,* citing the Wildlife Area's management plan where appropriate.

Our Response: We have been informed by the CDFG that the SJWA was established in the early 1980's as a mitigation site for the direct impacts of the State Water Project (SWP) which was completed in the mid-1970's. Management objectives for the original 4,800 ac (1,942 ha) of land acquired for SWP mitigation were directed towards habitat conservation and the restoration of historic habitat values associated with the San Jacinto Valley of Western Riverside County. To that end, initial habitat restoration efforts included the development of freshwater wetlands and extensive restoration of willow-cottonwood riparian habitat. Wildlife habitats conserved in public ownership include Riversidian Sage Scrub, annual grasslands, Alkali Sink Scrub, and virtually the entirety of the historic Mystic Lake floodplain. The placement of the Mystic Lake floodplain in public ownership represents the most important *A. coronata* var. *notatior* conservation action realized to date.

In 1995, the SJWA was included in the reserve lands for the Stephens' Kangaroo Rat (SKR) pursuant to the SKR Habitat Conservation Plan. More recently the SJWA has been designated a principal reserve for the MSHCP adopted in June 2004. Over the years and with the recent acquisition of the Potrero Unit, the SJWA has grown to nearly 20,000 ac (8,094 ha). Pursuant to the conservation mandates above, the management objectives for the SJWA continue to seek the conservation of multiple species of plants and animals by maintaining and restoring a diversity of habitat types.

As to the conservation of *A. coronata* var. *notatior,* the draft management plan for the SJWA designates the habitat of *A. coronata* (Alkali Sink Scrub) a Special Ecological Community. The plan recognizes the need for additional survey of the distribution of the species on the SJWA, and provides for the incorporation of appropriate impact analysis for this sensitive plant in future project environmental review procedures. The plan also recognizes the need to initiate additional species-specific research efforts with the goal of formulating a management prescription for this endangered plant (Paulek 2005 *in litt.*).

23. *Comment:* One peer reviewer stated that there appears to have been an overestimate in the proposed rule of the total acreage of *Atriplex coronata* var. *notatior* habitat that is located within waterfowl ponds. The reviewer requested that we review this information and correct the text in the final rule.

Our Response: In our 2004 proposed critical habitat rule, we wrote that within the SJWA/Mystic Lake area, approximately 470 ac (190 ha) of habitat consist of duck ponds, 250 ac (100 ha) of which fall within the SJWA (Roberts and McMillan 1997). We have been informed by the CDFG that wetland habitat (freshwater marsh) on the 10,000-ac (4,047-ha) Davis Road Unit of the SJWA includes approximately 470 ac (190 ha) of marsh habitat managed under a moist soil management regimen. Typically these wetlands are flooded in the fall and the water is drawn off in the spring. In addition, up to 500 ac (202 ha) of semi-permanent wetland at other locations on the Wildlife Area can be flooded in the early spring and maintained into the summer months. The moist soil management regimen (fall flooding) at several locations on the SJWA has been found to promote the germination of *Atriplex coronata* var. *notatior* after the spring drawdown (Paulek 2005 *in litt.*).

24. *Comment:* Two peer reviewers submitted two comments that noted that the proposed rule states that CNDDB Element Occurrence 12 is outside of the SJWA, but that was incorrect and that the occurrence was added to the SJWA in 1996.

Our Response: We appreciate the peer reviewer's comment on this matter and will take the information into account when working with the species in this area.

25. *Comment:* One peer reviewer stated that the survey conducted by Glenn Lukos Associates in 2000 was conducted under special circumstances. The reviewer stated that landowners suspended discing and manure dumping for a spring census at the request of their biological consultants. Additionally, discing and manure dumping resumed following the census, with significant impact to the populations. This further illustrated both the impact of these activities on the species and the species resilience to temporary disturbance.

Our Response: We appreciate the peer reviewers' comments with regard to the Glenn Lukos Associates 2000 survey, and we will take this information into account when working with the species and during our MSHCP implementation processes. We address impacts to the species from manure dumping, and how the MSHCP can address this threat, in the ''Special Management Considerations or Protections'' section of this final rule.

26. *Comment:* Two peer reviewers submitted three comments that suggested some alterations to Unit 2 of Habitat with Essential Features. They recommended that the Unit be better defined to exclude upland and watershed areas that are not suitable for the species, including habitat north of Florida Avenue and upland slopes west of the San Diego Canal. One peer reviewer provided a detailed map to show which upland and agricultural areas are not suitable habitat for the species and should be excluded from Unit 2. Additionally, the peer reviewers expressed that occupied habitat known to occur south of the railroad tracks at the southern end of the Unit, and south of the intersection of Warren Road and Esplanade Avenue north of the Unit, should be included in Unit 2. Additionally, one peer reviewer expressed that occupied habitat known to occur south of the railroad tracks at the southern end of the Unit, and between Devonshire Road and Tres Cerritos Road within the Metropolitan Water District right-of-way for the San Diego Canal, should be included in Unit 2.

Our Response: We appreciate the peer reviewers' comments with regard to excluding upland and watershed areas from habitat with essential features. We will take this information into account when working with the species and during our MSHCP implementation processes. As is explained in greater detail in the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section of this final rule, the occupied habitat area south of the railroad tracks at the southern end of the

unit that is outside of our Unit does not fall within our interpretation of the MSHCP Conservation Area. However, in accordance with the Additional Survey Needs and Procedures section of the MSHCP (section 6.3.2), property owners must avoid 90 percent of those portions of the property within the MSHCP Criteria area that provide long-term conservation value for the species until the permitees have demonstrated that conservation goals for the species have been met. Additionally, the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools section of the MSHCP (*i.e.*, section 6.1.2) may result in additional conservation for this species.

Because we have no source on file for the population reported by one peer reviewer between Devonshire Road and Tres Cerritos Road within the Metropolitan Water District right-of-way for the San Diego Canal, we requested that the peer reviewer provide a source. The peer reviewer said that the surveys that detected these individuals were conducted this year and collections are forthcoming (David Bramlet 2005 pers. comm. with USFWS). This area also does not fall within our interpretation of the MSHCP Conservation Area.

27. *Comment:* One peer reviewer recommended that the Service review the study of the Unit 2 area conducted by Recon in 1995, and incorporate information into the final rule to provide a more complete overview of the Unit.

Our Response: The 1995 study by Recon is a fairly comprehensive survey of the Unit 2 area, excluding watershed areas to the north and west. *Atriplex coronata* var. *notatior* was found to be locally common within the study area. Survey results indicate a total of 33 data points for the species, with numbers of individuals at each point ranging from 2 to 10,000 plants.

28. *Comment:* One peer reviewer recommended the Service closely examine the survey methodology of the 2001 Amec Earth and Environmental, Inc. census. The reviewer believes the estimate of 136,000 plants on 40 ac (16 ha) in the Upper Salt Creek Wetland Preserve is extremely high.

Our Response: According to the Amec Earth and Environmental, Inc. (2001) study, ''methodologies were consistent from year to year * * * population estimates based on average plant densities were calculated for [*Atriplex coronata* var. *notatior*]. Ten-meter-square quadrats were randomly placed within a stand of [*A. coronata* var. *notatior*] and average plant density was then multiplied by the population area to arrive at the estimated number of plants per population.'' Please also see our response to comment 12 above.

29. *Comment:* One peer reviewer stated that habitat restoration is needed in the Upper Salt Creek Area due to significant hydrological impacts from ground surface alterations. For example, the reviewer explained that a drainage ditch was constructed in 1989 that drains water off of the surrounding flats, and has led to a reduction of *Juncus* sp. and *Eleocharis* sp. which were once abundant in the area.

Our Response: We appreciate the peer reviewer's comment and we will take this information into account when working with the species in this area and during our MSHCP implementation processes.

30. *Comment:* One peer reviewer recommended documenting in the final rule instances where storm flows are allowed to reach *Atriplex coronata* var. *notatior* habitat rather than being collected in storm drains and directed into stormwater channels. The reviewer further explained that land conversion to large developed areas with storm drain systems fundamentally changes the natural hydrology within watersheds supporting *A. coronata* var. *notatior*.

Our Response: We have participated in three informal consultations in the watershed area of Unit 2 of Habitat with Essential Features which have resulted in the maintenance of clean water flows to the seasonally flooded alkali vernal plain habitat at upper Salt Creek. Clean water flows from Reinhardt Canyon and hillside areas west of the Heartland Project are collected in a detention basin located northwest of the California Avenue and Florida Avenue intersection. These flows are then pumped out of the detention basin and travel by sheet flow to the seasonally flooded alkali vernal plain habitat (Heartland Project Description 2000; Heartland Memorandum of Understanding 2000). Once construction is completed for these projects, clean water flows from the Tres Cerritos hills north of the JP Ranch and Tres Cerritos West Projects will be collected in a system of pipes which will direct the clean water flows under the project sites to a spreader located south of Devonshire Avenue between Warren Road and Old Warren Road (Lockhart and Associates 2004; LSA Associates, Inc. 2004). Through informal consultation, the City of Hemet has agreed to maintain these clean water delivery systems.

31. *Comment:* One peer reviewer stated that dryland farming has not been conducted in Hemet on any scale for over a decade. Additionally, the reviewer believed that discing conducted in Hemet is for fire prevention rather than dryland farming.

Our Response: We have been informed by the City of Hemet that weed abatement notifications for fire prevention are not sent to properties within the MSHCP Criteria Area (Masyczek 2005 *in litt.*).

32. *Comment:* Two peer reviewers submitted four comments that suggested alterations to Unit 3 of Habitat with Essential Features. They recommended that the unit be better defined to exclude the area north of Nichols Road and include the field west and southwest of the unit due to the presence of Willows soils. One peer reviewer provided a detailed map to show these recommended changes.

Our Response: First, we appreciate the peer reviewers' comments with regard to excluding the area north of Nichols Road from habitat with essential features. The text in our proposed rule stated that ''the northern boundary [of Unit 3] is defined by Nichols Road.'' The inclusion of the area north of Nichols Road in the critical habitat unit was a mapping error resulting from the presence of mapped Willows soils in that area. Due to the presence of dense riparian habitat, we concur with the peer reviewers that habitat for the species does not extend north of Nichols Road. Second, we have reviewed the map provided by peer reviewers of the field in question located west and southwest of the Unit of habitat with essential features. According to official soil survey data (United States Department of Agriculture Soil Conservation Service 1971), the soil types in this area are Garretson very fine sandy loam and Arbuckle loam. However, this area is included in our interpretation of the MSHCP Conservation Area (as described in greater detail in the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section of this final rule) and should be conserved under the MSHCP.

33. *Comment:* Two peer reviewers submitted two comments that recommended adding to the final rule that it is likely the Alberhill Creek population is larger than currently known. Additionally, the reviewer stated that information for this occurrence is limited to a few collections and no surveys of potential habitat have been conducted.

Our Response: We appreciate the peer reviewer's comment and we will take this information into account when working with the species in this area and during our MSHCP implementation processes.

Public Comments

34. *Comment:* One commenter submitted four comments that supported our decision to exclude critical habitat based on the presence of an existing HCP. The commenter stated that the MSHCP provides protection for covered species and sensitive habitats, including *Atriplex coronata* var. *notatior* and its habitat. The commenter expressed concern that the designation of critical habitat within HCP boundaries would undermine partnerships with landowners that were developed during the planning process. The commenter further stated that landowners participated in the regional MSHCP planning effort in part to prevent the inefficient and ineffective project-by-project regulation that is associated with designated critical habitat, and that designating critical habitat in this area would subject landowners to two different regulatory processes that would be a financial burden.

Our Response: As stated in the ''Exclusions Under Section 4(b)(2) of the Act'' section of the proposed rule, we agree that the MSHCP benefits the conservation of *Atriplex coronata* var. *notatior* and that the benefits of excluding lands covered under the MSHCP outweigh the benefits of including such lands. We also recognize that the designation of critical habitat may remove incentives to participate in the HCP processes, in part because of added regulatory uncertainty, increased costs to plan development and implementation, weakened stakeholder support, delayed approval and development of the plan, and greater vulnerability to legal challenge. We believe HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. We look forward to working with HCP applicants to ensure that their plans meet the issuance criteria and that the designation of critical habitat on lands where an HCP is in development does not delay the approval and implementation of their HCP.

35. *Comment:* One commenter submitted two comments that disagreed with our decision to exclude critical habitat based on the presence of an existing HCP. The commenter stated that all agencies are not signatories to the MSHCP, and therefore critical habitat should be identified for those projects and agencies operating outside the MSHCP. The commenter was concerned that the reason for habitat exclusions did not have a scientific basis.

Our Response: See the response to Peer Reviewer Comment 3 above.

36. *Comment:* One commenter submitted two comments stating that threats to the species were not adequately addressed in the proposed rule and the MSHCP. The commenter recommended additional discussion on the threats of manure spreading and non-seasonal flows which may result from future development.

Our Response: See the response to Peer Reviewer Comment 9 above.

37. *Comment:* One commenter stated that failure to designate critical habitat within HCP boundaries would be a disincentive to the participation of their organizations in the development of future HCPs.

Our Response: It has been our experience that many different stakeholders participate in the creation of an HCP. We appreciate the commenter's participation in HCP planning efforts and urge them to continue to participate in future HCP efforts. However, it has been our experience that the designation of critical habitat in HCP areas removes incentives for most stakeholders to participate in the HCP process due to added regulatory uncertainty, increased costs to plan development and implementation, delayed approval and development of the plan, and greater vulnerability to legal challenge.

38. *Comment:* One commenter stated that it is incumbent upon the Service to designate areas as critical habitat if they are identified as ''essential habitat,'' based on the definition of critical habitat.

Our Response: Section 4(b)(2) of the Act allows us to consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Areas identified as having features essential for the conservation of the taxon 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 an area as critical habitat will result in the extinction of the species. We have determined that the benefits of exclusion of habitat with essential features covered by the MSHCP outweigh the benefits of inclusion. See ''Exclusions Under Section 4(b)(2) of the Act'' section for a detailed discussion.

In addition, the Service in this and other notices has been using the term ''essential habitat'' as shorthand for ''areas eligible for designation as critical habitat''. We recognize that this might cause confusion with the provisions of the Act that areas unoccupied at the time of listing may be designated by the Secretary as ''essential to the conservation of the species'' and so included in a critical habitat designation. The use of the term ''essential habitat'' in this and past notices is not a determination by the Service or the Secretary that this habitat is, within the terms of the Act, essential to the conservation of the species, unless the use of the term is accompanied by an express statement that the Secretary has made such a determination. In either event, however, we have authority under section 4(b)(2) of the Act to exclude any such area.

39. *Comment:* One commenter stated that the reserves proposed under the MSHCP are fragmented and the connectivity between units of habitat with essential features is lacking.

Our Response: The three Units of Habitat with Essential Features for *Atriplex coronata* var. *notatior* include areas of seasonally-flooded alkali vernal plain habitat that are currently naturally isolated from each other. The MSHCP provides for a connection through different habitat types between Units 1 and 3. Unit 2 falls within proposed MSHCP noncontiguous habitat block 7 which is not connected to the larger MSHCP Conservation Area. However, this habitat block is currently isolated from other natural areas by existing development and agricultural lands. Efforts are being made on a local level in order to prevent fragmentation of habitat within MSHCP noncontiguous habitat block 7. For example, the City of Hemet has adopted an Interim Urgency Ordinance to ensure that development efforts within the MSHCP Criteria Area are coordinated such that habitat conserved within the criteria area does not become fragmented, thereby allowing the City to meet their obligations under the MSHCP (Ordinance No. 1742).

40. *Comment:* One commenter stated that the Service should consider multiple variables (*e.g.*, life strategy, disturbance probability, potential habitat, population size, recovery from disturbance, habitat suitability, predation, and competition) when determining the size of plant conservation areas and critical habitat units. Additionally, this commenter stated that the purpose of critical habitat designation is not only to prevent extinction but to facilitate recovery, as supported by case law. The commenter stated that the critical habitat proposal failed to include areas of unoccupied suitable habitat that would provide for recovery opportunities, including

genetic exchange and migration in response to climate change.

Our Response: As described in the ''Critical Habitat'' portion of this final rule, a number of policy and regulatory guidelines and standards provide the Service with criteria, procedures, and guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials, expert opinions, or personal knowledge.

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. Moreover, we believe this HCP, and HCPs generally, offer greater benefits to all aspects of the conservation of listed species, including to recovery, than a critical habitat designation. We also believe that this action complies with all applicable laws.

Public Comments on the Draft Economic Analysis

41. *Comment:* Three commenters state that the Draft Economic Analysis (DEA) quantifies costs for projects that do not contain occupied habitat for *Atriplex coronata* var. *notatior*. Two of the commenters also question why costs not related to protection of *A. coronata* var. *notatior* or its habitat are presented in Table 6 in Section 5.1.

Our Response: As described in Section 5.1, Table 6 of the DEA, past development projects outside of the footprint of the proposed critical habitat designation have impacted the species habitat within the lands proposed for designation. In this scenario, the DEA appropriately quantifies the costs of the project modifications implemented at the offsite development projects to protect the species and habitat within the proposed designation. This is consistent with the scope of analysis as described in Section 1.2: the analysis considers the cost of species and habitat conservation, not just impacts to projects located within occupied habitat.

The information on the costs of vernal pool conservation not related to protecting *Atriplex coronata* var. *notatior* or habitat are provided in Section 5.1, Table 6 as these activities provide insight into the types and costs of project modifications implemented to protect vernal pool species and habitat in general. The conservation activities and associated dollar amounts described in the table, however, are provided only for context and are not captured in the quantitative results of the DEA.

42. *Comment:* Two commenters question the framework for development effects, as discussed in Section 2.2.2.1 of the DEA. These commenters state that the DEA is an analysis of the impacts of the California Environmental Quality Act (CEQA) and the Western Riverside County MSHCP, not solely of designating critical habitat.

Our Response: Coextensive effects, as defined in Section 1.2 of the DEA, may include impacts associated with overlapping protective measures of other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation. Because habitat conservation efforts affording protection to a listed species likely contribute to the efficacy of the critical habitat efforts, the impacts of these actions are considered relevant for understanding the full effect of the proposed critical habitat designation.

43. *Comment:* One commenter suggests that information on specific, planned development projects should be reviewed.

Our Response: Throughout the development of the DEA, past and current development projects within the potential critical habitat area were researched. As described in Table 6 of Section 5.1, two development projects are currently in progress and the development companies were contacted to determine the details and status of the projects. The DEA captures the impacts of mitigating these projects based on information obtained. Data are not available on all potential development projects that may occur during the 20-year forecast period; thus, the analysis estimates and applies average costs of impacts to development on a per-acre rather than per-project basis where specific information is unavailable.

44. *Comment:* Multiple comments state that the DEA fails to evaluate the cost of property for conservation acquisition or the costs of implementing and maintaining of conservation easements. Specifically, one comment asserts that the methodology used to quantify development impacts is questionable as it does not quantify the cost of purchasing reserves for the MSHCP. The comment further states that while the MSHCP reserve boundaries are not yet proposed, land will have to be purchased or obtained through mitigation dedication and projects may have to be modified to avoid impacts to vernal pools and vernal pool watersheds. The comment also states the DEA fails to analyze the potential loss of developable private lands or the potential cost of transfer of ownership of lands for mitigation.

Our Response: As acknowledged by the commenter, the MSHCP does not describe the exact location or timing of each acre of private land to be acquired for the MSHCP reserve. However, as described in Section 5.2.4.1 of the DEA, current land use and population growth rates were available from the Riverside County to spatially forecast future development within the proposed critical habitat units. Section 2.2.2.1 of the DEA describes the model applied to estimate impacts to development using these data. The DEA assumes that development is permitted in potential critical habitat areas if appropriate project modifications and/or mitigation activities are undertaken, and/or mitigation fees paid. That is, the analysis does not assume that land is lost to development, but instead that development occurs with mitigation.

Quantified mitigation efforts include the collection of a mitigation fee from future development within the boundaries of the MSHCP. These funds will be used by the County to finance the future acquisition of lands for the MSHCP reserve. The impact of these fees is captured in the DEA (Section 5.2.5). Further, as outlined in Section 5.2.2, other conservation efforts associated with development projects have been quantified in the DEA, including purchase of on-site or off-site mitigation lands through restoration and enhancement; habitat creation; purchasing preservation credits from a conservation bank; or purchasing vernal pool habitat from a private land owner and preserving wetted acreage. To account for a variety of potential mitigation ratios and mitigation measures, the DEA presents impacts of *Atriplex coronata* var. *notatior*

conservation efforts on development projects as a range. That is, the DEA reports the full range of costs associated with a combination of mitigation ratios and conservation efforts that may be recommended to offset impacts of development to the species and habitat.

45. *Comment:* One commenter states the DEA should justify why it assumes that habitat protection under the MSHCP will not affect existing development patterns. The comment also questions how the habitat with essential features will be conserved if all of the potential developments are approved.

Our Response: It is uncertain which specific areas of the habitat with essential features may be developed during the forecast period, when those areas may be developed, what mitigation would be recommended, and if the County would be interested in acquiring a portion of that area for the MSHCP reserve. By assuming that all future development is allowed in habitat areas with appropriate project modifications and/or mitigation activities, the DEA captures the cost of modifying development projects to protect the plant and its habitat.

46. *Comment:* According to one comment, the DEA fails to include impacts to the proposed expansion of the Ramona Expressway and the construction of a dam across the San Jacinto River.

Our Response: The DEA quantifies economic impacts to specific road projects where information is available (Section 6.1.1.1) and applies a generic impact estimate future road projects for periods where project-specific information is not known. California Department of Transportation (Cal Trans) was contacted during the development of the DEA to identify future transportation projects planned in and around the essential habitat areas. While the proposed expansion of the Ramona Expressway was not explicitly identified by Cal Trans as a project during its 2006–2009 planning period, the DEA captures the economic impacts associated with future project in its generic forecast of impacts to road projects generally if the Ramona Expressway expansion occurs during the 2010–2025 period.

47. *Comment:* One commenter states that the DEA fails to consider that the main purpose of the SJWA is waterfowl management. The comment further suggests that the Reserve Manager should have been contacted to determine the budget for *Atriplex coronata* var. *notatior* conservation efforts and opines that these costs should be offset by the benefits of maintaining these sites. In addition, the California Native Plant Society (CNPS) and Center for Biological Diversity (CBD) state *A. coronata* var. *notatior* conservation is not explicitly considered in the operating budget of the Wildlife Area and therefore, costs of Wildlife Area management should not be included in the DEA. The commenters further state that, while the operation of the Wildlife Area benefits some *A. coronata* var. *notatior* populations, management has also damaged the species in the past, for example, inundating habitat, which reduces the potential for recovery. The DEA fails to evaluate these damages.

Our Response: As described in Section 6.6, the DEA acknowledges that the SJWA was established as mitigation for the State Water Project, and that the primary purpose of the Wildlife Area was to conserve the floodplain ecosystem and species' habitat. In addition, the manager of the Wildlife Area was contacted regarding costs of conservation activities specifically benefiting *A. coronata* var. *notatior.* As quantified in the DEA, the SJWA spends approximately $5,000 every other year to protect vernal playa habitat. Information was also provided on the annual number of recreational user days, which were valued and used to quantify the net economic impacts of Wildlife Area management in the DEA. No information was identified regarding the impact of past damages to *A. coronata* var. *notatior* habitat resulting from Wildlife Area management. The DEA does, however, capture the costs of monitoring and maintaining the habitat, which is assumed to include avoiding such damages in the future.

48. *Comment:* Two commenters state the cost model used in the DEA to estimate the administrative cost of section 7 consultation is highly inflated.

Our Response: As described in Section 2.2 of the DEA, the cost model is based on a survey of Federal agencies and Service Field Offices across the country and the costs are believed to be representative of the typical range of costs of the section 7 consultation process. Throughout the development of the DEA, stakeholders were asked whether the range of estimated consultation costs was reasonable. In the case that stakeholders anticipated higher or lower costs, this improved information would be applied in the DEA. No stakeholders indicated, however, that the range of costs applied in the DEA was inappropriate.

49. *Comment:* A comment provided by the CNPS and CBD states that the cost estimates of species conservation as provided in the DEA conflict with the cost estimated in the Western Riverside MSHCP for this species alone, which is much less. Therefore, either the DEA or the MSHCP contain errors in its impact estimates.

Our Response: Section 8.2.1 of the MSHCP describes the costs of implementing the plan, including costs to acquire reserve lands, manage and monitor the reserve area, and general administration of the MSHCP. The County estimates these costs will total almost $1 billion during the first 25 years of the MSHCP. This impact estimate, however, is not directly comparable to that in the DEA as the policy actions being analyzed are different. The MSHCP estimates the cost of acquiring and managing its reserve area and conservation actions for the multiple species covered under the plan. Further, the geographic scope of the MSHCP and the potential critical habitat for *A. coronata* var. *notatior* are different.

50. *Comment:* Two commenters question the use of ''low income farmers'' as an example of a group that may be adversely affected by species conservation in Section 1.1. Another comment states that the report appears biased because it implies that low income farmers are the principal landowners within the habitat with essential features being reviewed, and that the report does not provide a review of the economic status of the private landowners in the affected areas.

Our Response: The DEA considers the status of public and private land ownership; however, the identity of every private landowner within the 15,232 acres of essential habitat is unknown. As described in Section 6.8, approximately one-half of all habitat with essential features is classified as agriculture land, and this agriculture land represents 60 percent of the developable acres. Considering farmers comprise a large percentage of landowners within the habitat with essential features and developable land, the use of farmers as an example of a group of individuals that could be impacted in Section 1.1 is considered appropriate.

51. *Comment:* One commenter requests that more detail be provided on local regulations that protect *A. coronata* var. *notatior* within the County.

Our Response: Section 4 of the DEA includes discussion of the relevant Federal, State, and local regulations that provide protection to the species and its habitat.

52. *Comment:* One commenter states that the description of the Clean Water Act in Section 4.2.1 does not include

the proposed Special Area Management Plan (SAMP) for the San Jacinto River watershed.

Our Response: Section 4.0 provides a summary of important regulations that provide protection for the plant and its habitat but does not provide an exhaustive list of all regulatory protection. The proposed SAMP may streamline the Section 404 permitting process in the future, but it is not expected to influence the types of project modifications and mitigation implemented to protect *A. coronata* var. *notatior* and its habitat as quantified in the DEA.

53. *Comment:* Four commenters stated that the DEA should include an analysis of benefits, such as flood protection, watershed management, and open space. The commenters further stated that there is a benefit of having critical habitat in place should the Western Riverside MSHCP falter in its conservation mandate. Two of the commenters also stated the DEA fails to consider non-market values. One comment noted that large portions of the existing occupied habitat outside of the San Jacinto Valley Wildlife Area are being disked and that this will result in considerable costs to restore the habitat for this species. Thus, the beneficial costs of extant habitat that will not require restoration should be carefully evaluated.

Our Response: In the context of a critical habitat designation, the primary purpose of the rulemaking is to designate areas in need of special management that are essential to the conservation of listed species.

The designation of critical habitat may result in two distinct categories of benefits to society: (1) Use; and (2) non-use benefits. Use benefits are simply the social benefits that accrue from the physical use of a resource. Visiting critical habitat to see endangered species in their natural habitat would be a primary example. Non-use benefits, in contrast, represent welfare gains from ''just knowing'' that a particular listed species' natural habitat is being specially managed for the survival and recovery of that species. Both use and non-use benefits may occur unaccompanied by any market transactions. In addition, there is no general agreement on how to value ''just knowing'' benefits.

A primary reason for conducting this analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. 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. Economic impacts can be both positive and negative and by definition, are observable through market transactions.

Where data are available, this analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (*e.g.*, impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, the DEA quantified the net economic impact of the proposed designation taking into account additional recreation activities. This is described in Section 6.6 (CDFG, San Jacinto Wildlife Area) of the DEA.

While the Act requires us to specifically consider the economic impact of a designation, it does not require us to explicitly consider in economic terms, or in an economic analysis, any broader social benefits (or costs) that may be associated with the designation where these are not readily monetized.

54. *Comment:* Four commenters stated that costs should be allocated among all the threatened and endangered species that benefit from the efforts.

Our Response: Coextensive effects as quantified in the DEA may also include impacts associated with overlapping protective measures of other Federal, State, and local laws that aid habitat conservation in the areas proposed for designation. We note that in past instances, some of these measures have been precipitated by the listing of the species and impending designation of critical habitat. Because habitat conservation efforts affording protection to a listed species likely contribute to the efficacy of the critical habitat designation efforts, the impacts of these actions are considered relevant for understanding the full effect of the proposed critical habitat designation. Enforcement actions taken in response to violations of the Act, however, are not included.

55. *Comment:* Two commenters stated that the DEA does not make a distinction between the cost of listing the species under the ESA versus the cost of designating critical habitat.

Our Response: This analysis identifies those economic activities believed to be most likely to threaten *Atriplex coronata* var. *notatior* and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the essential habitat area. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation.

56. *Comment:* Four commenters suggested that the economic analysis should be limited to the proposed critical habitat designation, zero acres, rather than the 15,232 acres of essential habitat, which comprise lands excluded from designation.

Our Response: In the proposed critical habitat rule we considered 15,232 acres of habitat essential for *Atriplex coronata* var. *notatior*, but we excluded that habitat from designation due to the presence of an existing habitat conservation plan under section 4(b)(2) of the Act. However, we recognized that we might receive comments on the proposed rule that would cause us to reassess our exclusions, and for this reason we conducted an economic analysis on the essential habitat. In addition, the Act requires us to consider economic impacts. The fact that we have proposed in advance to exclude areas for other reasons does not exempt us from this requirement.

57. *Comment:* Three commenters submitted requests that the 14 day comment period on the Draft Economic Analysis be extended to 30 or 60 days and four commenters stated that the Service did not offer a reasonable time period for review of the Draft Economic Analysis.

Our Response: We were unable to extend the comment period on the Draft Economic Analysis due to the lawsuit settlement deadline for the publication of the final critical habitat rule.

58. *Comment:* Two commenters stated that the essential habitat areas are not protected by the MSHCP but are within the MSHCP Criteria Area which directs potential conservation. They further stated that a full year after the issuance of the section 10(a)(1)(B) permit for the MSHCP, manure dumping and habitat conversion such as sod farming, continues to directly impact the species.

Our Response: The MSHCP is a large and complex habitat conservation plan, and its implementation is expected to take time. In its first year of

implementation, the MSHCP has already resulted in conservation and management actions that address threats to *Atriplex coronata* var. *notatior* on private lands. We address this issue further under the ''Special Management Considerations or Protections'' section of this final rule.

59. *Comment:* One commenter stated that although the Service mapped 15,232 acres of essential habitat for the species, the MSHCP proposes the conservation of only 6,900 acres of suitable habitat for the species. Moreover, our essential habitat coincided with the lands already conserved (Public/Quasi-Public Lands (PQP) and lands to be conserved (conceptual reserve design) under the MSHCP. The watershed lands in Salt Creek identified as essential habitat are expected to be developed and the MSHCP provides guidelines to maintain water quality and quantity to occupied seasonal wetlands. Thus, there is not a conflict between the proposed conservation of *Atriplex coronata* var. *notatior* under the MSHCP and the essential habitat identified in the proposed rule for the following reasons: (1) Although we did not use the habitat model used in the MSHCP, all essential habitat is protected by the MSHCP; (2) the 6,900 acres of suitable habitat for *Atriplex coronata* var. *notatior* is embedded within the much larger MSHCP Conservation Area; (3) approximately 77 percent of the essential habitat for *Atriplex coronata* var. *notatior* (11,760 acres of the 15,232 acres of essential habitat) would be protected on existing PQP lands and conceptual reserve design lands within the Western Riverside County MSCHP at San Jacinto River, Mystic Lake, Salt Creek, and Alberhill Creek, and (4) approximately 23 percent of the essential habitat (3,473 ac, 1405 ha) provides the watershed for the MSHCP Conservation Area at Unit 2. These watershed lands are not part of the MSHCP Conservation Area and are not known to be occupied by *A. coronata* var. *notatior*. The MSHCP species-specific Objectives for *A. coronata* var. *notatior* and the Guidelines Pertaining to the Urban/Wildlands Interface will ensure that floodplain processes will be maintained and the quantity and quality of runoff discharged to the MSHCP Conservation Area will not be altered in an adverse way when compared with existing conditions such that the essential functions and values that these watershed areas provide for the species will be maintained.

Our Response: When we mapped essential habitat for *Atriplex coronata* var. *notatior*, we did not use the habitat model used in the MSHCP for the species. The MSHCP defines suitable habitat for the species as consisting of grasslands on alkali soils, playas, and vernal pools within the Mystic Lake, San Jacinto River, and Salt Creek areas. When we mapped essential habitat for the species, we looked at habitat as described in the primary constituent elements of this rule, and our essential habitat includes watershed areas that were not captured in the MSHCP's definition of suitable habitat for *Atriplex coronata* var. *notatior*.

60. *Comment:* One commenter stated that in the MSHCP's proposal to conserve 6,900 acres of suitable habitat for the species, there is no consideration of conserving occupied versus potential habitat and asked for an explanation of how the MSHCP will conserve essential habitat for the species.

Our Response: MSHCP species-specific objective 2 for *Atriplex coronata* var. *notatior* requires that the locality at Alberhill creek and the three Core Areas for the species located along the San Jacinto River from the vicinity of Mystic Lake southwest to the vicinity of Perris and in the upper Salt Creek drainage west of Hemet, be included within the MSHCP Conservation Area. For further explanation of how the MSHCP will conserve essential habitat for the species, see the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section below.

61. *Comment:* One commenter expressed concern that the Conservation Areas are the only areas that will be conserved through the MSHCP and that all habitat enhancement, revegetation, and restoration will occur only within these areas.

Our Response: The ''Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools'' and ''Additional Survey Needs and Procedures'' sections of the MSHCP may result in additional conservation and habitat enhancement, revegetation, and restoration for *Atriplex coronata* var. *notatior*. To date, these policies have resulted in the submittal of two DBESPs that will result in conservation and restoration activities that may benefit *A. coronata* var. *notatior* (Lockhart 2004; LSA Associates Inc. 2005). For these two projects, the DBESPs propose to introduce the species into restored and created vernal pool habitat north of the upper Salt Creek populations once initial success criteria have been met, even though the proposed actions that resulted in impacts to vernal pool habitat did not directly affect *A. coronata* var. *notatior*.

Summary of Changes From Proposed Rule

We have reviewed public comments received on the proposed designation of critical habitat for *Atriplex coronata* var. *notatior* and the related draft economic analysis. While we have made no major changes to the rule, we have made a minor administrative change: Instead of adding text pertaining to *A. coronata* var. *notatior* to 50 CFR 17.97 as proposed, we are adding text to 50 CFR 17.96 instead. Since publication of the proposed rule, we have used § 17.97 for a different purpose. Consistent with the proposed rule, no lands are being designated as critical habitat for *A. coronata* var. *notatior* because all habitat with features essential to the conservation of this taxon are within the conservation area of the approved Western Riverside MSHCP, and are excluded pursuant to section 4(b)(2) of the Act. However, we have incorporated detailed information on the MSHCP and its associated documents as they relate to *A. coronata* var. *notatior* into this rule under the section titled ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan.''

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such

designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 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 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 considered essential to the conservation of the species and, therefore, included in the critical habitat designation.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.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 data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.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 section 4(b)(1)(A) of the Act, we used the best scientific data available in determining those areas that contain the features essential to the conservation of *Atriplex coronata* var. *notatior*. We utilized data and information contained in, but not limited to, the proposed critical habitat rule (69 FR 59844), the proposed listing rule (59 FR 64812), the final listing rule (63 FR 54975), CNDDB, reports submitted by biologists holding section 10(a)(1)(A) recovery permits, reports and documents on file in the Service's field offices, and communications with experts outside the Service who have extensive knowledge of the species and its habitat. Additionally, we used information contained in comments received by December 6, 2004, which were submitted on the proposed critical habitat designation (69 FR 59844), and comments received by September, 14, 2005, submitted on the draft economic analysis (70 FR 51739).

After all the information about the known occurrences of *Atriplex coronata* var. *notatior* was compiled, we created maps indicating the habitat areas with essential features associated with each of the occurrences. We used the information outlined above to aid in this task. Theses areas were mapped using GIS and refined using topographical and aerial map coverages. These areas were further refined by discussing each area with Service biologists familiar with each area, and by site visits to all three areas. After creating GIS coverage of the areas, we created legal descriptions of those areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the areas.

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 data available and to consider those physical and biological features (primary constituent elements (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 biological and physical features which are essential to the conservation of *Atriplex coronata* var. *notatior, i.e.,* the PCEs, are based on specific components that provide for the essential biological requirements of the species as described below.

Space for Individual and Population Growth, and for Normal Behavior

Atriplex coronata var. *notatior* occupies seasonally-flooded alkali vernal plain habitat, which includes alkali playa, alkali scrub, alkali vernal pool, and alkali annual grassland components (Interface Between Ecology and Land Development in California 1993, Service 1994, Madrono 1996). The species occurs in areas where this habitat is associated with the Willows soil series, and to a lesser extent, the

Domino, Traver, Waukena, and Chino soils series (Service 1994, Knecht 1971). Seasonal wetlands that the species occupies are dependent upon adjacent transitional wetlands and marginal wetlands within the watershed (Service 1994). These areas do not occur in great abundance, and in recent years have been degraded and lost to agriculture, soil chemistry alteration resulting from the dumping of manure, discing for fire prevention, off-road vehicle use, grazing, flood control projects, and development, including pipeline projects, transportation projects, and residential development projects (Service 1994).

The four locations where the taxon is known to occur are no longer pristine and undisturbed. However, the wetlands and associated hydrology continue to provide essential biological and physical features necessary for this taxon at all four locales. All remaining occurrence complexes have been impacted by agricultural activities (Bramlet 1993, CNDDB 2003, Roberts and McMillan 1997, Service 1998). The taxon is also affected by nonagricultural related clearing activities (Bramlet 1993, CNDDB 2003, Roberts and McMillan 1997, Service 1998). Farming continues today on a portion of the lands that make up the SJWA. The occurrence complex that occupies the floodplain of the San Jacinto River between the Ramona Expressway and the mouth of Railroad Canyon has been severely degraded during recent years by soil chemistry alteration resulting from the dumping of manure (Roberts 2003 and 2004). Habitat at the Salt Creek Vernal Pool Complex has been degraded as a result of dry land farming. Finally, the occurrence within the Alberhill Creek floodplain is adjacent to a plowed field. This population may have previously extended into the adjacent agricultural area. Additionally, the population may be affected by agricultural runoff and sediment.

Atriplex coronata var. *notatior* can persist in the seed bank within disturbed lands, including agricultural areas. Therefore, the species is expected to re-establish itself from the seed bank once lands are restored. Restoration of these disturbed areas is necessary for the conservation of this taxon.

Water and Physiological Requirements

Atriplex coronata var. *notatior* requires a hydrologic regime that includes sporadic flooding in combination with slow drainage in alkaline soils and habitats. The duration and extent of flooding or ponding can be extremely variable from one year to the next. Both localized and large-scale flooding are important to the survival of *A. coronata* var. *notatior.*

Local flooding occurs on a seasonal basis and large-scale flooding occurs less frequently, approximately every 20 to 50 years (Roberts 2004). *Atriplex coronata* var. *notatior* occupies the margins of flooded areas on dry mounds and banks within seasonally-flooded alkali vernal plain habitat. This annual species may be abundant during average and dry years due to the increased presence of floodplain margins. However, alkali scrub habitat expands and crowds out habitat for annuals such as *A. coronata* var. *notatior* under normal circumstances (Roberts 2004, Bramlet 2004).

When large-scale flooding occurs, standing and slow moving water is present for weeks or months and results in the death of submerged alkali scrub. Large-scale flooding will also naturally restore areas that have been degraded by discing or other activities. Because *Atriplex coronata* var. *notatior* occupies the margins of flooded areas, populations may be reduced during very wet years when most of the species habitat is underwater (Bramlet 2004). However, large-scale flooding is essential to the continued survival of the species due to its ability to restore and maintain this habitat in a successional state. Irreversible actions that alter the hydrology of the seasonal wetlands or infringe upon the wetlands may threaten the survival of *A. coronata* var. *notatior.*

All four occurrence complexes rely on seasonal localized flooding and ponding from surrounding watershed areas (Roberts 2004, Bramlet 2004). Less frequent large-scale flooding is provided by the San Jacinto River at the SJWA/Mystic Lake occurrence complex and the occurrence complex located between the Ramona Expressway and the mouth of Railroad Canyon. Alberhill Creek would provide large-scale flooding for the occurrence complex at that location. Finally, the Upper Salt Creek Vernal Pool Complex is in a natural depression where rainfall from the surrounding area flows across the land and pools within the complex, in addition to flooding received from an unnamed tributary to Salt Creek. While some of the localized flooding for the Upper Salt Creek Vernal Pool Complex comes from undeveloped hillsides, much of the watershed has been developed, and the flows traveling to the vernal pools include a large amount of urban runoff. The maintenance of clean, seasonal flows from the surrounding watershed, as well as natural floodplain processes, is necessary for the conservation of all four occurrence complexes.

Sites for Reproduction, Germination, and Seed Dispersal

Both localized and large-scale flooding are important to the reproduction, germination, and seed dispersal of *Atriplex coronata* var. *notatior* (Roberts 2004, Bramlet 2004). *A. coronata* var. *notatior* produces floating seeds (A. Sanders, June 4, 2004, University of California, Riverside, pers. comm. to S. Brown, USFWS) that are likely dispersed during local and large scale flooding by slow-moving flows within the floodplains and vernal pools where the species occurs. Natural floodplain processes are integral to the biotic processes this species uses to disperse and reproduce.

Local flooding allows for the distribution and germination of seeds within a localized area. Large scale flooding widely distributes seed of *Atriplex coronata* var. *notatior,* allowing the taxon to colonize favorable sites and retreat from less favorable sites in response to disturbance and variations in annual rainfall (Service 1994, Roberts 2004, Bramlet 2004). Natural hydrological processes must be maintained in these areas to allow for the reproduction and dispersal of the species.

Primary Constituent Elements for Atriplex coronata var. notatior

Based on our current knowledge of the life history, biology, and ecology of the taxon and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that *Atriplex coronata* var. *notatior's* primary constituent elements are:

(1) Seasonal wetlands, including floodplains and vernal pools, and the natural hydrologic processes upon which these areas depend;

(2) Natural communities, including seasonally-flooded alkali vernal plain, alkali playa, alkali scrub, and alkali grassland, within which the taxon is known to occur; and,

(3) Slow-draining alkali soils with a hard pan layer that provides for a perched water table, including the Willows, Domino, Traver, Waukena, and Chino Soils Series.

Criteria Used To Identify Habitat Areas With Essential Features

In our proposed critical habitat designation (69 FR 59844), we delineated three Units of habitat with features essential to the conservation of *Atriplex coronata* var. *notatior* encompassing the four occurrence

complexes where the taxon is known to occur. These Units encompass a total of approximately 15,232 ac (6,167 ha) of habitat.

All four of the occurrence complexes are within the geographic area occupied by the species, are known to have been occupied at the time of listing, and contain one or more PCEs (*e.g.*, soil type, habitat type). The four occurrence complexes are: (1) Floodplain of the San Jacinto River at the SJWA/Mystic Lake; (2) Floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir; (3) Upper Salt Creek Vernal Pool Complex; and (4) Alberhill Creek. Each of these four occurrence complexes is essential to the conservation of the species, although not all known populations within these complexes are considered essential to the conservation of the species. We included those populations which are considered essential to the conservation of the species within the essential habitat units delineated in the proposed critical habitat designation (69 FR 59844). The significance of each occurrence complex is described in detail in the proposed rule (69 FR 59844).

These complexes are mapped as three Units in Map 1 in the proposed rule (69 FR 59844): Unit 1—San Jacinto River; Unit 2—Salt Creek (Hemet); and Unit 3—Alberhill. *Unit 1—San Jacinto River* includes the first two occurrence complexes (the floodplain of the San Jacinto River at the San Jacinto Wildlife Area/Mystic Lake and the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir) and comprises 12,046 acres, 6,535 ac (2,645 ha) of which are privately owned and 5,511 ac (2,230 ha) of which are owned by the California Department of Fish and Game. *Unit 2—Salt Creek (Hemet)* includes the third occurrence complex (Upper Salt Creek Vernal Pool Complex) and comprises 3,154 ac (1,277 ha), all of which are privately owned. *Unit 3—Alberhill* includes the fourth occurrence complex and comprises 32.3 ac (13.1 ha), all of which are privately owned.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and contain the primary constituent elements may require special management considerations or protections. Within the areas of habitat with essential features occupied by *Atriplex coronata* var. *notatior,* we believe special management considerations or protections may be needed to maintain the physical and biological features that the species requires. Threats to the species habitat include habitat destruction and fragmentation resulting from urban and agricultural development, manure dumping, pipeline construction, alteration of hydrology and floodplain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing), and competition from non-native plant species (Bramlet 1993, Roberts and McMillan 1997, Service 1998). Each of these threats render the habitat less suitable for *A. coronata* var. *notatior,* and special management may be needed to address them.

The occurrence complex that occupies the floodplain of the San Jacinto River between the Ramona Expressway and Railroad Canyon Reservoir is threatened by non-agriculture related clearing, agricultural activity, including irrigated crops and alfalfa farming, and a proposed flood control project (Bramlet 1996, Roberts and McMillan 1997, Dudek and Associates 2003). The occurrence complex that occupies the San Jacinto Wildlife Area/Mystic Lake is threatened by invasive and weedy plant species introduced as food sources for waterfowl and also remaining from historical agricultural production (Bramlet 1996). Alteration of habitat for duck ponds (Roberts and McMillan 1997) and off-road vehicle activity (CNDDB 2003) are also management concerns in this area. The occurrence complex located within the Salt Creek Vernal Pool Complex is threatened by agricultural activities, including dry-land farming, weed abatement and fire suppression practices, grazing, invasion of non-native plant species, alteration of hydrology, fragmentation, and a proposed road realignment project (CNDDB 2003, Bramlet 1996, Roberts and McMillan 1997, Dudek and Associates 2003). The occurrence complex at Alberhill Creek is located in a rapidly urbanizing area and is subject to the threat of increased human-associated disturbance. Actions that alter habitat suitable for the species or affect the natural hydrologic processes upon which the species depends could threaten the species in this area.

In our proposed critical habitat designation (69 FR 59844), we delineated essential habitat units to provide for the conservation of *Atriplex coronata* var. *notatior* at the four occurrence complexes where it is known to occur. These essential areas total approximately 15,232 ac (6,167 ha) of habitat. Although all four complexes are considered essential to the conservation of *A. coronata* var. *notatior,* not all known populations within these complexes are considered essential to the conservation of the species. We included those populations which are considered essential to the conservation of the species within the essential habitat units delineated in the proposed critical habitat designation (69 FR 59844).

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 an 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 often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed IA under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

The Western Riverside MSHCP species specific conservation objectives and written criteria provide for the conservation of the species within all four delineated essential habitat units. Therefore, no lands are being designated as critical habitat for this species. Please refer to the proposed rule (69 FR 59844) for details on how we determined the boundaries of the essential habitat units. Peer Reviewers provided comments regarding their recommendations for revisions to the essential habitat unit boundaries during the public comment period for this final rule. We have addressed their recommendations in the ''Peer Reviewer Comments'' section of this final rule and incorporated their recommendations throughout the rule as appropriate.

Permittees under the Western Riverside MSHCP are obligated to adopt and maintain ordinances or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the MSHCP and its associated IA and Permit (see IA for the MSHCP, page 41). In its first year of implementation, the MSHCP has already resulted in conservation and management actions that address threats to *Atriplex coronata* var. *notatior* on private lands. For example, the City of Hemet has adopted two ordinances that have halted manure dumping within the City, and allowed the conditioning and coordination of development efforts such that habitat necessary for the conservation of

MSHCP Covered Species within the Criteria Area is protected and will not become fragmented (Ordinance No. 1666 and Ordinance No. 1742). For further information on management actions proposed for *A. coronata* var. *notatior* under the MSHCP see the ''Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan'' section below.

Critical Habitat Designation

We evaluated all 3 Units (four occurrence complexes) with features essential for the conservation of *Atriplex coronata* var. *notatior* for exclusion from critical habitat pursuant to section 4(b)(2) of the Act. All three Units are within the conservation area of the approved Western Riverside MSHCP in Riverside County. On the basis of our evaluation of the conservation measures afforded *A. coronata* var. *notatior* under the MSHCP, we have concluded that the benefit of excluding the lands covered by this MSHCP outweighs the benefit of including them as critical habitat (see discussion in section entitled ''Exclusions Under Section 4(b)(2) of the Act''). Thus, we are excluding the lands covered by this MSHCP from the designation of critical habitat for this taxon, pursuant to section 4(b)(2) of the Act. Because we have excluded all areas of habitat with essential features from the proposal, we are designating zero acres (0 ac) (0 ha) of critical habitat in this final rule for *A. coronata* var. *notatior.*

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 destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Atriplex coronata* var. *notatior* will continue to 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 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. However, no lands are being designated as critical habitat for *Atriplex coronata* var. *notatior* because all habitat areas with essential features are within the conservation area of the approved Western Riverside MSHCP.

If you have questions regarding whether specific activities would require consultation under section 7 of the Act, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE. 11th Avenue, Portland, OR 97232 (telephone 503/231–6131; facsimile 503/231–6243).

Exclusions Under Section 4(b)(2) of the Act

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 available after taking into consideration the economic impact, impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such 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. Consequently, we may exclude an area from critical habitat based on economic impacts, impacts on national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan

We are excluding critical habitat from approximately 15,232 ac (6,167 ha) of non-Federal lands within the Western Riverside County MSHCP under section 4(b)(2) of the Act. *Atriplex coronata* var. *notatior* is a covered species under the Western Riverside County MSHCP. We completed our section 7 consultations on the issuance of the section 10(a)(1)(B) permit for the Western Riverside County MSHCP on June 22, 2004. This approved and legally operative HCP provides special management and protection for the physical and biological features essential for the conservation of *A. coronata* var. *notatior* that exceed the level of regulatory control that would be afforded this species by the designation of critical habitat. We have determined that the benefits of excluding critical habitat within this HCP from the critical habitat designation will outweigh the benefits of including them as critical habitat and this exclusion will not result in the extinction of *A. coronata* var. *notatior*.

Below we first provide general background information on the Western Riverside County MSHCP, followed by an analysis pursuant to section 4(b)(2) of the Act of the benefits of including HCP lands within the critical habitat designation, an analysis of the benefits of excluding HCP lands, and an analysis of why we believe the benefits of exclusion are greater than the benefits of inclusion. Finally, we provide a determination that exclusion of the HCP lands will not result in extinction of *Atriplex coronata* var. *notatior*.

The Western Riverside County MSHCP establishes a multiple species conservation program to minimize and mitigate the expected loss of habitat values and, with regard to ''covered'' animal species, the incidental take of such species. The MSHCP Plan Area encompasses approximately 1.26 million ac (509,900 ha) in western Riverside County, including the entire range of *Atriplex coronata* var. *notatior*, which is a covered species under this plan. The Western Riverside County MSHCP is a subregional plan under the State's Natural Communities Conservation Plan (NCCP) and was developed in cooperation with the California Department of Fish and Game. The Service concluded that the MSHCP would not jeopardize the continued existence of *Atriplex coronata* var. *notatior* in its Biological and Conference Opinion (Service 2004).

The MSHCP has five species-specific conservation objectives to conserve and monitor *Atriplex coronata* var. *notatior* populations: (1) Include within the MSHCP Conservation Area at least 6,900 acres of suitable habitat (grassland and playas and vernal pools within the San Jacinto River, Mystic Lake and Salt Creek portions of the MSHCP Conservation Area); (2) include within the MSHCP Conservation Area the Alberhill Creek locality as well as the three Core Areas, located along the San Jacinto River from the vicinity of Mystic Lake southwest to the vicinity of Perris and in the upper Salt Creek drainage west of Hemet; (3) conduct surveys for *Atriplex coronata* var. *notatior* as part of the project review process for public and private projects within the Criteria Area where suitable habitat is present. *Atriplex coronata* var. *notatior* located as a result of survey efforts shall be conserved in accordance with procedures described within the MSHCP; (4) include within the MSHCP Conservation Area the floodplain along the San Jacinto River consistent with Objective 1. Floodplain processes will be maintained along the river in order to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change; and (5) include within the MSHCP Conservation Area the floodplain along Salt Creek generally in its existing condition from Warren Road to Newport Road and the vernal pools in Upper Salt Creek west of Hemet. Floodplain processes will be maintained in order to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change.

Approximately 77 percent of the essential habitat for *Atriplex coronata* var. *notatior* (11,760 acres of the 15,232 acres of essential habitat) would be protected on existing Public/Quasi-Public Lands (PQP) lands and conceptual reserve design lands within the Western Riverside County MSCHP (MSHCP Conservation Area) (see objectives 1 and 2). This essential habitat is located at Alber Hill Creek, San Jacinto Wildlife Area, along the floodplain of the San Jacinto River, and upper Salt Creek west of Hemet and includes many occurrences of *A. coronata* var. *notatior* (see objectives 1, 2 and 4). The assembly of the MSHCP Conservation Area is anticipated to occur over the life of the permit. The MSHCP also includes monitoring and management requirements for *A. coronata* var. *notatior*. Known localities within the MSHCP Conservation Area will be monitored every eight years. Under the MSHCP, reserve managers are responsible for the maintenance and enhancement of floodplain processes on the San Jacinto River and Upper Salt Creek. Particular management emphasis will be given to preventing alteration of hydrology and floodplain dynamics, farming, fire and fire suppression activities, off-road vehicle use, and competition from non-native plant species. Thus, a significant amount of essential habitat and occurrences of *Atriplex coronata* var. *notatior* are expected to be conserved and managed in the MSHCP Conservation Area.

Approximately 14 percent of the essential habitat (2,202 acres of the 15,232 acres of essential habitat) provides the watershed for the MSHCP Conservation Area at upper Salt Creek west of Hemet. These watershed lands are not part of the MSHCP Conservation Area and are not known to be occupied by *Atriplex coronata* var. *notatior*. The Guidelines Pertaining to the Urban/Wildlands Interface is to ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions. The function of these lands would be to maintain the quantity and quality of runoff discharged to the MSHCP Conservation Area. While these lands are expected to be developed, this guideline would ensure that future urbanization would maintain the existing water quality and quantity needed to sustain the seasonal wetlands occupied by *Atriplex coronata* var. *notatior*.

Numerous processes are incorporated into the MSHCP that allow for Service oversight of MSHCP implementation. These processes include (1) annual reporting requirements; joint review of projects proposed within the Criteria Area; participation on the Reserve Management Oversight Committee; and a Reserve Assembly Accounting Process which will be implemented to ensure that conservation of lands occurs in rough proportionality to development, are assembled in the configuration as generally described in the MSHCP, and that conservation goals and objectives are being achieved. The Service is also responsible for reviewing Determinations of Biologically Equivalent or Superior Preservation that are proposed under the Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools policy and for reviewing minor amendment projects, such as the State Route 79 Realignment project and the San Jacinto River Flood Control project, for consistency with the requirements of the MSHCP.

Thus, the Western Riverside County MSHCP provides significant conservation benefits to *Atriplex coronata* var. *notatior.* These benefits include a MSHCP Conservation Area that protects a significant percentage of the essential habitat and occurrences for *Atriplex coronata* var. *notatior* and long-term management of the preserve areas. The MSHCP also provides avoidance and minimization measures, under the Guidelines Pertaining to the Urban/Wildlands Interface that provide benefits to the species and watershed for *Atriplex coronata* var. *notatior.* Finally, the MSHCP provides oversight to ensure effective implementation.

(1) Benefits of Inclusion

Overall, we believe that there is minimal benefit from designating critical habitat for *Atriplex coronata* var. *notatior* within the Western Riverside County MSHCP because, as explained above, these lands are already managed or will be managed for the conservation of *Atriplex coronata* var. *notatior.* Below we discuss benefits of inclusion of these HCP lands.

A benefit of including an area within a critical habitat designation is the protection provided by section 7(a)(2) of the Act that directs Federal agencies to ensure that their actions do not result in the destruction or adverse modification of critical habitat. The designation of critical habitat and the analysis to determine if the proposed Federal action may result in the destruction or adverse modification of critical habitat for *Atriplex coronata* var. *notatior* may provide a different level of protection under section 7(a)(2) of the Act that is separate from the obligation of a Federal agency to ensure that their actions are not likely to jeopardize the continued existence of *Atriplex coronata* var. *notatior.* Under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species than was previously believed, but it is not possible to quantify this benefit at present. However, the protection provided under section 7(a)(2) of the Act is still a limitation on the harm that occurs to the species or critical habitat as opposed to a requirement to provide a conservation benefit.

The inclusion of these 15,232 ac (6,167 ha) of non-Federal land as critical habitat may provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot.* A benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands do not likely result in the destruction or adverse modification of critical habitat. This additional analysis to determine destruction or adverse modification of critical habitat is likely to be small because the lands are not under Federal ownership and any Federal agency proposing a Federal action on these 15,232 ac (6,167 ha) of non-Federal lands would likely consider the conservation value of these lands as identified in the Western Riverside County MSHCP and take the necessary steps to avoid jeopardy or the destruction or adverse modification of critical habitat. In any event, they will still need to consult with us to avoid jeopardy to the species, and we generally consider habitat impacts in such jeopardy consultations.

The areas excluded as critical habitat include the seasonal wetlands that are occupied by *Atriplex coronata* var. *notatior* and the surrounding watershed (the watershed is not occupied by *A. coronata* var. *notatior*). If these areas were designated as critical habitat, any actions with a Federal nexus, such as the issuance of a permit under section 404 of the Clean Water Act, which might adversely affect critical habitat would require a consultation with us, as explained previously, in Effects of Critical Habitat Designation. However, inasmuch as portions of these areas are currently occupied by the species, consultation for Federal activities which might adversely impact the species would be required even without the critical habitat designation. For the surrounding watershed not occupied by *A. coronata* var. *notatior,* the Federal action agency would need to determine if the proposed action would affect the species rather than making a determination if the proposed action would cause destruction or adverse modification of critical habitat. A potential benefit of critical habitat would be to signal the importance of the surrounding watershed not occupied by *A. coronata* var. *notatior* to Federal agencies and to ensure their actions do not result in the destruction or adverse modification of critical habitat pursuant to section 7(a)(2) of the Act.

This potential benefit of critical habitat is reduced by the measures contained in the HCP to maintain watersheds for endangered species and seasonal wetlands. The Western Riverside County MSHCP provides Guidelines Pertaining to the Urban/Wildlands Interface. Under this guideline, proposed developments in proximity to MSHCP Conservation Areas shall incorporate measures, including measures required through the National Pollutant Discharge Elimination System requirements, to ensure that the quantity and quality of runoff discharged to the MSHCP Conservation Area is not altered in an adverse way when compared with existing conditions. In particular, measures shall be put in place to avoid discharge of untreated surface runoff from developed and paved areas into the MSHCP Conservation Area. Stormwater systems shall be designed to prevent the release of toxins, chemicals, petroleum products, exotic plant materials or other elements that might degrade or harm biological resources or ecosystem processes within the MSHCP Conservation Area. Thus, this HCP provide a greater level of protection and management for the watersheds of seasonal wetlands occupied by *Atriplex coronata* var. *notatior* than the simple avoidance of adverse effects to critical habitat.

If these areas were included as critical habitat, primary constituent elements would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit Court'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, for those seasonal wetland areas occupied by *Atriplex coronata* var. *notatior* and the surrounding watershed, consultation for activities which may adversely affect the species, would be required even without the critical habitat designation.

In *Sierra Club* v. *Fish and Wildlife Service,* 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat areas essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. The inclusion of an area as critical habitat 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 educational benefit has largely been achieved for *Atriplex coronata* var. *notatior.* The public outreach and environmental impact reviews required under the National Environmental Policy Act for the Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by *Atriplex coronata* var. *notatior* and the surrounding watershed. In addition, there has been public notice and opportunity for comment on this proposal, which identified lands eligible for designation as critical habitat, and on the economic analysis for the proposal, which also identified those lands. There would be little additional informational benefit gained from including these lands as critical habitat because of the level of information that has been made available to the public as part of these regional planning efforts. Consequently, we believe that the informational benefits are already provided even though this area is not designated as critical habitat. Additionally, the purpose of the Western Riverside County MSHCP to provide protection and enhancement of habitat for *Atriplex coronata* var. *notatior* is already well established among State and local governments, and Federal agencies.

As discussed below, however, we believe that designating any non-Federal lands within the Western Riverside County MSHCP as critical habitat would provide little additional educational and Federal regulatory benefits for the species. Because portions of the excluded seasonal wetlands are occupied by the species, there must be consultation with the Service over any action which may affect these populations. For the surrounding watershed not occupied by *Atriplex coronata* var. *notatior,* the Western Riverside County MSHCP provide management measures to protect the watershed for these seasonal wetlands. The additional educational benefits that might arise from critical habitat designation have been largely accomplished through the public review and comment of the environmental impact documents which accompanied the development of the Western Riverside County MSHCP, the public notice and comment period on this proposal, which identified lands eligible for designation as critical habitat, and on the economic analysis for the proposal, which also identified those lands, and the recognition by the County of Riverside of the presence of *Atriplex coronata* var. *notatior* and the value of their lands for the conservation and recovery of the species. The areas identified for conservation in the Western Riverside County MSHCP under the species-specific conservation objectives (San Jacinto River, Mystic Lake, Salt Creek, and Alberhill Creek portions of the MSHCP Conservation Area) are the same lands we have identified as providing the physical and biological features essential to the conservation of this species.

For 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot,* the Fish and Wildlife Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. However, in *Gifford Pinchot* the court noted the government, by simply considering the action's survival consequences, was reading the concept of recovery out of the regulation. The court, relying on the CFR definition of adverse modification, required the Service to determine whether recovery was adversely affected. The *Gifford Pinchot* decision arguably made it easier to reach an ''adverse modification'' finding by reducing the harm, affecting recovery, rather than the survival of the species. However, there is an important distinction: section 7(a)(2) limits harm to the species either through jeopardy or destruction or adverse modification of its habitat where there is a Federal nexus to the potential harm. It does not affect purely State or private actions on State or private land, nor does it require positive habitat improvements or enhancement of the species status. Thus, any management plan which has enhancement or recovery as the management standard will almost always provide more benefit than the critical habitat designation.

(2) Benefits of Exclusion

As mentioned above, the Western Riverside County MSHCP provide for the conservation of *Atriplex coronata* var. *notatior* through avoidance, minimization, and/or mitigation of impacts, management of habitat, and maintenance of watershed. The Western Riverside County MSHCP provides for protection of the PCEs, and addresses special management needs such as edge effects and maintenance of hydrology. Designation of critical habitat would therefore not provide as great a benefit to the species as the positive management measures provided in this HCP.

The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot.* Many HCPs, particularly large regional HCPs take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP 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 participants abandon the voluntary HCP process because the critical habitat designation may result in additional regulatory requirements than faced by other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

Another benefit from excluding these lands is to maintain the partnerships developed among the County of Riverside, State of California, and the Service to implement the Western Riverside County MSHCP. Instead of using limited funds to comply with administrative consultation and designation requirements which cannot provide protection beyond what is currently in place, the partners could instead use their limited funds for the conservation of this species.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP 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 HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. In addition, Federal actions not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act. HCP and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP ''No Surprises'' regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations that, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development. In the biological opinions for the Western Riverside County MSHCP, the Service concluded that issuance of section 10(a)(1)(B) permit for this plan is not likely to result in jeopardy to the species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the exclusion of critical habitat for *Atriplex coronata* var. *notatior* from approximately 15,232 ac (6,164 ha) of non-Federal lands within the Western Riverside County MSHCP and based on this evaluation, we find that the benefits of exclusion (avoid increased regulatory costs which could result from including those lands in this designation of critical habitat, ensure the willingness of existing partners to continue active conservation measures, maintain the ability to attract new partners, and direct limited funding to conservation actions with partners) of the lands containing features essential to the conservation of *Atriplex coronata* var. *notatior* within the Western Riverside County MSHCP outweigh the benefits of inclusion (limited educational and regulatory benefits, which are largely otherwise provided for under the HCP) of these lands as critical habitat. The benefits of inclusion of these 15,232 ac (6,164 ha) of non-Federal lands as critical habitat are lessened because of the significant level of conservation provided *Atriplex coronata* var. *notatior* under the Western Riverside County MSHCP (conservation of occupied and potential habitat, monitoring, and providing hydrology). In contrast, the benefits of exclusion of these 15,232 ac (6,164 ha) of non-Federal lands as critical habitat are increased because of the high level of cooperation by the County of Riverside, State of California, and the Service to conserve this species and these partnerships exceed any conservation value provided by a critical habitat designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these 15,232 ac (6,164 ha) of non-Federal lands will not result in extinction of *Atriplex coronata* var. *notatior* since these lands are conserved or will be conserved and managed for the benefit of this species pursuant to the Western Riverside County MSHCP. This HCP includes specific conservation objectives, avoidance and minimization measures, and management that exceed any conservation value provided as a result of a critical habitat designation. The Service concluded that the Western Riverside County MSHCP would not jeopardize the continued existence of *N. fossalis Atriplex coronata* var. *notatior* in our Biological and Conference Opinion because of the management measures and level of conservation.

The jeopardy standard of section 7 and routine implementation of habitat conservation through the section 7 process also provide assurances 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.

Additionally, the species within the Western Riverside County MSHCP occurs on lands protected and managed either explicitly for the species or indirectly through more general objectives to protect natural values. These factors acting in concert with the other protections provided under the Act, lead us to find that exclusion of these 15,232 ac (6,164 ha) within the Western Riverside County MSHCP will not result in extinction of *Atriplex coronata* var. *notatior.*

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific data information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on August 31, 2005, (70 FR 51739). We accepted comments on the draft analysis until September 14, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *A. coronata* var. *notatior.* This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and

enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

There is no economic impact within the final designation because the Service has not designated any lands as critical habitat for *Atriplex coronata* var. *notatior.*

A copy of the final economic analysis and 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) or by download from the Internet at *http://carlsbad.fws.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because we are designating zero acres of critical habitat, this rule would not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review 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 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 (5 U.S.C. 601 *et seq.*, 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when proposed critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. However, since no critical habitat is being designated, no consultations would be necessary.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Because zero acres of critical habitat are being designated, there would be no additional costs to small businesses, and, thus, this rule would not result in a ''significant effect'' for the small business entities in Riverside County. As such, we are certifying that this rule will not result in a significant economic impact on a substantial number of small entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action under E.O. 13211, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, 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; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal 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. Non-Federal entities that 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. However, 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 we are designating zero acres of critical habitat. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of desinating critical habitat for *Atriplex coronata* var. *notatior*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Because we are designating zero acres of critical habitat for *Atriplex coronata* var. *notatior*, this rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of zero acres of critical habitat in areas currently occupied by *Atriplex coronata* var. *notatior* would have no impact on State and local governments and their activities. The process of identifying habitat with essential features may have some benefit to State and local governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While 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 making them wait for case-by-case section 7 consultation 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 zero acres of critical habitat in accordance with the provisions of the Endangered Species Act. This final rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Atriplex coronata* var. *notatior.*

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the 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 determined that there are no tribal lands with features essential for the conservation of *Atriplex coronata* var. *notatior*. Critical habitat for *A. coronata* var. *notatior* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as 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. In § 17.12(h), in the List of Endangered and Threatened Plants, revise the entry for ''*Atriplex coronata* var. *notatior*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*		*	*
Atriplex coronata var. *notatior*.	San Jacinto Valley crownscale.	U.S.A. (CA)	*Chenopodiaceae—Goosefoot Family*.	E	650	17.96 (a) (No areas designated)	NA
*	*	*	*	*		*	*

■ 3. In § 17.96, amend paragraph (a) by adding an entry for *Atriplex coronata* var. *notatior* in alphabetical order under Family Chenopodiaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Chenopodiaceae: *Atriplex coronata* var. *notatior* (San Jacinto Valley crownscale)

Pursuant to section 4(b)(2) of the Act, we have excluded all areas determined to meet the definition of critical habitat under section 3(5)(A) of the Act for *Atriplex coronata* var. *notatior.* Therefore, no specific areas are designated as critical habitat for this species.

* * * * *

Dated: September 30, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–20146 Filed 10–12–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
October 13, 2005

Part VII

The President

Federal Register
Vol. 70, No. 197
Thursday, October 13, 2005

Presidential Documents

Title 3—

The President

Proclamation 7941 of October 7, 2005

Fire Prevention Week, 2005

By the President of the United States of America

A Proclamation

Each year, fires kill or injure thousands of Americans and destroy or damage billions of dollars worth of property. Many of these fires might have been prevented by taking appropriate precautions and following safety guidelines. During Fire Prevention Week, we highlight the need to prevent and prepare for fires, and we raise awareness of fire safety. We also honor our Nation's brave firefighters.

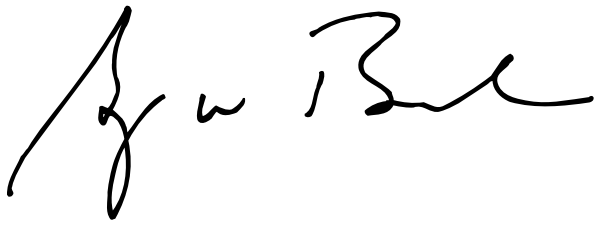
Each year, the National Fire Protection Association and the Department of Homeland Security's United States Fire Administration raise awareness during Fire Prevention Week. This year's theme is ''Use Candles with Care.'' Although the number of home fires has declined in recent years, the number of fires caused by candles has risen dramatically. Fortunately, the risk of candle fires can be lessened by following a few basic guidelines, including never leaving candles unattended, keeping them away from flammable items, and always keeping them out of reach of children.

While many fires can be prevented by following precautions, families should still be prepared for the possibility of a fire by having working smoke alarms on every level of their homes. Families should also have a fire escape plan in place to help get everyone out of the home safely in case of an emergency.

When fires occur, Americans depend on our courageous firefighters to be first on the scene and to save lives. Each year, more than 100 of our country's firefighters die in the line of duty. Americans are grateful for the brave men and women who put themselves in harm's way to rescue and protect their fellow citizens. During Fire Prevention Week, we recognize these heroes and honor their sacrifice.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 9 through October 15, 2005, as Fire Prevention Week. On Sunday, October 9, 2005, in accordance with Public Law 107–51, the flag of the United States will be flown at half-staff on all Federal office buildings in honor of the National Fallen Firefighters Memorial Service. I invite the people of the United States to participate in this observance by flying our Nation's flag over their homes at half-staff on this day, to mark this week with appropriate programs and activities, and to renew efforts throughout the year to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20655
Filed 10–12–05; 9:18 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7942 of October 7, 2005

National School Lunch Week, 2005

By the President of the United States of America

A Proclamation

Since 1946, the National School Lunch Program has contributed to the welfare of our Nation's youth and the academic mission of our schools. Each year during National School Lunch Week, we recognize this valuable program and highlight the continuing importance of providing America's children with access to nutritious meals.

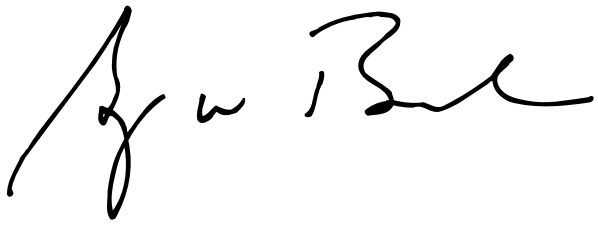
Today, nearly 100,000 public and private schools and residential child care institutions are implementing the National School Lunch Program, providing fresh fruits and vegetables, milk, and other nutritious food choices to an average of 29 million children each school day. The School Breakfast Program and the availability of after-school snacks as part of the School Lunch Program give children additional opportunities to receive a more wholesome diet.

Through the National School Lunch Program, school officials and food service professionals continue to demonstrate their dedication to our Nation's youth. To support these efforts, the U.S. Department of Agriculture's Team Nutrition provides important nutrition education programs for children and technical training programs for food service professionals to assist them in preparing healthy school lunches. The National School Lunch Program also supports the HealthierUS School Challenge, an initiative that recognizes schools and local communities for actively promoting healthy lifestyles. By encouraging healthy eating habits and access to nutritious food, we are helping America's young people succeed in school, and we are helping protect them against childhood obesity, diabetes, and the risk of other serious health problems later in life.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of America's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week,'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9 through October 15, 2005, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program in appropriate activities that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20656
Filed 10–12–05; 9:18 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7943 of October 7, 2005

Leif Erikson Day, 2005

By the President of the United States of America

A Proclamation

More than 1,000 years ago, Leif Erikson left the coast of Greenland and began a journey to explore new lands. He made that voyage in the spirit of discovery and became one of the first Europeans known to have reached North America, inspiring stories of bountiful lands and charting a way for future explorers to follow. On Leif Erikson Day, we celebrate the accomplishments of Leif Erikson and his crew, and we honor the many contributions of Nordic Americans to our Nation.

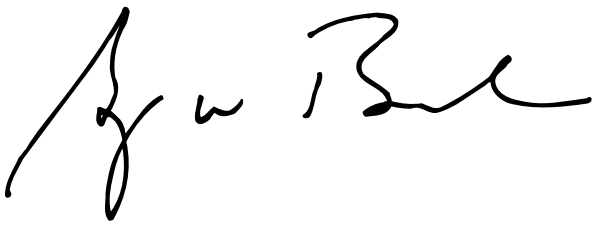
The journey of Leif Erikson reflects the spirit that has made America strong, as the desire to explore and understand is part of our national character. Today, we continue to push the frontiers of knowledge in many areas and especially with our exploration of space, drawn to the heavens as we were once drawn to the open seas.

Generations of Nordic Americans have come to our country with a sense of determination and optimism, and they have helped build a stronger and more vibrant Nation. On Leif Erikson Day, we celebrate Nordic Americans, as well as the ties between America and the Nordic nations. We are joined by a common respect for liberty, human rights, and the dignity of every person. Working together, we are spreading freedom and hope, and we are helping to build a better and more compassionate world.

To honor Leif Erikson, son of Iceland and grandson of Norway, and to celebrate our citizens of Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized and requested the President to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 9, 2005, as Leif Erikson Day. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs to honor our rich Nordic-American heritage.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20657
Filed 10–12–05; 9:18 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7944 of October 7, 2005

Columbus Day, 2005

By the President of the United States of America

A Proclamation

Christopher Columbus' journey across uncharted waters in 1492 changed the course of history. Overcoming many obstacles, the explorer from Genoa pursued a dream that carried him to the ''New World'' and helped launch an age of exploration, leading to the founding of new countries across the Americas. Through the years, the desire to discover and understand has been a part of our Nation's character, and Columbus' spirit has inspired generations of explorers and inventors. On Columbus Day, we honor Christopher Columbus and the vision that carried him on his historic voyage.

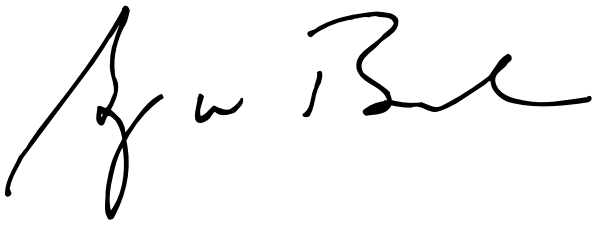
Since 1934, when President Roosevelt first proclaimed the national holiday, our Nation has observed Columbus Day to mark the moment when the Old World met the New. As we recognize Columbus' legacy, we also celebrate the contributions of Italian Americans to our Nation's growth and well-being. Americans of Italian descent are musicians and athletes, doctors and lawyers, teachers and first responders. They are serving bravely in our Armed Forces. From our country's first days, the sons and daughters of Italy have brought honor to themselves and enriched our national life.

More than 500 years after Columbus' journey, we are honored that the Italian Republic is among our closest friends and strongest allies. On Columbus Day, we celebrate this strong bond between America and Italy.

In commemoration of Columbus' journey, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested that the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 10, 2005, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20658
Filed 10–12–05; 9:19 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7945 of October 7, 2005

General Pulaski Memorial Day, 2005

By the President of the United States of America

A Proclamation

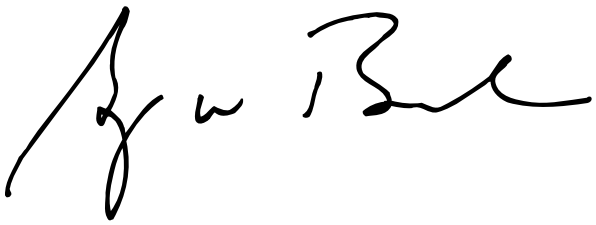
America's freedom has been achieved with great sacrifice. In the Revolutionary War, General Casimir Pulaski gave his life for the cause of freedom. Today, we honor his selfless contributions and heroic service.

Born in Poland, Casimir Pulaski fought Russian oppression in his homeland. In 1776, Benjamin Franklin met Pulaski in France and successfully recruited him to join the American fight for liberty. In America, Pulaski distinguished himself at the Battle of Brandywine and was commissioned as a Brigadier General by General George Washington. After raising his own legion, a special infantry and cavalry division that included many foreign-born troops, he helped defend Charleston, South Carolina, before being mortally wounded at the siege of Savannah in 1779.

General Pulaski exemplifies the spirit and determination of Polish immigrants to America, and he embodies our Nation's highest ideals. On this day, we express our gratitude for all the contributions of Polish Americans to our Nation and for the strong relationship between the United States and Poland. By honoring this lasting friendship and remembering heroes like General Pulaski, we reaffirm our commitment to advancing our country's founding ideals and carry forward our heritage of freedom.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 11, 2005, as General Pulaski Memorial Day. I encourage Americans to commemorate this occasion with appropriate programs and activities honoring Casimir Pulaski and all those who defend freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord two thousand five, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 05–20659

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Atlantic bluefish and summer flounder; published 9-13-05

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Air quality implementation plans; approval and promulgation; various States:

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Low income housing:

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Federal Housing Enterprise Oversight Office

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Office of Executive Director et al.; published 10-13-05

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Cirrus Design Corp.; published 9-1-05

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AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Peanut promotion, research, and information order; amendment; comments due by 10-21-05; published 9-21-05 [FR 05-18759]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

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Cut flowers from countries with chrysanthemum white rust; comments due by 10-21-05; published 9-20-05 [FR 05-18604]

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Forest Service

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Economic Analysis Bureau

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COMMERCE DEPARTMENT

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Fishery conservation and management:

Atlantic coastal fisheries cooperative management—

American lobster; comments due by 10-17-05; published 9-2-05 [FR 05-17557]

Atlantic highly migratory species—

Atlantic blue and white marlin, recreational landings limit; Atlantic tunas, swordfish, sharks, and billfish, fishery management plans; public hearings; comments due by 10-18-05; published 8-19-05 [FR 05-15965]

Magnuson-Stevens Act provisions—

National standard guidelines; comment extension; comments due by 10-21-05; published 8-15-05 [FR 05-16119]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

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EDUCATION DEPARTMENT

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Vocational and adult education—

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ENERGY DEPARTMENT

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Energy Efficiency and Renewable Energy Office

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Air quality implementation plans:

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Air quality implementation plans; approval and promulgation; various States:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 3863/P.L. 109–86

Natural Disaster Student Aid Fairness Act (Oct. 7, 2005; 119 Stat. 2056)

S. 1786/P.L. 109–87

To authorize the Secretary of Transportation to make emergency airport improvement project grants-in-aid under title 49, United States Code, for repairs and costs related to damage from Hurricanes Katrina and Rita. (Oct. 7, 2005; 119 Stat. 2059)

S. 1858/P.L. 109–88

Community Disaster Loan Act of 2005 (Oct. 7, 2005; 119 Stat. 2061)

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